

VERDICTS & SETTLEMENTS

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Building Connections

Former San Francisco judge James McBride wants to look parties in the eye.

By Don DeBenedictis

Special to the Daily Journal

To settle a lawsuit, James McBride said, he first must establish connections with the attorneys and then the parties.

For the former, the briefs and the pre-mediation phone calls are important. In those calls, he asks the lawyers what they think is the likelihood of settlement and what the obstacles are to it.

While he said it is vital for him to connect with the lawyers early, more important is to “build a connection with whoever it looks like is making the decisions. Ideally, it’s the client,” McBride added. “I’m usually not a big fan of ‘My client’s on the phone, but we can reach her if we need to.’”

To connect with the clients, the former presiding judge of the San Francisco Superior Court first masters the facts of the case. “So when they tell their story, I already have a context,” he said, and “I don’t have to say, why is that important?”

Then, he listens to them. “You’ve got to give the people an opportunity to talk because if it settles, this is the only forum in which they’re going to be able to talk to a disinterested party about how badly they were harmed,” McBride said. “I say somewhat tongue in cheek, even an insurance claims rep has feelings about a case. ... If they want to tell you about it, you listen.”

And listening means more than merely listening. “It’s attitude, demeanor, context. I don’t want to claim to be an empath, but you have to be somewhat empathic to listen well.”

San Francisco plaintiffs’ attorney Jonathan Davis said McBride makes his clients feel comfortable. “He



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takes a genuine interest in the case and the issues that they’re facing. He asks the right questions, the hard questions, but knows how to ask them in a way that’s productive.”

Jessica Dayton represented plaintiffs in two sexual assault cases with McBride. “He was just so incredibly compassionate about their experience and how they felt about the mediation,” she said. He made them “feel they were the most important part of the process ... they were the decisionmakers.”

In a case brought by a woman seriously injured in a slip-and-fall, the former judge took at least a half hour getting to know the plaintiff, where she grew up and where

she worked, said her attorney, Monica Burneikis. With that knowledge, he was able to tell the defense that her client would be a great plaintiff whom jurors would love. Their connection also helped make the client “more respectful of the points he was trying to make during the mediation,” she said.

Even more than his listening skills, attorneys who’ve mediated cases before McBride praised his skill at making those important points. “He knows how to cut to the heart of matters, and he is not afraid to say when he believes a person’s position needs some altering,” said plaintiffs’ attorney Robert Arns. “He can have a really stern look on his face, and

Hon. James J. McBride (Ret.)

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it makes one want to hustle,” even though he has “a very kind disposition.”

“He looks you in the eye and tells you what he thinks of the facts and the strengths and risks of a plaintiff’s case,” agreed Megan Irish. For clients, “he doesn’t sugarcoat it in a bunch of legalese.”

But even when McBride is confident about how a case will settle, he doesn’t push, according to legal malpractice specialist Jessica MacGregor. “He’ll consider anything you give him, but he’ll quickly root out the things that aren’t important. He really has an ability to focus the parties on ... the heart of the matter.”

McBride was more modest. He said that he almost always begins a case with an idea of how it will come to be settled. “And I almost never come out the other side with the same idea about how we would get there.”

As a 21-year veteran of the trial bench, he acknowledged that attorneys often expect him to tell them what he thinks of their cases. “I’m perfectly capable of being a very evaluative mediator,” he said. “But I realize if I tell somebody your case stinks, you should settle, that goes nowhere. ... What you have to do is invite them to look at the risk that you see.”

McBride grew up in the Haight Ashbury area of San Francisco. By the time he was in eighth grade, the middle-class neighborhood had become the birthplace of the 1960s counterculture movement. The Grateful Dead’s house was across the street from his school, and the Hell’s Angels moved in just down the street.

Later, he attended a nearby all-boys Catholic high school and then, beginning in 1969, U.C. Berkeley. “There were riots and disturbances going on, I think, basically the whole time I was at Cal,” he said.

While there, McBride sought advice from a well-known law and psychiatry expert, Bernard Diamond, about going to law school. Diamond asked him if he’d ever had an interesting thought, and McBride answered he’d thought about becoming a cop. The idea stuck with him.

Although he started at Berkeley’s law school soon after obtaining his bachelor’s degree in 1973, he took two years off beginning in 1975 to join the San Francisco police department. After he returned, he stayed on the job for another three semesters. “I didn’t want to give up the paycheck,” he said.

McBride learned a great deal being a police officer. “Growing up in the Haight Ashbury in the city and going to Cal, I thought I was

pretty streetwise,” he said. “I wasn’t.”

That wisdom has affected his style in mediation. “When you’re a police officer, you listen to a whole lot of people who you wouldn’t voluntarily speak to.”

After earning his law degree in 1979, McBride joined the San Francisco District Attorney’s Office. His most high-profile case was convicting serial killer Philip Arthur Thompson on gun charges.

In 1985, he joined a law firm that specialized in bringing First Amendment lawsuits on behalf of cable TV companies. Later, he moved to a small commercial firm that often represented tech companies.

In 1994, Gov. Pete Wilson named McBride to the San Francisco Municipal Court, where he primarily handled criminal cases, plus some civil cases. From that experience, he came to believe that “every judge at every level should still have to do a small claims calendar on some regular basis.”

Court unification put him on the Superior Court in 1999, and over the next 16 years, he handled both civil and criminal matters, including a tour as supervising criminal judge and another as supervising civil judge. In 2009, he became the presiding judge and led the court through the Great Recession.

McBride retired in 2015 and

joined ADR Services, Inc. the same year. He handles tort cases, real estate disputes including landlord-tenant and rent-control cases, environmental matters, legal malpractice, employment, class actions and general commercial cases. He also regularly settles insurance appraisal disputes under Insurance Code Section 10082.3.

He takes on arbitrations as well, although only about two a year make it all the way to trial before settling.

He said he is happy as a neutral. “I am not ever going to retire,” McBride said. “I enjoy the work too much.”

Here are some attorneys who have used McBride’s services: Robert S. Arns , Arns Davis Law; Monica J. Burneikis, Burneikis Law P.C.; Jonathan E. Davis, Arns Davis Law; Jessica A. Dayton, ADZ Law LLP; Leeh A. DiBello, Vogel Meredith Burke & Streza LLP; Kathleen M. Ewins, Long & Levit LLP; Megan R. Irish, Dolan Law Firm; Margaret M. Lesniak, Demler Armstrong & Rowland LLP; Jessica MacGregor, Long & Levit LLP; Joseph P. McMonigle, Long & Levit LLP; David S. McMonigle, Long & Levit LLP; J. Kevin Morrison, Altair Law LLP; Craig M. Peters, Altair Law LLP; Joseph S. Tobener, Tobener Ravenscroft LLP