

The Lifeguard

Judicate West neutral Timothy Casserly tries to help litigants avoid the troubled waters of trial.

By Shane Nelson

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When he was first asked to start handling civil settlement conferences one day a week in 2004, now-retired San Diego County Superior Court judge Timothy M. Casserly wasn't particularly excited.

"I told the powers that be, 'That doesn't sound that interesting to me. I don't think I want to do that,' and they said, 'No, we'd really like you to do this,'" Casserly recalled. "And I thought, 'Well, I'm a team player. I'll do it.' ... And I found out that it was my favorite thing I had ever done in the law."

Casserly spent the previous four years as the criminal supervising judge in Vista, a role in which he said he had a great deal of success settling criminal cases.

"Civil cases were a lot harder to settle," Casserly explained, noting that the added challenge was part of the fun. "Settling criminal cases is just getting a base hit, but settling the civil cases felt like a home run, and I got addicted to it."

After 25 years on the bench, Casserly said he decided he wanted to focus full time on mediation, and he joined Judicate West in June last year.

"I knew this is what I wanted to do. This is what I'm passionate about, and I was counting down the days," he said. "I started to feel like a senior in high school. I knew where I was going, and I wanted to get there."

Casserly said the bulk of the disputes he's been working to resolve since then have been



Photo courtesy of Judicate West

personal injury matters, but he's also tackled employment, real estate, probate and professional malpractice cases.

He's been busy, working on more than 200 mediations in his first year as a Judicate West neutral, he said.

Casserly noted that he's not done any arbitrations and said he'd prefer to keep it that way.

"I much prefer doing mediation to arbitration," he explained. "What I enjoy is helping people settle their cases. ... It's what I'm passionate about. When you're doing what you're passionate about, it doesn't really feel like work."

Before a mediation, Casserly said he likes to receive briefs from both sides as soon as possible and will often read through

them twice. He also tries to speak over the phone beforehand with attorneys to cover any questions that may come up while examining the briefs.

On the day of a mediation, Casserly said he typically starts off his sessions employing a more facilitative approach, but he won't hesitate to share his thoughts about the case.

"I try to empower the attorneys as much as possible, and I'll say, 'I'm going to give my opinion on things, but if your attorney disagrees, trust your attorney. That's who you've hired, that's your champion, that's who's going to fight for you, so trust that person's judgment,'" Casserly said. "I find that helpful because I know, for the most part, the at-

Timothy M. Casserly

Judicate West
San Diego

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torney's looking at it the same way I am. So, if both of us are saying that, it's something the party needs to consider."

Joint sessions aren't a strategy Casserly employs, but he will turn to mediator's proposals if a dispute doesn't settle during the initial session – provided both sides are OK with the approach.

"I would rather not use them; that's not my first choice. I would rather a case settled during the session," Casserly explained. "If you think of a mediation like a football game, now we're going into overtime, and I would rather win in regulation. You never know what's going to happen in overtime. ... But I find that generally when I make a mediator's proposal, it is accepted by both sides."

Pasadena defense attorney Lisa J. Brown appeared before Casserly a number of times on the bench and has since used him as a mediator on a couple of personal injury cases and one equine law matter. Brown said Casserly is smart and very even-handed.

“He really listens to both sides and gives everybody their opportunity to say their piece,” Brown explained. “And then he puts an equal amount of pressure on both sides. I didn’t get the impression that he was only beating me up to pay more. I got the sense that he’s also on the other side telling them to stop being so greedy.”

San Diego real estate attorney Schuyler V. Hoffman has used Casserly to mediate a number of disputes, and he said what distinguishes the neutral is his “bed-side manner.”

“I utilize him in heavily contested disputes, where there is often times a huge emotional component that is driving the litigation,” Hoffman said. “In cases where emotions run high, Judge Casserly is particularly adept at allowing each party to explain their side of the story or vent and take the time and the energy needed to gain the confidence of not only the attorneys involved but of the parties themselves. He’s really good at letting things flesh themselves out, allowing tempers to kind of quell a bit and then diving into the nuts and bolts of the case. ... And if there’s a deal to be made, I know Judge Casserly is going to get it done.”

San Diego employment attorney Andrew E. Hillier also appeared before Casserly during his time on the bench and has since used him to mediate several cases. Hillier agreed that the neutral’s commu-

nication skills really set him apart.

“We’ve had difficult clients and easy clients and clients that were very confident and clients that were unsure of themselves, and in every situation, Judge Casserly tailored his message to them in order to effectively communicate,” Hillier explained. “And that’s not something I’ve seen with a lot of mediators. Typically, they have a style, they stick to it, and if that works for your case then great, and if doesn’t, then it doesn’t. But that’s not what I’ve seen from him. ... He’s respectful to all sides and receptive to all messages, but at some point, he isn’t afraid to take a stance.”

Casserly noted that at some point during his time on the bench, he found himself comparing his role in settlement conferences to that of a lifeguard – only his job was to try and steer folks away from the troubled waters of trial.

The Judicate West neutral said that analogy remains true in his dispute resolution work.

“I tell them, ‘Look, you’re an expert at whatever field you’re in. This is my area of expertise,’” Casserly explained. “I feel like I’m the lifeguard, and this is my beach. I know where the riptides are. I know where the safe places are to swim and where it’s not safe. I’m going to tell you about those things. Then ultimately, it’s your call whether you go in the water or not.”

Here are some attorneys who have used Casserly’s services: Schuyler V. Hoffman, Hoffman & Forde, Attorneys at Law; Jack R. Leer, Caldarelli Hejmanowski Page & Leer LLP; Andrew E. Hillier, Hillier DiGiacco LLP; Eydith J. Kaufman, Horton, Oberrecht & Kirkpatrick; Lisa J. Brown, Wallace Brown & Schwartz.