

Guest Editorial

JUDICIAL INDEPENDENCE IS IMPORTANT

As many of you know, I am a retired Modoc County Superior Court Judge, having served for two decades as the only Superior Court Judge in Modoc County and an additional decade as an assigned Judge in various Superior Courts throughout California. Recently, there has been substantial public dialogue about the decision making of our local judges although no judicial office is the subject of an election contest this year. I am writing this editorial on behalf of the judicial system as I believe it is important that our citizens have a general understanding of the judicial decision making process and the rules that are in place to assure that judges make decisions based on the facts and the law and independent from any outside influence such as passion, prejudice or what might be the most "popular" decision based on perceived public opinion. This independence in decision making is at the core of a fair and impartial system of justice.

In Modoc County, as opposed to many larger counties, our Superior Court judges preside over and have to make decisions regarding every category of law, ranging from small claims, civil suits, family law, probate, guardianships and conservatorships to juvenile and criminal law, ranging from minor traffic matters to murders. In all these matters, the judges are bound by law and ethics to make their decisions based solely on the facts presented and the law that applies in each case, remain impartial and are precluded from considering outside influences such as perceived public opinion or popularity of a decision. These same rules also preclude judges from making any public comment on any matter, civil or criminal, pending before that judge or that might reasonably come before that judge in the future. The same set of rules preclude judges from taking any public position on any election contest other than a judicial election, which again serves to preserve the impartiality and independence of judicial decision making and is why you do not see the local judges engaging in any of the public dialogue regarding their decision making.

This is not intended to suggest that judges should be free of public scrutiny. Judges, just like their justice partners (District Attorney and Sheriff) are accountable to the public by election. In fact, given the process, one could argue that judges are subject to more public scrutiny in their decision making process than many public servants as virtually every decision made by a judge is required to be made in a hearing open to the public with expressed findings in support of their decision for which accurate official and public records are maintained. Further, every decision made by a judge is subject to challenge by writ or appeal to a higher court to assure the decision is made in accordance with the applicable facts and rule of law.

Finally, the public needs to understand that judicial decisions are not made in a vacuum. Whether civil or criminal, due process requires that fair and reasonable input be allowed from both sides on any issue to be decided, and while judges are often called upon to exercise discretion, they must do so based on considering the evidence and arguments presented by both sides. It is essentially the same process and the same rules

that apply to the citizens of Modoc County when called upon to do their civic duty as a juror.

In fact, in most criminal cases the ultimate issue of guilt or innocence is decided by a jury of your peers. As to sentencing, the Legislature has specified a range of punishment that applies to the crime and the Judge is bound to follow the law. As an example, a Judge cannot impose a prison sentence for a parking ticket. When a jury finds a defendant guilty, the Judge can and should consider motions for new trial and the like that are raised by either side based on the facts and the law that applies. However, a Judge is required to remain impartial and cannot order a new trial just because the verdict is not what the Judge may have personally decided.

Assuming the case is at the point of sentencing, the process for a typical felony case is referral by the Judge to the Probation Office for a Sentencing Report and Recommendation that goes to both the Judge and Prosecutor and Defense Attorney. If either attorney has a concern regarding the report, the Probation Officer can be called as a witness and be examined. If the concern remains, either attorney can ask for an evidentiary hearing where they can call witnesses in an effort to convince the court of their position. The Judge then makes a ruling, stating the reasons on the record in what are called findings. If either side believes the Judge has considered inappropriate facts or law, they have a right to ask for a review by a higher Court by either a writ or appeal.

To summarize, the sentencing process for the Judge is as follows:

1. As the Trial Judge, the Court has already heard all of the trial evidence;
2. Has considered the Probation Report and input from the attorneys about the report;
3. Has considered any additional evidence presented at the Sentencing hearing;
4. Has considered the arguments of both counsel (which is usually quite extensive);
5. Has stated the decision and the reasons for the decision on the record; and
6. If a Writ or Appeal is filed, must consider and follow the Appellate Court ruling.

The reality is that the Legislature and decisions of the higher courts have resulted in the reduction of punishment in regard to certain offenses, narcotic offenses being a prime example. Judge's must follow the law even though they may have personal beliefs that are different. Part of being impartial is the recognition that a Judge takes an oath to follow the law regardless of his personal views on the subject. When I became a Judge it did not take very long to realize that in following the rules regarding decision making, the best I could hope for was to make one party happy and it was not unusual that my decisions made both sides unhappy. I also realized that it was not my job to make anyone happy, but rather to dispense justice as set forth in this editorial.

The other reality is that the vast majority of criminal cases come to the Judge by way of what is called a "plea bargain" where the attorneys have agreed that in exchange for a particular guilty plea (and thus avoiding time and expense of trial), there is an agreed upon sentence. My personal view has always been that if you have good attorneys on both sides their agreement is probably fair and reasonable and should be accepted.

However, the Judge always retains the right to reject a plea bargain if the Judge believes the agreement is not fair and reasonable for either the People or the defendant, but this is an unusual occurrence.

I hope this helps clarify for the citizens of Modoc County how judicial decisions are made and why our local judges are not participating in the current public dialogue regarding the same. There are weekly court calendars posted on the Modoc Superior Court web site and I encourage members of the public, including the media, to attend the public hearings of interest to you and scrutinize for yourselves the input given and the process employed in decision making. If you do, I think it will become readily apparent that while the judges have the final call on any decision, the decisions are based on the facts as presented by the parties and the law that is applicable to those facts.

Respectfully Submitted,

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Superior Court Judge, Retired