

Hon. Jeremy Fogel



On September 17, 2018, Judge Jeremy Fogel became the first Executive Director of the Berkeley Judicial Institute, a center at Berkeley Law School whose mission is to build bridges between judges and academics and to promote an ethical, resilient and independent judiciary. Prior to his appointment at Berkeley, he served as Director of the Federal Judicial Center in Washington, DC (2011-2018), as a United States District Judge for the Northern District of California (1998-2011), and as a judge of the Santa Clara County Superior (1986-1998) and Municipal (1981-1986) Courts. He was the founding Directing Attorney of the Mental Health Advocacy Project from 1978 to 1981.

ARTICLE: Daily Journal - Verdicts and Settlements: Judge Jeremy D. Fogel - The Human Dimension

Judge Fogel was the Director of the Federal Judicial Center (2011-2018) and was a lecturer at Stanford Law School from 2003 until his relocation to Washington. He taught for the California Continuing Judicial Studies Program and California Judicial College from 1987 to 2010. He developed and taught judicial education which included, recognizing unconscious assumptions; the effects of structural inequality; judicial independence and accountability; and judicial wellness and resilience. He has served as a faculty member for legal exchanges in more than a dozen foreign countries.

Judge Fogel has received numerous accolades, including the President's Award for Outstanding Service to the California Judiciary from the California Judges Association and the Vanguard Award for notable contributions to intellectual property law from the State Bar of California. In 2002, he received special recognition from the Santa Clara County Bar Association for exemplifying the highest standards of professionalism in the judiciary.

"Judge Fogel was one of the best mediators I've ever had. Very well prepared, very persuasive. I would definitely recommend him to others."

Judge Fogel frequently mediated cases at the request of colleagues on the district court and also served as a civil team leader on the Santa Clara Superior Court and supervising judge of the family law division.

He also has extensive experience dealing with complex cases involving emotional or psychological dynamics.

Areas of Expertise:

- ANTITRUST
- CIVIL RIGHTS
- COMMERCIAL DISPUTES
- COMPLEX LITIGATION

- CONTRACTS
- EMPLOYMENT
- INTELLECTUAL PROPERTY
- MDL
- PATENT
- SEXUAL HARASSMENT
- STANDARD ESSENTIAL PATENTS (SEP)
- TRADEMARK & COPYRIGHT
- TRUSTS & ESTATES

ADR Cases:

- Epic Games v. Apple (mock trial in antitrust matter)
- Apple v. Qualcomm (expert witness in foreign litigation re an aspect of US patent law)
- Epic Games v. Google (expert witness in foreign litigation re a procedural aspect of US and California competition and contract law)
- Office of the Circuit Executive, Ninth Circuit Court of Appeals (management study)
- Anthony M. Kennedy Learning Center and U.S. District Court for the Eastern District of California (management study)

Representative Cases

Intellectual Property and Internet:

- Affymetrix v. Incyte, et al. (construction of biotech patents; successfully mediated case with consent of parties after determining dispositive motions)
- Comb v. PayPal (enforceability of clickwrap agreements)
- Dolby v. Lucent (construction of patents for digital signal suppression)
- In re Compression Labs, Inc. Patent Litigation (patent MDL involving JPEG patents)
- Kinderstart.com LLC v. Google, Inc. (challenge to Google's PageRank algorithm)
- Lenz v. Universal Music (fair use doctrine in copyright)
- Online Policy Group v. Diebold (availability of sanctions under the Digital Millennium Copyright Act)
- Ritz Camera & Image, LLC v. SanDisk Corp. (interplay between antitrust and patent law)

Civil Rights and Public Policy:

- Medrano v. D'Arrigo Brothers, et al (class action involving pay and working conditions of agricultural workers)
- Morales v. Tilton (Section 1983 litigation re California's lethal injection protocol)

- Operation Tailwind Litigation (MDL involving libel claims against CNN for coverage of Vietnam Era covert operation)
- Rodriguez v. California Highway Patrol (class action involving racial discrimination in car stops and searches)
- San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose (limits on doctrine of qualified immunity)

Business Employment and Antitrust:

