

Appellate Mediation — No Longer an Oxymoron

“Appellate Mediation: What Makes It Different and Why Does It Work?” That was the topic of discussion during a Friday afternoon Continuing Legal Education session during the ABA Annual Meeting. Judge Dorothy Nelson, of Pasadena, Calif., outlined the format of the program by posing several questions that the panel of experts would address. What is appellate mediation, and what are the benefits? How is appellate mediation different from pre-trial mediation? What kinds of cases lend themselves to appellate mediation?

In addition to Judge Nelson, the panel included Claudia Bernard, chief circuit mediator for the Ninth Circuit Court of Appeals; Pamela Dunn, a lawyer in Pasadena, Calif.; Jon Eisenberg, a civil appellate practitioner from San Francisco; Ignazio Ruvolo, presiding justice of the California First District Court of Appeals, Division Four; and John A. Toker, San Francisco lawyer, mediator and arbitrator.

Toker explained that he had been told long ago that “appellate mediation” was an oxymoron but that it was no longer true. Bernard weighed in, saying that courts want appellate mediation for a simple reason: it works. And Judge Nelson reiterated its benefits by saying that it brings quick resolution to cases.

Bernard brought somewhat of a human element to the discussion of arbitration, saying that – like other mediation – the mediator provides the opportunity for the individuals involved to tell someone what they really need, want and what their interests are. Often people just want their story to be heard.

The program also provided a forum for the panelists to discuss the rate of success of appellate mediation, and also the degree of willingness of both local and federal government to participate.

The ABA Section of Dispute Resolution sponsored the program.

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