Article - Judge Michael Markman

How did 44-year old, Oakland resident Michael Markman find his way to the Alameda County Superior Court bench? He had been considering a change from his federal patent litigation practice with high-powered law firms, Covington & Burling and earlier with Heller Ehrman. Then he was selected as an alternate juror for a criminal trial before Alameda County Superior Court Judge Jeffrey Horner and that experience, and how Judge Horner managed the courtroom during trial, motivated him to seek a position on the superior court bench and submit his name to the Governor’s office. Lo and behold, Governor Brown appointed him to the bench in July 2013 and he was thereafter reelected in June 2016.

Now Judge Markman sits in Department 302 as a Direct Calendar Judge in Alameda (the City that is), on beachfront property. Judge Markman’s move to a Direct Calendar Department assignment speaks to his experience in civil litigation, albeit primarily in Federal Court. With limited court resources and staff, it’s been very different than his big firm experience. Yet, Judge Markman enjoys the new challenges and, best of all, “he is in court every day.”

Before his assignment to a Direct Calendar department, Judge Markman cut his teeth on criminal arraignments in Department 107, while doing unlawful detainer bench trials two times a week. In January 2014, he was assigned to a Family Law Department in Alameda, and later in Hayward when the Family Law departments were consolidated. Did I mention he was busy? For Family Law practitioners this comes as no surprise. Decisions have to be made quickly, one right after the other, and his day was jammed packed. It was an assignment he took seriously, recognizing that his decisions directly impacted the lives of each of the litigants before him.

In December 2016, he was assigned to Department 302, a Direct Calendar department in Alameda. He has kept the then-current courtroom procedures in place until he could make his own evaluations. Judge Markman did, however, discontinue case management conferences on Friday mornings so that he would have more time available for pre-trial conferences and bench trials. Case management conferences still are scheduled on Monday through Thursday at 2:30 p.m. Typically, unless the case demands it, Judge Markman schedules one case management conference per case. It, therefore, seems prudent that your case management statement be more than perfunctory and, if issues are anticipated, they should be raised in your case management conference statement.

Judge Markman issues tentative case management orders at least 24 hours in advance, and the orders will typically set deadlines for the selection of a mediator, completion of the meditation and scheduling a trial date. If the case is set for trial, a pretrial order will also be issued. If parties disagree with the deadlines or trial date, or want further instructions to be included in the case management order, counsel will need to contest the tentative by 4:00 p.m. the court day before the hearing and thereafter appear at the hearing (by phone or in person) to discuss alternative dates and modifications to the tentative case management order. Counsel are also advised to provide a realistic trial time estimate, identify all related cases, provide a candid assessment of whether or when key motions are likely to be filed, and explain whether or why significant discovery disputes are anticipated. Typically, counsel appear via CourtCall, a practice that is completely acceptable to Judge Markman.

Pretrial conferences are held on Fridays on Judge Markman’s trial calendar. Trials are set for Fridays and typically jurors do not appear until the next court day. Trials begin at 8:30 a.m., or thereabout as the courthouse itself does not open until 8:30 a.m., and continue until 1:30 p.m., Mondays through Thursdays. Two 15-minute breaks are taken during each trial day.

Judge Markman uses the “6-pack” method of jury selection. Unless the case is particularly simple, he encourages counsel to use juror questionnaires. Questionnaires should be submitted one week before the Friday pretrial conference so that the questionnaire can be finalized at the conference. Be aware that at the pretrial conference Judge Markman will also set time limits for voir dire.

Judge Markman suggests that trial counsel visit his courtroom in advance of trial as the courtroom is unusually shaped, and it will be important to arrange courtroom technology and exhibit displays in a location that can be seen by the witnesses and the jury.

What’s important to Judge Markman? Preparation. Lack of preparation is probably the biggest mistake lawyers make in his courtroom. Attacks on opposing parties and counsel are not well-received by Judge Markman and simply not very effective in his view. Judge Markman suggests that the secret to success in his courtroom is to focus the trier of fact on the *key* facts and issues.

Importantly, Judge Markman frequently imposes time limits for trials and he uses a chess clock to keep track of time. Whatever time you are assigned to “try your case,” it will include your cross examination of witnesses (something often hard to predict) and closing arguments, so be aware. The Court’s time limits are “firm.”

One more thing, while Judge Markman handles his regular Direct Calendar tasks, he also acts as one of three judges (four when a conflict arises) assigned to the Appellate Division of the Superior Court, which meets every second Friday of the month. The Appellate Division hears criminal misdemeanor appeals and appeals of limited civil jurisdiction decisions. Judge Markman said he wanted a change from his patent litigation practice and there seems to be little doubt that that is exactly what he got.

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| **Scheduling Information For Dept. 302** | |
| Trial Schedule | Monday-Thursday 8:30 a.m. – 1:30 p.m. |
| CMC Schedule | Monday – Thursday at 2:30 p.m. |
| L&M Schedule | Tuesday at 2:30 p.m. and Friday at 1:30 p.m. |
| Settlement Conf. | Wednesdays 2:30 p.m. |
| *Ex Parte* Schedule | Monday – Thursday at 2:30 p.m., *Reservations are required.* |
| Scheduling of **all** hearings should be made **by e-mail only** to [Dept.302@alameda.courts.ca.gov](mailto:Dept.302@alameda.courts.ca.gov). | |