

## JUDICIAL DECISION-MAKING

- I. **Welcome & Overview** (ice-breaker questions to audience)
  
- II. **Objectives:** Identify the role of judges; Differentiate between trial and appellate courts; Discuss appropriate and inappropriate factors in judicial decision-making and various constraints that limit judges' authority and decisional prerogatives
  
- III. **Factors that bear on judicial decision-making**
  - A. What type of proceeding (e.g., civil or criminal case)?
  - B. What level of court (trial court or appellate court)?
  - C. For trial courts, what stage of the proceeding (e.g., pretrial, during trial, or post-trial)?
  - D. What is the issue that calls for a decision (e.g., pretrial ruling on a motion to suppress, a discovery dispute, or an anticipated evidentiary issue; selection of a jury at trial; a ruling during trial on admissibility of evidence; or a post-trial issue regarding the jury's verdict)?
  - E. Is the issue one of fact or of law, or a mixed question of fact and law? (Different standards apply to these)
  - F. Is the issue one of "common law" (i.e., law arising from court decisions in areas not governed by statute), or rather one of statutory or constitutional construction?
  
- IV. **Inappropriate Factors** (at any court level and any stage of proceedings)
  - A. Don't decide cases based on whim, majority vote of the parties or the public, personal policy preferences, or out of fear of political repercussions.
  - B. Don't have a constituency of partisan voters that tell a judge how cases should be decided.
  - C. Don't decide cases based on the attorneys or the parties involved.
  - D. Don't decide cases based on newspaper articles

about the case, or letters to the editor, or blogs.  
E. Very different than how the Governor makes decisions, or how Legislators, County Commissioners or City Council Members make decisions.  
F. What works just fine for a popularly elected official is not how it works for judges.  
G. Judges take an oath to fairly and impartially decide cases by applying the law (Constitution, statutes, regulations or prior case law) to a real case involving specific parties, based on the specific facts presented and found in court.

## **V. Trial courts**

- A. Where trials and fact-finding occurs
- B. Fact-finding (the "search for the truth") is solely for the trier of fact - the jury in a jury trial, and the court in a bench trial
- C. The trier of fact has wide discretion in evaluating the evidence and deciding the facts. E.g., the jury may consider the strengths and weaknesses of the evidence presented (witness testimony and exhibits admitted into evidence at trial); the demeanor and credibility of witnesses; any inconsistencies in the evidence; common sense and human experience.
- D. The trial court, not the jury, controls and administers the law that applies during trial, e.g.,
  - 1. Evidentiary rulings on what evidence may or may not be presented to the jury; compliance with procedural requirements such as disclosure of witnesses and exhibits)
  - 2. Jury instructions on the law that the jurors must then apply to the facts as found by them
  - 3. Any motions made during trial (e.g., motions for a directed verdict)
- E. But again, the jury (or the trial court in a bench trial) is the sole finder of the facts; and courts generally will not second guess the facts found by a jury (even if the judge might disagree with the verdict), as long as some reasonably evidence was presented at trial to support the jury's findings or verdict.

- F. Regarding legal issues on which the trial court must rule, various factors constrain its authority, e.g.,
  - 1. The court is bound by applicable statutes (assuming no constitutional issue) and decisions of Arizona's appellate courts, and USSC cases on questions of federal constitutional law and must follow them if they apply, even if the judge disagrees with the statute or prior appellate case.
  - 2. And trial courts do not have the last word - the losing or disgruntled party may appeal to the court of appeals.

## **VI. Appellate courts**

- A. Much different function than trial court. Not a fact-finding court; does not hold trials, hear witness testimony, or evaluate the evidence. The "search for the truth" regarding facts is over and does not reoccur in the appellate court.
- B. Rather, appellate courts address issues of law raised by the parties, e.g., was a statute or contract correctly interpreted and applied? Was material evidence erroneously admitted or excluded at trial? Were a party's constitutional rights violated? Did the trial court make a significant error in instructing the jury on the law?
- C. Court of Appeals considers and decides cases using 3-judge panels, and Az. Supreme Court has discretionary review in most cases and generally sits and decides cases with all 5 justices
- D. As with trial courts, various factors constrain the authority and decisional prerogatives of appellate courts, e.g.,
  - 1. Appellate court jurisdiction (i.e., the power or authority to decide) is governed by statute or the Arizona Constitution
  - 2. Bound by the record of proceedings in the trial court (limited to any evidence actually presented and admitted in the trial court)
  - 3. Generally limited to issues raised and argued by the parties in written briefs they file. Other potential issues are waived.

4. Different standards of review apply, depending on the nature and substance of the issue presented (e.g., de novo review on pure questions of law, vs. abuse of discretion for certain rulings)
5. Like trial courts, the Court of Appeals is bound to follow applicable statutes (again, assuming no constitutional issue), Arizona supreme court decisions, and USSC cases on questions of federal constitutional law, even if the court disagrees with them.
6. The Arizona Supreme Court is likewise bound to follow applicable statutes and USSC cases.
7. Appellate courts generally follow applicable Arizona case precedent under the principle of stare decisis (Latin for "let the decision stand"), unless good, sound reasons support overruling a prior case based on obsolescence, significantly changed conditions, etc.
8. Judicial restraint - judges seek to address, in as limited or narrow manner as possible, only those issues that are clearly raised and require decision
9. Appellate courts announce their rulings in written decisions that explain the background, issues, legal analysis, and result. All decisions are immediately made public record through the court websites and through legal research companies such as Westlaw.
10. The results of appellate decisions generally fall into one of these categories: affirm (in whole or in part); reverse (in whole or in part); remand to the trial court for a new trial or further proceedings of some sort).

VII. **Wrap up:** In all cases that are properly before the court, at any level, and that call for decision, judges are to faithfully, fairly, and impartially the law to the facts, to the best of their ability in accordance with their oath.