

VERDICTS & SETTLEMENTS

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Retired justice Patricia Benke champions classic mediation model

Now a neutral with ADR Services, retired 4th District Court of Appeal justice Justice Patricia D. Benke encourages joint sessions, creative problem-solving and careful written analysis drawn from nearly four decades on the bench.

By Shane Nelson

Special to the Daily Journal

Retired justice Patricia D. Benke spent nearly four decades on the bench and authored more than 400 published appellate decisions.

“When I retired, West’s gave me volumes for everything I worked on, ... and there were six volumes of cases,” Benke said with a chuckle. “And those are just the published ones.”

A former San Diego County municipal and superior court judge, Benke worked for 35 years as an associate justice for the 4th District Court of Appeal before retiring in the summer of 2021.

“Then I spent about a year and a half, two years with the Judicial Retirement Group,” Benke added. “I sat in the 2nd District up in Los Angeles for about seven or eight months, ... filling vacancies in divisions one, two, and three.”

The retired justice also tackled special master assignments in Orange County, continued to teach at National University and also works as counsel for the Complex Appellate Litigation Group (CALG).

“I’ve been busy,” Benke said, chuckling again.

As a private neutral, Benke has been working regularly as a discovery referee and arbitrator, and she has her first mediation scheduled later this month.

“One of the areas I teach is alternative dispute resolution,” said Benke, who’s taught undergraduate legal courses at National University since 2009. “And I thought this would be



Patricia D. Benke

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a good opportunity to actually do the practical side of it as well.”

Benke noted that she applies a meticulous approach as an arbitrator.

“I dot Is, and I cross Ts,” she said. “I do everything in writing. And anyone who appears before me gets my written decision as to why I am concluding as I am. And that probably comes from my appellate court days.”

As a mediator, meanwhile, the retired justice said attorneys should expect her to encourage joint sessions.

“I subscribe to the classic mediation, and I teach the classic mediating, which is you put the parties at the table, so they can vent,” she explained. “I like that - where you can be face-to-face with the individual you may have a conflict with and explain why it is that you have the conflict, so the parties can hear each other.”

From there, Benke said meeting separately with parties is critical in order “to discern exactly what it is they want and to try to bring them together.”

The retired justice added, however, that one mediation philosophy she regularly teaches and will apply herself is to consider impasses from innovative new angles.

“I like emphasizing to parties that they can be creative,” she said. “And I encourage them not to approach a problem or a conflict in too narrow a way.”

Benke added that her job as a mediator is most certainly not to judge.

“The goal is that the parties work it out themselves,” she said. “I’m not there to impose something on them. I’m trying to help them.”

Along with her reference, arbitration and forthcoming mediation work, Benke has also been helping attorneys strengthen their appellate case arguments through moot courts.

“It’s not a matter of just listening [or] giving practice to the attorneys. It’s shaping the case,” Benke said of her moot court approach. “It’s saying, ‘Wait a minute. This is what you need. This is the line you need to lead [with] when you come out and when you first talk.’”

San Francisco litigator Monte M. Cooper used Benke recently to moot an appellate case involving the public records act, and he said the retired justice “grasped the issues in very short order.”

“She’s very, very intelligent,” Cooper said. “She was articulate in her questions. She wanted to make sure our team was fully prepared for the hard questions that she anticipated we would receive. And she had thought through them very carefully. ... She was impressive.”

Based on his experience with Benke in the moot court, Cooper said he wouldn’t hesitate to use the retired justice as a mediator or arbitrator.

“She’s the type of private neutral you want because she’s fair, and she’s intelligent, and she’ll think through the issues,” Cooper said. “She’ll listen to both sides. And she’s thoughtful, so she may come up with solutions that might otherwise be hard for the parties themselves to see.”

Murrieta litigator Robert H. Tyler used Benke recently to moot an appellate case involving the church autonomy doctrine, and he was also very impressed by the retired justice.

“She was fantastic,” Tyler said. “She provided really good insight. She studied the pleadings, she invested time into the analysis and was able to provide valuable feedback following the moot ... She really gave us valuable insight we wouldn’t have otherwise had.”

Palo Alto litigator Neel Chatterjee also used Benke recently to moot

an appellate case, and he said the retired justice was “terrific.”

“She really drilled down ... and asked really, really sophisticated and hard - but fair - questions,” Chatterjee said. “She also followed up after, saying ‘Here’s some other things I thought of you should consider in your argument,’ which was so helpful for me when preparing.”

Chatterjee was quick to encourage other attorneys thinking about working with Benke in a moot court setting to thoroughly engage her before and after.

“Talk to her in advance about what she feels makes a compelling approach on an oral argument, ... and work with her ahead of time to help frame certain issues,” he said. “Then follow up with her privately afterwards to get any feedback you can because she’ll give very concrete and very helpful feedback and some really useful suggestions.”

Like Cooper, Chatterjee said after his moot with Benke that he wouldn’t hesitate to hire her as an arbitrator.

“Anybody that goes before her is going to get a fair shake,” Chatterjee said. “I bet she would be awesome at presiding over an arbitration.”

Well beyond 40 years now working in the legal industry, Benke said she’s still taking a great deal of satisfaction from helping people.

“My role is to calm the parties,” she explained. “To focus on what the legal issue is and bring them back to that while encouraging them to trust me and to recognize that - as a neutral - I’m going to help them through it.”

Here are some attorneys who have used Benke’s services: Neel Chatterjee, King & Spalding LLP; Robert H. Tyler, Tyler Law LLP; Monte M. Cooper, King & Spalding LLP; Michael P. Sousa, Law Offices of Michael P. Sousa APC; Joseph C. Barbarie, Law Offices of Joseph C. Barbarie

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