

VERDICTS & SETTLEMENTS

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Patient and Prepared

Neutral Judy Hersher does the research to thoroughly explain her reasoning, attorneys say.

By Shane Nelson

Special to the Daily Journal

Retired judge Judy H. Hersher tackles mediations with three guiding principles: trust, patience and a tailored approach.

“Trust comes from before the actual mediation,” Hersher said. “Once I have briefs, I typically spend upwards of an hour — or maybe a little bit more — in private conversations before the mediation with attorneys to get better insight from them on the case and any issues with respect to their clients and a sense of where they might really like to go in the mediation.”

The Judicate West neutral added that she tries to continue building trust at the start of each mediation.

“I ask counsel if they’re willing to do just a brief, very brief joint session, where I introduce myself to their clients,” Hersher said. “I explain to their clients the benefits of mediation, what’s different about mediation from trial, and then how the process is going to work. ... My joint session at the beginning is simply designed to have everybody be on the same page about how I’m going to work the mediation procedurally.”

A 1984 graduate of UC Davis School of Law, Hersher spent 17 years as a litigator and trial attorney before her 2000 appointment to the Sacramento County Superior Court, where she handled juvenile, family law and criminal calendars before moving into a complex civil trial assignment.

Hersher retired from the bench in February 2021s, then took some time to travel, catch up with friends and family and “take a deep breath,

relax a little bit after working on the bench for 20 years.”

In January 2022, Hersher joined Judicate West’s roster and said she “jumped back in with both feet, arms, legs, neck and head.” She has been busy since then as a mediator, arbitrator, and discovery referee, tackling everything from business disputes to personal injury, health care, employment and real estate cases.

“I’ve also had a couple international cases,” she added. “And I’ve had parties from China, Mexico, the Philippines, Russia and Africa.” Hersher noted that patience has been critical in all of the disputes she’s worked to resolve.

“People are usually in distress,” she said. “And it takes a while for them to express not only what their actual legal concerns might be, but also some of the emotions and driving forces behind why they’re in the case and what it might take to resolve the case.”

The retired judge noted that a patient approach is also important with attorneys.

“I can have some pretty strong advocates in front of me who are doing their job — exactly what they’re supposed to do,” Hersher explained.

“They, of course, need to be listened to, as well, but from time to time, then perhaps guided into a



Malcolm Maclachlan / Special to the Daily Journal

Judy H. Hersher

Judicate West
Sacramento

Areas of Specialty:

Employment
Civil Rights
Real Estate
Professional Malpractice
Personal Injury

posture that might help the case resolve.”

San Diego plaintiffs’ attorney Eric J. Benink used Hersher last year to resolve a complex contractual dispute, and he described her as a very prepared and plain-spoken mediator.

“She’s tough,” Benink said. “She doesn’t pull punches. I think for some clients who are sensitive that may not be the right approach. But if you’re talking about business people, or people that just want to hear the truth, ... then she’s somebody other attorneys should consider.”

Benink said mediating his case with Hersher was terrifically positive thanks not only to her excellent preparation but her willingness to offer creative solutions.

“I think what set her apart and what I appreciated was that she actually had ideas that she was not afraid to share as far as vehicles by which we could settle the case,” Benink explained. “She was not afraid to provide her opinions about the strengths and weaknesses of legal positions on both sides. And I have found that many mediators in recent years have been reluctant

to do that. Some like to engage in shuttle diplomacy — running numbers back and forth. But then they are sometimes very reluctant to just get into the meat of some of the legal issues. She was not afraid to do that, and I really appreciated that.”

Hersher added, meanwhile, that litigants and attorneys are also often concerned that an arbitrator will not actually apply the law and may try to please one side or the other to garner future business. “I always make my decisions based on the law and the facts. That’s what I did for 20 years on the bench, and I’m not concerned with a popularity contest,” Hersher said. “I would, of course, love for people to like me, but what I really want when they walk away at the end of the day is to believe that I was knowledgeable, and I appropriately applied the law to the facts of their case, and I gave them a full opportunity to present their case.”

San Diego defense attorney Adam F. Sloustcher is currently using Hersher as an arbitrator on an employment dispute, and he said she exhaustively examines everything

that needs to be considered.

“She focuses on what’s important, and she asks the right questions,” Sloustcher said. “No matter if you are representing a plaintiff or are on the defense side, I think with Judge Hersher you feel like you got someone who is very fair, who does a really thorough job and puts a lot of thought into the legal issues that need to be adjudicated.”

Lawndale defense attorney Michael Ayzén used Hersher as an arbitrator in a complex lemon law case, and he also described her as extremely detail oriented.

“She wants to always hear both sides of the story and wants all of the facts, all of the details out there,” Ayzén said. “And she asked very pointed questions that cut through all of the noise and really got to the issues.”

Ayzén noted that Hersher made use of a research assistant during the arbitration, which was a decision he valued.

“Nobody’s going to be knowledgeable about everything. It’s just impossible,” Ayzén explained. “The fact that she’s open about hiring a research assistant makes it clear

she’s not afraid to explore and research a new topic in order to give a thorough opinion. She’s not one of those individuals who says, ‘I know everything. I don’t need to update myself on the law or what’s going on.’”

Ayzén was quick to add that Hersher is not an arbitrator who leaves attorneys wondering about why she makes decisions.

“The worst thing you can do to an attorney is not provide an explanation,” he said with a chuckle. “With Judge Hersher, there was never that feeling. You always understood why. Even if you didn’t agree with something, you at least understood why she’s going that way. And it’s all backed up with very, very thorough analysis and case cites.”

Here are some attorneys who have used Hersher’s services: Adam F. Sloustcher, Fisher & Phillips LLP; Eric J. Benink, Benink & Slavens LLP; Michael Ayzén, Theta Law Firm LLP; Noel S. Cohen, Polsinelli LLP; Daniel M. Steinberg, Weintraub Tobin Chediak Coleman Grodin LC.

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