

[Lloyd Miller's Notes from 03/18/10 Appellate Practice Section Meeting]

Our March 18 program featured an excellent presentation by Judge Elaine Andrews and Appellate Clerk Marilyn May on the Supreme Court's settlement program.

Marilyn May introduced the topic by reviewing Rules 221 and 222, adopted in 2001. She noted that the current active settlement program led by Judge Andrews was commenced in 2003 because little had happened in the way of self-initiated appellate settlement efforts prior to that time. Since 2003 approximately 16% of the 1000 cases that have been reviewed by judges have been selected as candidates for settlement. Of these, nearly one-half have been settled with a handful still in the settlement process.

Judge Andrews reviewed the work she has been doing with Senior Bankruptcy Judge Ross, Judge Hensley and Judge Finn. Judge Andrews explained the screening process she undertakes to identify cases that are the best candidates for settlement. In general, prisoner cases, workers' compensation cases, habitual litigator cases, and Child In Need of Aid cases are not selected during the screening process (although Judge Andrews identified some circumstances warranting the occasional exception).

On the other hand, Judge Andrews explained that she does not disqualify cases involving *pro se* litigants from the Appellate Settlement Program, a notable departure from many similar programs in other appellate courts.

Next, Judge Andrews discussed the informal process she employs for initiating and pursuing the settlement process, beginning with 'cold calls' to the attorneys and often leading to concluded settlements through telephonic means only. Judge Andrews emphasized that her focus remains on moving the process swiftly and as inexpensively as possible, a goal which also commands informality. The litigants are free to express their preferences from among the four judges participating in the project, and the court will suspend briefing schedules to permit the settlement process to be concluded.

Judge Andrews recognized that some attorneys are reluctant to identify in the Rule 221 Form their openness to settlement. For this reason Judge Andrews also said she was open to direct phone calls from appellate counsel, where an attorney suggests 'off the record' that Judge Andrews look at a particular case during the screening process.

Judge Andrews also spent some time explaining the unique tools that can be used during the settlement process to achieve resolution of a case, such as (1) coordinating activities in two or more cases that are at different levels of proceedings (or even in different courts) and (2) working with the trial judge to consider actions that can facilitate the settlement process (including the possible withdrawal of rulings).

During the question and answer period Judge Andrews noted that the settlement program could be extended to petitions for review if requested, although to date this has not occurred. Judge Andrews also indicated that considerable progress could be made if volunteer attorneys were available to assist unrepresented parties. Judge Andrews thought that such assistance could be particularly helpful in the settlement of domestic relations cases and in cases relating to lands issues such as easements. With respect to criminal law cases, there was also a brisk discussion regarding the value of having a retired judge involved as a neutral evaluator to offer insights for the benefit of criminal defendants involved in appeals.

Over 30 people attended the program (including several telephonically). Many thanks to Judge Andrews and Marilyn May for their time and contributions. Our next program will occur on Thursday, May 20, 2010. The topic of the program will be announced next month.