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PERSPECTIVE

## No Ambushes

*Judicate West neutral Thomas Oesterreich, a former plaintiff and defense litigator, urges parties to be patient and positive.*

By Shane Nelson

Daily Journal Staff Writer

Judicate West neutral Thomas G. Oesterreich likes to begin mediations by asking parties on all sides to be patient and positive.

“I refer to it as my two P’s,” he said with a chuckle. “I explain to them the process is going to take longer than they want, they’re going to hear things out of the gate they don’t like, and it’s going to be tough to be patient, and it will be tough to stay positive. I say to them, ‘You need to trust your lawyer, you need to trust the process, and to some small degree, trust me.... We’re working to get this thing done. And patience and positivity are just really, really important.’”

A University of Houston Law Center graduate, Oesterreich passed the California Bar exam in 1986 and spent much of the next 35 years representing defendants in a wide variety of personal injury matters and plaintiffs in business litigation — often for Fortune 100 companies.

He spent more than two decades as a partner at Lewis Brisbois Bisgaard & Smith LLP, and he started volunteering as an arbitrator and mediator for the Los Angeles and Orange County superior courts in 2001. Oesterreich spent three years as a settlement officer for the Orange County Superior Court, starting in 2018, and then began working full time as a private neutral with Judicate West last year.

“I think it’s very important for the lawyers, the parties and the neutral to all stay patient and stay positive,” Oesterreich con-



Justin L. Stewart / Special to the Daily Journal

tinued. “Let things happen along their natural course. Don’t rush it.... The right move at the wrong time is the wrong move. I really believe that.”

Oesterreich said his extensive defense background, often in personal injury matters, combined with his substantial work representing plaintiffs in commercial litigation, has given him a good foundation of understanding for all the parties involved in a dispute.

“I think that gives me a bit of a unique perspective on how both sides would evaluate not only a particular case — and what is this spine injury worth, for example — but also for a range of other intangibles,” he said. “Having ex-

perience on both sides, I think, helps me now when I’m in both rooms to have some credibility when I’m discussing the pros and cons of a particular approach.”

With Judicate West, Oesterreich has handled mediations and arbitrations involving personal injury, commercial and real estate disputes along with wage-and-hour employment matters and construction cases.

Prior to a mediation, Oesterreich said he prefers to receive briefs about a week beforehand, and he often speaks with attorneys for both sides over the phone. Joint sessions aren’t a typical approach for the neutral because he believes they can make resolution

### Thomas G. Oesterreich

Judicate West  
Orange County

#### Areas Of Specialty:

Personal Injury  
Business  
Construction  
Real Estate Employment

more difficult. He will make use of a mediator's proposal if both sides are willing to consider the suggestion, and he feels the proposal has a good chance of success.

Oesterreich said he puts a lot of emphasis on the exchange of information between parties in a dispute.

"I am not a fan of ambush," he said. "I don't think, for example, coming into a mediation without exchanging briefs really serves the party's best interests.... Let's reduce the element of surprise, reduce the aha or the got-you moments because I find in mediation that doesn't truly get you where you want to go."

For arbitrations, Oesterreich said he likes to have a 30-minute case management conference early on to discuss discovery rules and submission deadlines as well as hearing dates. About 45 days out, he likes to have a 30-minute arbitration readiness conference.

"We talk about how they're going to do their exhibits. Who are the witnesses now? How long are they really going to be testifying for?" he explained. "Are there any

unusual issues with respect to testimony by declaration or affidavit? Do we need interpreters—Spanish, Tagalog?... I find if you invest a half-hour in the front end, you can save yourself hours on the back end."

Plaintiffs' attorney Laura L. Davidson has used Oesterreich to mediate personal injury disputes and said working with the neutral has been terrific.

"Tom did an exceptional job of understanding the intricacies of the cases," Davidson recalled. "None of the three cases I've mediated with Tom so far have been straight forward rear end car crashes or slip and falls. They've all had more complex legal issues, complex procedural issues, and he's been a really creative problem solver, which I really value in a mediator."

Davidson said Oesterreich is a real expert at effectively diagnosing what a case is actually worth.

"What sets him apart is his understanding of how to value cases and how to explain that case value to everyone involved," she explained. "Sometimes it's the plain-

tiff that doesn't want to hear it. Sometimes it's the adjuster that doesn't want to hear it. But Tom can explain it in a way that gets buy-in from parties and adjusters and that is a really special skill."

Defense attorney Lisa J. McMains said she's used Oesterreich to successfully mediate some difficult personal injury cases.

"He's done a particularly great job at balancing people's personalities," McMains said. "He's just great about weird and unique situations and just kind of figuring out the best way to handle it without making anyone feel small or insignificant or not necessary to the resolution of the case."

Defense attorney Jeff I. Braun worked with Oesterreich to represent clients before he moved into full-time work as a private neutral. Braun has also used Oesterreich to mediate personal injury disputes over the past year.

"It's always helpful when you have a mediator who's been in the trenches in litigation," Braun said. "Having somebody with practical experience who is able to relate to both sides is really critical in

a mediation process.... Having been a recent trial attorney, he also has his finger on the pulse of what verdicts are coming out in our Southern California Counties, so he's pretty good about getting clients to have realistic expectations on both sides."

Oesterreich said moving into full-time work as a private neutral has been terrific fun.

"I love what I'm doing," he said. "In practice, you're not getting something done for both sides. You're getting something done for your side. And I just really like the ability as a facilitator, as an independent, to help both sides obtain some closure and move on from a situation they'd certainly prefer not to be involved in. It's just been very rewarding."

*Here are some attorneys who have used Oesterreich's services:* Jeff I. Braun, McNeil, Tropp & Braun LLP; Laura L. Davidson, Jacoby & Meyers; Lisa J. McMains, Wesierski & Zurek LLP; Mike Arias, Arias Sanguinetti Wang & Torrijos LLP; Geoffrey P. Norton, Norton & Melnik APC