

Public Policy and Judicial Decision-Making: A Conversation
AJEI
November 3, 2017 at 10:30 a.m.

Participants

Moderator: Mary Massaron, Plunkett Cooney, P.C.

Panelists: Chief Justice Stephen J. Markman, Michigan Supreme Court
Judge David O. Carter, United States District Court for the Central District of California

Learning Objectives

The learning objectives for the program are:

1. To learn what public policy means in the context of judicial decision-making
2. To be able to provide examples of different kinds of public policy considerations
3. To understand where public policy may be found, such as in statutory language, in constitutional principles, in custom or tradition
4. To evaluate what are appropriate limits to the use of public policy and whether they differ depending on the nature of the legal issue

Program Overview

The program will examine the impact of public policy considerations on judicial decision-making. The panelists will explore various approaches to the use of public policy in judicial decision-making including those most closely associated with former Justice Scalia and those more associated with others such as former Justice Holmes. The panelists will discuss their perspectives on the use of public policy as part of judicial decision-making, using some illustrative decisions. Panelists may discuss Judge Ruggero Aldisert's concerns regarding the use of public policy as a ground of decision. They may also consider different policy considerations such as society's interest in stability (the policy ground for stare decisis), the policy interest in clear bright line rules which are predictable versus standards which can take into account varying circumstances but may be less predictable. Panelists may also discuss whether moral grounds are appropriate values, and if so, when.