

Judicial Profile

MICHAEL J. ZUSSMAN

Hon. Morton Denlow U.S. Magistrate Judge, Northern District of Illinois

A judge sitting with lawyers and their clients, working through and resolving a problem together, that is the profession at its best. That is the direction the law is going, and why mediation is becoming more important.

—Judge Morton Denlow

Judge Morton Denlow retired from the bench on Oct. 1, 2012, after 16 years as a federal magistrate judge for the Northern District of Illinois, Eastern Division. Judge Denlow, passionate about and a master of problem solving and alternative dispute resolution, plans to move into the next phase of his career as a mediator and arbitrator with JAMS.

Early Influences

Judge Denlow is a child of Jewish immigrants from Poland. Both parents worked as tailors, and his father served in the Polish army. His parents, Holocaust survivors, met outside Munich, Germany, in a displaced persons camp, where Judge Denlow and one of his brothers were born. The family immigrated to the United States when he was two years old and settled in St. Louis, Mo. Judge Denlow attended Washington University in St. Louis before earning his law degree from Northwestern University in Evanston, Ill. He took a great interest in sports, and grew up an avid St. Louis Cardinals baseball fan.

Judge Denlow found his calling in the law in his youth. Through his early Jewish education, Judge Denlow's first exposure to issues of law and morality came from the study of Jewish law. As a Hebrew day school student, he studied the Talmud with classmates and interpreted the meanings of Jewish law. Family also had significant impact on Judge Denlow. He grew up in a close-knit family as the oldest of six children. Judge Denlow's parents instilled in him a strong work ethic, and the notion that making a difference in the world really matters. He worked part-time jobs from age ten through law school, including selling newspapers, scooping ice cream, and working in a pawn shop. However, by ninth grade, Judge Denlow had already made the decision to pursue a career in the law.

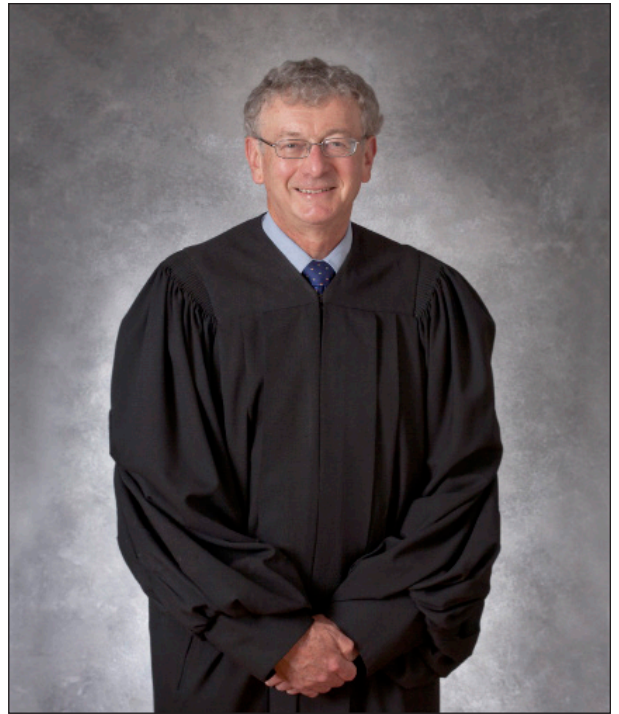


Photo courtesy of Thomas Zamiar

Any ninth grade student remotely interested in legal issues would be excited for a field trip to the U.S. Supreme Court. A young Mort Denlow, on a visit with his ninth grade class, was no different. The class had the unique opportunity not only to visit the Court, but also to meet Chief Justice Earl Warren. This trip inspired Judge Denlow to write a term paper about the Chief Justice, and Judge Denlow credits this visit as the moment he realized his desire to practice law. He later discovered that he was also well suited for the competitive nature of the litigation process.

Professional Development and the Bench

After graduating from law school, Judge Denlow first worked as an associate at D'Ancona & Pflaum, where he had clerked during law school. Coincidentally, Judge Robert W. Gettleman, Judge Denlow's colleague on the bench, hired the judge for this position. Judge Denlow practiced primarily commercial litigation at D'Ancona & Pflaum, and later at Sachnoff & Weaver. He then partnered with Nathan Dardick, and they successfully managed their own law firm,

Dardick & Denlow, for nine years, focusing primarily on complex commercial litigation. During this period, Judge Denlow appeared before the Northern District of Illinois countless times, giving the court ample opportunity to observe his trial and litigation skills first hand.