- In re Mercury Interactive Securities Litigation (securities fraud class action with related DOJ prosecution)
- In re Wachovia Corp. “Pick-A-Payment” Mortgage Marketing and Sales Practices Litigation (financial services MDL including multiple class actions—dispositive motions and post-settlement claim proceedings)
- Maghribi v. Advanced Micro Devices (religious discrimination in executive employment)
- Manufactured Home Communities v. City of Santa Cruz (constitutional challenge to mobile home park ordinance—successfully mediated case with consent of parties after determining dispositive motions)
- In re Ebay Seller Antitrust Litigation (antitrust class action re Ebay’s fee structure)

Environmental Law:

- United States v. Alisal Water Corporation, et al. (enforcement action under Safe Drinking Water Act, including post-judgment receivership proceedings)
- Wing and a Prayer, Inc. v. City of San Jose, (constitutional and regulatory challenge to airport noise ordinance)

Professional Activities:

- Federal Judicial Center, 2001-present. Faculty member for programs in patent law, mediation training for U.S. district, bankruptcy and magistrate judges, decision-making, and ethical issues in alternative dispute resolution; created and served as co-leader of mid-career programs for circuit, district, bankruptcy and magistrate judges.
- Lecturer, Stanford Law School (psychology of litigation), 2003-2011.
- United States Department of State, 2007-present. Project leader for technical assistance efforts in Namibia and Uzbekistan; lead faculty member for programs on intellectual property rights in Brazil and Taiwan; organizer of programs in Turkey on terrorism and freedom of expression.

- Institute for the Study and Development of Legal Systems, 1999-2007. Faculty member for programs on intellectual property rights, case management, alternative dispute resolution and judicial ethics training in Bangladesh, Hong Kong, India, Israel, Jordan, Taiwan and Tanzania; host to numerous international delegations studying intellectual property rights, case management and mediation.
- California Continuing Judicial Studies Program, 1987-2010. Member of curriculum planning committee, 1991-97, chair, 1995-97; faculty member for programs in family law, alternative dispute resolution, advanced decision-making, and excellence in judging.
- California Judicial Education and Research, 1988-1998. Chair, probate/mental health institute; faculty member for programs in civil law and procedure, family law, and judicial conduct and ethics; lead facilitator, strategic planning for judicial branch education.
- Judicial College of California, 1995-97 and 2017-present. Faculty member for courses in alternative dispute resolution, domestic violence, and mindfulness and judging.
- California State University, Hayward, 1977-78. Lecturer, Department of Human Development.

Honors and Awards:

- Judge of the Year, Santa Clara County Trial Lawyers' Association, 2011, 2005, 1997.
- Vanguard Award (for outstanding contributions to intellectual property law), Intellectual Property Law Section, State Bar of California, 2011.
- Justice of the Year, San Francisco Trial Lawyers' Association, 2007.
- Top 100 Lawyers in California, Daily Journal Corporation, 2007.
- Special Award for Professionalism and Exemplary Leadership, Santa Clara County Bar Association, 2002.
- President's Award for Outstanding Contributions to the California Judiciary, California Judges Association, 1997.
- "LACY Honors" Award, Legal Advocates for Children and Youth, 1997.

Select Publications:

- "Creating and Sustaining a Respectful Judicial Workplace," Federal Judicial Center, 2018.
- "Mindfulness and Judging," Federal Judicial Center, 2016.
- "A Tribute to Judge Mark Kravitz," Lewis and Clark Law Review, Vol. 18, No. 3, 2014.
- "A Reasonable Expectation of Privacy," Litigation, Vol. 40, No. 3, 2014.
- "In the Eye of the Storm: A Judge's Experience in Lethal-Injection Litigation," Fordham Urban Law Journal, Vol. XXXV, No. 4, 2008.



- “Strategies for Effective ADR Advocacy,” in “A Litigator’s Guide to Effective Use of ADR in California,” California Continuing Education of the Bar, 2005.
- “The Psychology of Litigation,” American Business Trial Lawyers Report, Vol. 13, No. 1, 2003.

Education:

- B.A. from Stanford University in 1971.
- J.D. from Harvard Law School in 1974.