

# Daily Journal

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## JUDICIAL PROFILES

# Mark H. Pierce walks the fine line between protecting public safety and helping drug users

By Kevin Lee

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**S**AN JOSE - Judge Mark H. Pierce's newest bench assignment involves work quite familiar to him.

Now approaching nine years of judicial service, Pierce this year was reappointed to drug court, returning to the Terraine Courthouse in downtown San Jose as part of a systemwide rotation of Santa Clara Superior Court judges. The judge's first major assignment was overseeing drug cases, which he did from 2006 to 2009.

Sandwiched between his two tenures in Terraine, Pierce served a four-year stint on the civil calendar, handling a wide range of matters.

A longtime civil litigator who mostly handled personal injury and workers' compensation cases while an attorney, Pierce said he would like another opportunity to handle civil cases but also is satisfied making a difference in drug court. "I'm always learning something new," Pierce said.

But attorneys such as Julia A. Hill, an assistant city attorney for Santa Clara, said she misses Pierce's presence on the civil calendar.

Hill filed the city's first civil complaint to enforce an ordinance that banned medical marijuana dispensaries. At first, Pierce awarded the city both preliminary and permanent injunctions, effectively shutting down the dispensary.



Mark H Pierce

But when Hill drafted the injunction orders, Pierce reconsidered his decision and rescinded the permanent injunction.

Hill said she respected the judge's willingness to review his decision. "He realized based on opposing counsel's objections that a preliminary injunction was appropriate but we needed to file a summary judgment motion or go to trial on the issues to win a permanent injunction," Hill said.

The parties have stipulated to dismissing the lawsuit next year if the dispensary remains closed.

On the bench, Pierce is concise and keeps discussions on point, while allowing defense lawyers time to confer with their clients. The judge also lets his sense of humor show during proceedings. When the courtroom deputy pulled out an antiquated microphone to amplify a police officer who recently testified on the stand, Pierce began to chuckle.

"A lot of times we don't use that, because it's a small courtroom and we all yell," he jokingly told the officer.

John D. Luft, a Santa Clara County deputy district attorney who handles drug court matters, said he could not have asked for a better assignment when he was recently transferred to Pierce's court.

"He is the prototype of what most trial lawyers would like to encounter in any courtroom," Luft said.

“He is even-tempered, always willing to listen. If you could come up with a better model for a judge, I’d like to hear it.”

The judge typically doesn’t impose standing orders, and he has relatively straightforward requests for practitioners, he said.

“I don’t like to wait, and I don’t expect people to wait for me,” Pierce said. “I expect people to be on time or let us know if you’re in another department and you’re going to be here a little later, so at least we know what’s going on.”

Pierce and his colleagues on the drug court bench will cooperate with district attorneys and public defenders to determine the best courses of action while trying to move through busy caseloads. “The people from the public defender’s office and the district attorney’s office are very good, very qualified people,” he said.

Since moving back to drug court, Pierce has maintained a full week of calendars, which typically include pleas and sentencing on Mondays and Wednesdays, review of those offenders undergoing the state’s drug treatment program on Tuesdays, felony settlement matters on Thursdays and review of first-time drug offenders on Fridays.

The state’s first-time drug offender program, officially known as

Deferred Entry of Judgment, or DEJ, allows certain first-time drug offenders to enter guilty pleas and submit to a treatment and testing schedule. The conviction and any jail time are eliminated if the offender successfully completes treatment and testing.

Pierce attempts to steer new offenders toward the program, because the state’s other major drug treatment program, enacted by the voter-backed initiative Proposition 36, typically takes longer to complete and requires more frequent testing.

“I try to tell them, this [DEJ] is the best program there is,” Pierce said. “People who have failed to do it get brought into court and I say, ‘Why didn’t you do this?’”

George Abel, the deputy public defender assigned to Pierce’s department, said the judge is willing to listen to troubled individuals who appear before him and try to work with them.

“It appears on the surface that they have failed, and it’s easy to take a superficial appearance of the case,” Abel said. “He’ll listen to why someone didn’t comply and give them an opportunity to comply. He wants people to succeed.”

Pierce recalled when a drug offender who was supposed to show his treatment progress in court used

a very familiar excuse for his lack of paperwork - a dog had eaten the sheet that outlined his meeting attendance.

“I think they literally brought in part of [the paper] to show that the dog had eaten most of it,” Pierce said. “I believed him, I accepted that, and I gave him the benefit of the doubt, but a lot of times, people don’t do what they are supposed to do.”

Luft said Pierce has the common sense and life experience to factor in both an individual’s need for treatment and the public’s safety concerns.

“Judge Pierce has a pretty healthy understanding of the balance we’re trying to strike,” he said.

When he’s not on the bench, Pierce is busy tending to his homegrown grapes that he uses to make homemade pinot noir.

Pierce’s wine is not for sale, because he is an amateur winemaker, but critics seem to be fond of his craftsmanship. A double gold ribbon from the Santa Clara County Fair is prominently displayed in Pierce’s chambers.

Here are some of Judge Pierce’s recent cases and lawyers involved:

*Proview Electronics Co. Ltd. et al. v. Apple Inc. et al.*, CV12-219219 - fraud

For the plaintiff: Jill F. Kopeikin, GCA Law Partners LLP, Mountain View

For the defendant: George A. Riley, O’Melveny & Myers LLP, San Francisco

*Diamond v. Casa Del Valle Homeowners Association*, CV07-99053 - real property foreclosure

For the plaintiff: Louis Spitters, San Jose

For the defendant: Charles L. Morrone, San Jose

*City of Santa Clara v. Angel’s Care Collection*, CV11-214566 - medical marijuana dispensary ban

For the plaintiff: Julia A. Hill, city attorney’s office, Santa Clara

For the defendant: James K. Roberts, Roberts & Elliott LLP, San Jose

*Merritt et al. v. Mozilo et al.*, CV09-159993 - fraud

For the plaintiff: Salma Merritt and David Merritt, in pro per, Sunnyvale

For the defendant: James Goldberg, Bryan Cave LLP, San Francisco

*Prediwave Corp. v. Simpson Thacher & Bartlett LLP et al.*, CV08-110304 - legal malpractice

For the plaintiff: Gabriel Colwell, Squire Sanders LLP, Los Angeles

For the defendant: George M. Newcombe, Simpson Thacher & Bartlett LLP, Palo Alto

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