In 1993, Dardick & Denlow merged into Sachnoff & Weaver, and the judge became of counsel to the firm. Judge Denlow took time at Sachnoff & Weaver to hone his mediation skills through training after experiencing the benefits of the mediation process as a litigator for a party in a bitter family business dispute that was ultimately settled through mediation.

In 1996, after practicing law for 24 years, Judge Denlow had grown to appreciate the problem solving aspects of the law, and excelled at quickly and fairly resolving disputes. Chief Judge James F. Holderman, before whom Judge Denlow had appeared many times as an attorney, recognized Judge Denlow's expert proficiency and passion for dispute resolution. Judge Holderman found Judge Denlow's integrity "absolutely impeccable," and was "one of his biggest supporters" when Judge Denlow joined the bench. Judge Gettleman also supported Judge Denlow's candidacy, stating that his "strong commitment in dispute resolution was a major factor" in the considerations.

On the bench, Judge Denlow presided over thousands of cases. While some of those cases attracted significant media attention, such as the recent "Weiner Wars" trademark dispute between Oscar Mayer and Ball Park Franks, the most professionally satisfying cases for Judge Denlow were in the areas of employment discrimination, civil rights, and social security disability, cases in which Judge Denlow felt he really had an opportunity to make a difference in people's lives. He also enjoyed working on intellectually challenging cases involving patents, trade secrets, and the First Amendment (such as a case involving whether an ordinance barring a plaintiff from selling t-shirts advocating for the legalization of marijuana at a city-sponsored festival was unconstitutional).

Judge Denlow developed a reputation for settling cases. In their most recent evaluation, the Chicago Council of Lawyers found that "attorneys had extremely positive views of his ability to settle cases and similarly praised him for the amount of time and effort he put into settlement conferences." Judge Denlow emphasizes the advantages of settlement over litigation to attorneys and their clients. His seven Cs¹ (seven advantages of settlement over litigation) have become well known and reflect his belief that factors other than the legal merits motivate most settlements.

Settlement Assistance Program

Chief Judge Holderman lauds Judge Denlow for recognizing that the purpose of litigation is to resolve disputes, and that there are superior ways to resolve a case other than by trial. In settlement, parties can be creative and obtain many benefits not available



The Denlow Family Team.

through a trial.

Judge Denlow's greatest impact was in the area of settlements. One of his legacies—not only for the Northern District of Illinois, but the federal judiciary itself—is the creation and development of the Settlement Assistance Program. The program, designed chiefly by Judge Denlow, allows the court to appoint counsel to represent pro se plaintiffs in employment discrimination and civil rights cases for the limited purpose of assisting the litigants to reach a settlement with their adversaries. The appointed attorneys work with the plaintiffs to help them understand the value of their case, how the settlement process works, and assist in settlement negotiations. If a case does not result in a settlement, there is no obligation for the appointed counsel to continue his or her representation.

The Settlement Assistance Program levels the playing field for pro se plaintiffs against more sophisticated corporate defendants, and has been hugely successful. The program's success has not gone unnoticed. Articles have been written about the program, and it has inspired courts across the country to implement similar programs in their own jurisdictions.

Settlement Database and Publications

Judge Denlow was also the first magistrate judge to devise a settlement database to log the settlements reached in cases. The court anonymously tracks information on different types of cases, and the amount for which they are settled. This way, judges have a basis for determining appropriate settlements in future cases. The Settlement Database, which contains information on approximately two thousand cases, has proven to be especially helpful in employment discrimination, civil rights, and personal injury matters, as those types of cases tend to come before the court repeatedly. The database has been pivotal in maintaining consistency, fairness, and efficiency in the settlement process.

