



JAMS Washington State Virtual Roundtable Appellate Analysis Options

About the Panelists



Judge Ronald E. Cox (Ret.) spent 23 years on the Washington State Court of Appeals, serving as Presiding Chief Judge of the entire court and as Chief Judge of Division One and authoring more than 1,200 decisions. He previously served as a partner in a commercial litigation practice.



Judge Anne L. Ellington (Ret.) authored hundreds of opinions on the Washington State Court of Appeals (Division One) from 1995-2012. She also tried hundreds of cases and handled dozens of settlement conferences during 11 years on the King County Superior Court.



Judge Michael J. Trickey (Ret.) was appointed to the Washington State Court of Appeals (Division One) in 2014 and served most recently as Acting Chief Judge. He also served on the King County Superior Court for almost 18 years and tried 100 jury trials as a private litigator.

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JAMS offers its clients access to an esteemed group of retired appellate judges, justices and former appellate law practitioners with decades of experience in state and federal courts. Our neutrals draw upon their extensive knowledge of the nuances that distinguish appellate disputes and their deep familiarity with court practices and trends, including applicable standards of review. Three retired appellate court judges from the JAMS Washington State panel recently held a virtual roundtable to discuss the benefits of our appellate analysis services.

How may retired appellate judges at JAMS assist lawyers during appeals?

JUDGE RONALD E. COX (RET.): Two of the most critical points in the art of persuading judges on appeal are briefing and oral argument. Each has its own functions in any appeal. Retired appellate judges at JAMS may be helpful to counsel during briefing by assisting in the assessment of what issues are most important on review. They may also be helpful in assisting counsel in evaluating how the appellate court is likely to view potential issues on appeal, given the applicable standards of review. Likewise, they may be helpful in evaluating other aspects of the brief, such as tone and clarity. JAMS retired appellate judges may also be helpful to counsel in preparing for oral argument. For example, anticipating what questions are likely to be asked at oral argument and how those questions should best be answered can be critical to the outcome of an appeal.

JUDGE MICHAEL J. TRICKEY (RET.): Often the record on appeal is not sufficient to help the appellate court decide the issues presented. Retired JAMS judges may be able to suggest what should be provided from the trial court record to the appellate court for proper review.

Appellate Neutral Analysis

What types of cases are best suited to appellate analysis?

JUDGE ANNE L. ELLINGTON (RET.): Any case with complex or difficult trial issues, or difficult analysis questions, or novel arguments.

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Can a neutral help me decide whether or not to appeal a case?

ELLINGTON: A neutral can assist with identifying strong arguments justifying appeal, or the lack thereof.

How can lawyers use JAMS neutrals to help with appellate briefs?

ELLINGTON: Comments from former appellate judges can help hone the argument and identify unnecessary arguments or tone problems.

TRICKEY: Writing appellate briefs is a very precise art, and former appellate judges can help make sure the briefs comply with the rules on appeal.

How can a lawyer work with a retired appellate judge prior to oral argument?

ELLINGTON: Prior to oral argument, a retired judge may point to likely questions from the bench, help to hone responses, conduct a moot argument and suggest ways to deal with the other party's likely arguments.

What appellate and practical experience should lawyers examine when choosing an appellate neutral evaluator?

COX: One approach is to look to the cases a retired appellate judge has decided. That information is readily available on Westlaw and other legal research platforms. The information obtained from such a search would reveal whether a judge has written on a particular subject. Likewise, it may also give valuable information on the extent of practical experience a retired judge brings to bear on a subject.

When is the best time to hire a neutral to analyze an appellate case?

ELLINGTON: This depends upon the case. Any case set for oral argument can benefit from a "moot" beforehand, giving counsel an idea what questions are likely from the bench and how to respond. If the case is complex, assistance before and during briefing may be very valuable.

What are other creative ways JAMS can help with appellate cases?

COX: Mediation of an appellate case is an evolving area in which appellate judges may be helpful. Among the advantages of mediation is that a settlement achieved by this process may offer the opportunity for parties to obtain relief that a court may be unable to grant.

Appellate Mediation

What is appellate mediation?

TRICKEY: Mediation can be useful at various stages of the appellate process. It could be helpful to meet with the parties and their counsel early on in the appeal to discuss the issues in the case in general terms to see if mediation could settle the case. For example, if the appeal concerns a summary judgment ruling rather than a judgment entered after a jury trial, the parties might be encouraged to resolve the case because summary judgment decisions are reversed and/or modified more frequently than appeals after a jury decision.

Isn't it too late to settle the case once it's on appeal?

ELLINGTON: No. Many cases settle on appeal, and mediation is mandatory in many appellate courts.

What types of cases are most suited to appellate mediation?

ELLINGTON: Mediation allows the parties to design their own outcome. If a major change in the law is the objective, mediation will not be appropriate. Otherwise, almost any civil case should be evaluated for mediation, either before or after briefing.

To set a case or learn more about our appellate services, please contact Michelle Nemeth at 206.622.5267 or visit jamsadr.com/appellate.

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