

VERDICTS & SETTLEMENTS

FRIDAY, JULY 19, 2024

No Surprises

Neutral Steven Kleifield believes sharing key info at the last minute can scuttle settlement.

By Shane Nelson

Special to the Daily Journal

Retired Judge Steven J. Kleifield likes to tell people that his mother inspired his decision to focus on a career in the law.

“Where I grew up, you were supposed to either be a doctor or a lawyer, and she decided that I was the lawyer type,” said Kleifield, who was raised in Skokie, Illinois. “I liked to talk about things. I liked to analyze things, and she told me, ‘You should be a lawyer,’ and that just stuck with me.”

A 1979 graduate of George Washington University Law School, Kleifield spent more than two decades in private practice, representing plaintiffs in a range of professional malpractice, product liability, personal injury, employment and insurance bad faith cases. Kleifield was then appointed in 2002 to the Los Angeles Superior Court, where he handled criminal and civil assignments over his 20 years on the bench.

Kleifield also spent two years as the Coordination Judge for asbestos-related cases in Los Angeles, Orange and San Diego counties.

“Frankly, it was the best professional decision I have ever made,” Kleifield said of his time as a judge. “It always seemed to me like that was the best job in the courtroom.”

After retiring from the bench in the spring of 2023, Kleifield joined the ADR Services, Inc. roster of private neutrals last July, and he’s since been tackling a variety of cases as a mediator and an arbitrator, including personal injury, employment, contractual disputes and several asbestos matters.



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“I don’t see an arbitration as being much different than a court trial - except that we can be a little bit more informal,” Kleifield said of his role as an arbitrator. “We have a lot more flexibility as to how we conduct the arbitration than I would as a judge, and I can give them more time than I had as a judge.”

Prior to his mediations, meanwhile, Kleifield likes to receive briefs from all the parties and to speak over the phone beforehand with counsel. The retired judge noted, however, that he likes to have those conversations with attorneys as close to the actual mediation date as possible.

“Preferably, the day before,” Kleifield explained. “At that point in time, they probably have thought in a little bit more depth about what they’re trying to accomplish at the mediation. I find that it’s a good opportunity to learn about the case, to learn about the whole context of the case. ... And they can be pretty candid with me about what they think we can accomplish.”

Kleifield noted that after reading the briefs and speaking with attorneys, he has typically already decided who he’ll spend time with first on the actual day of mediation.

“I’ve formulated what my ap-

Hon. Steven J. Kleifield (Ret.)

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Asbestos
Professional Malpractice
Insurance

proach is going to be,” he explained. “Every case is different, but I do come in with an agenda.”

The retired judge noted that he typically begins with introductions, but he moves quickly into a phase of careful listening.

“Mostly what I want to do is I want to hear from the client,” Kleifield said. “Establish a relationship with the client and let them know that it’s their case. They’re the ones that are going to be making the decisions - not the attorneys and not me. ... Get to know them. Find out, if I can, what they want out of the mediation and basically facilitate the flow of information.”

When he feels the timing is appropriate, Kleifield said he will move into a more evaluative strategy, helping the parties to better understand their case’s strengths and weaknesses.

“I don’t want to interject that too early,” he said. “But my feeling is they have retained my services for a reason, and one of those reasons is I was a judge, and at some point, they’re going to want to know what I think. ... And at some point, it’s going to become important for me to discuss the realities of litigation with them.”

Kleifield added that he feels it’s important for both sides to lay all their cards on the table.

“Cases can’t really settle unless both sides are assured that they know what the other side has. There can’t be any surprises,” Kleifield said. “I don’t think cases can settle based on surprises, last-minute information. Everybody thus has to have a common understanding as to what the evidence will be, what the issues are. And that’s really important.”

San Ramon defense attorney Karyne T. Ghantous used Kleifield recently to settle a difficult habitability dispute, and she said she “would use him again in a heartbeat.”

“I just highly recommend him,” Ghantous said. “He thinks outside the box, and his experience gives him the knowledge to probably resolve any case before him. He just brings so much credibility to the table.”

Ghantous said the ADR Services, Inc. mediator was very well prepared.

“He saw the issues right away. I didn’t have to bring him up to speed,” Ghantous recalled, noting that the case also featured a fair bit of emotion. “And he was able to bring somebody up to speed who

was not knowledgeable in the law. ... He was able to identify the legal issues and communicate why this case needs to be resolved and why it was in their best interest to do so. And in the end, he was successful in doing it. He got it done.”

Los Angeles business litigator Chan Yong Jeong used Kleifield recently to settle a difficult commercial dispute involving intellectual property claims, and he also said the retired judge did a terrific job helping the parties understand the strengths and weaknesses of their case.

“Lawyers, of course, try to explain, but when a third-party neutral - who has more experience and knowledge - sometimes when they are speaking it has more weight than the explanations given by their own counsel. I think Judge Kleifield knows how to play his role in that sense, and I really think he helped [the parties] to better understand the case, the claims and applicable case law.”

Irvine defense attorney John P. Katerndahl appeared a number of times before Kleifield while he was on the bench, and he used the ADR Services, Inc. neutral recently to resolve an asbestos case.

“He is very fair to both sides,” Katerndahl said. “He doesn’t take sides. Like when he was on the bench, there was no perception that he favored the plaintiff’s side versus the defense side.”

Katerndahl also described Kleifield as extremely polite, incredibly intelligent and hardworking, and he noted the retired judge ultimately resolved the matter with a mediator’s proposal.

“I think both sides felt like it was a fair settlement,” Katerndahl recalled. “There are some fairly complicated medical issues and factual issues in these asbestos cases, and he was in his element. He totally understood both sides’ arguments, and then he came up with what I thought was a reasonable compromise number, and we both went for it.”

Here are some attorneys who have used Kleifield’s services: John P. Katerndahl, Gordon Rees Scully Mansukhani LLP; Chan Yong Jeong, Jeong & Likens LC; Karyne T. Ghantous, Ghantous Law Corporation; Evan M. Selik, McCathern Shokouhi Evans Grinke; Jean M Daly, Walsworth LLP

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