Judge Denlow has written extensively on effective settlement techniques. One of his many articles, "Breaking Impasses in Settlement Conferences: Five

Techniques for Resolution,” published in the Fall 2000 edition of *The Judges’ Journal of the American Bar Association*, discusses several specific techniques, with case studies illustrating their application to real world scenarios. A follow-up article, “Breaking Impasses in Judicial Settlement Conferences: Seven (more) Techniques for Resolution,” published in *Court Review, The Journal of the American Judges Association*, 2011, volume 46, “describes seven more tried-and-true impasse-breaking techniques that judges may add to their settlement arsenal.” *Id.*

Judge Denlow has worked to improve judicial efficiency in other areas, as well. His article, “Trial on the Papers: An Alternative to Cross Motions for Summary Judgment,” published in the August 1999 issue of *The Federal Lawyer*, vol. 46 at p. 30, addressed the problems encountered when parties cross-move for summary judgment. He suggests that parties seek a ruling on the merits pursuant to Rule 52(a) of the Federal Rules of Civil Procedure in order to avoid the potential nondecision that can result from cross-motions for summary judgment. Judge Gettleman notes that Judge Denlow often encouraged use of trial on the papers as a method of accomplishing as much as possible outside of the courtroom, thereby easing the Court’s burden and allowing additional time for other matters.

Community and Family

Making a difference outside the courtroom is equally as important to Judge Denlow. He is chairman of the Resolution Systems Institute (RSI), an organization which promotes court annexed mediation, conducts research in the area of mediation, and has one of the most comprehensive online ADR resources. In addition, Judge Denlow is a vice president of the Jewish Judges Association of Illinois, a board member of the Chicago Bar Foundation, and he is a past president of his synagogue. He has also been an active member of the Federal Bar Association, serving on the board of the Chicago Chapter with Fern C. Bomchill, the FBA’s immediate past president. Bomchill, who has known Judge Denlow since they were adversaries as associates, finds him to be “the whole package—an outstanding professional, an extraordinary jurist, and a quality friend.”

Judge Denlow loves spending time with his wife, Reva, their four children, and seven grandchildren. He plays softball on several teams, including on a team with some of his children. He is the pitcher for the judges’ softball team in the annual judges vs. clerks game. Following his retirement, Judge Denlow traveled to Las Vegas to play in the World Championship of Senior Men’s Softball Tournament. He enjoys going to sporting events with his friends and family, particularly Northwestern University football and basketball games, and he always tries to see the Cardinals when they come to Chicago.

Transition to JAMS Mediator and Arbitrator

As a master of dispute resolution and active member of his community, Judge Denlow will be at home at JAMS. He will also stay active with pro bono with his continuing work with RSI, his synagogue, the Chicago Bar Foundation, and the Jewish Judges Association.

Judge Denlow has established himself not only as a fair, impartial, and respected arbiter, but also as a trustworthy colleague and mentor. Jose Lopez was the judge’s first judicial clerk and remains a close friend. Lopez, now a partner at Perkins Coie, still views Judge Denlow as his mentor and has consulted him on “every decision I’ve made in my professional life.” Lopez has no doubt that the judge will succeed at JAMS, because Judge Denlow is “human, easy to talk to, and makes everyone feel like they’ve had their day in court.”

Chief Judge Holderman finds Judge Denlow to be “one of the finest magistrate judges in the United States,” and Judge Gettleman, likewise convinced, said that “of all the judges who have gone on to practice ADR, Mort is by far the most qualified because he has devoted so much time and effort to perfecting his skills. He will be greatly successful, and truly missed by the Court.”

Perhaps Nathan Dardick said it best, in the speech he prepared for Judge Denlow’s swearing-in ceremony: “Mort is not blinded by raw factual data, but inquires into and develops an understanding of the motivation of the parties that is essential to the equitable resolution of any dispute ... He never loses sight of the forest for the trees, and never loses sight of the trees for the forest. If a tree falls in a forest and no one is there to hear it, Mort Denlow will hear it.”

Although the court will feel Judge Denlow’s absence, his legacy will affect litigants and the judiciary for years to come. **TFL**

Michael J. Zussman is a corporate, intellectual property, and entertainment law attorney in New York City who works primarily with entrepreneurs, emerging businesses, artists, and musicians. He serves on the board of the FBA’s Younger Lawyers Division as its liaison for the Second Circuit, and is the national delegate for the Southern District of New York Chapter. He can be reached at michael@zussmanlaw.com.

Endnote

¹The judge’s seven Cs are: (1) Client control of outcome, (2) Control of costs, (3) Certainty, (4) Confidentiality, (5) Creativity, (6) Continuing relationship, and (7) Closure.