

Appeal Court Consensus Builder Leaves Bench

By Scott Graham

The Recorder

May 24, 2013



SAN FRANCISCO -- When James Lambden was appointed to the First District Court of Appeal in 1996, the Alameda County public defender at the time, Jay Gaskill, predicted he would chart a centrist course on the appellate bench.

Seventeen years later, Lambden is set to retire in July without having published a single dissenting opinion. Instead Lambden has frequently cast the deciding vote in Division Two by siding with more liberal Presiding Justice J. Anthony Kline or more conservative Justice Paul Haerle.

"I didn't have to grub for votes, usually," Lambden quips, adding that he did take pride in trying to build consensus on issues.

Now Lambden, 63, plans to take his consensus-building skills into private mediation, and the First District will likely have to endure a second vacancy as it copes with tighter state budgeting.

"I do not believe the vacancy will be filled quickly," said Kline, Division Two's presiding justice. He expects the court to rely on a *pro tem* replacement, paid for by the Administrative Office of the Courts, for at least two or three months.

Kline credits Lambden with "a great contribution to the law of this state" while also working exceptionally hard on behalf of access to justice and the development of judicial interns.

Lambden is also known for publicly resigning his 35-year membership in the Boy Scouts in 2000, saying it had become "ethically questionable" for judges due to the Scouts' stand on homosexuality. "As we speak today the Boy Scouts has shifted its position," Lambden said in an interview last week. "In fact, if they don't adjust they may not survive. I think I did them a favor."

Lambden was appointed to Alameda County Superior Court in 1990 by Governor George Deukmejian and elevated to the First District by Governor Pete Wilson. He had previously handled commercial and construction litigation at Oakland's Fitzgerald Abbott & Beardsley for 14 years.

Originally a Democrat, Lambden became active in Republican Party politics during the Reagan era, but says he began opting for decline-to-state "the longer I became a judge and the more obstreperous the politics became."

At the First District he has wound up siding more often with Kline than Haerle on published cases, including *Merrill v. Navegar*, 75 Cal.App.4th 500, a Kline opinion holding a gunmaker potentially liable for the 1993 shooting spree at 101 California St. "We went all over the place" hashing out that case, Lambden recalls. "I thought it was a very thorough discussion of all the issues." The state Supreme Court ultimately reversed, though.

Lambden got the last laugh with an opinion that spurred changes to the law of prenuptial agreements. He ruled in 1999's *In re Marriage of Bonds* that baseball player Barry Bonds had unfairly pressured his wife, Sun, into signing one the day before their marriage, without the benefit of legal counsel. The Supreme Court again reversed, but **the Legislature adopted much of Lambden's thinking** in 2002 amendments to the Family Code.

Lambden said he looks forward to returning to trial-level litigation. "I'm excited about being back in the game," he said. The appellate court can sometimes feel "like working in a museum," he jokes.

His passion has been access to justice. Lambden has chaired the State Bar's Commission on Access to Justice, worked with the Judicial Council on the issue and **testified before the Legislature**.

"I've always just tried to call them as I see them and not be identified as any particular ideology," Lambden says. "Except when it comes to access to the courts."

Lambden's is the second retirement from the First District this year. When Division One Presiding Justice James Marchiano stepped down, the court joined the Third and parts of the Second and Fourth districts in asking the governor to delay appointments to help them meet their budgets. Former First District Justice Patricia Sepulveda is currently filling in at Division One.

The full court also has multiple staff openings, including three of its four central staff attorneys, that it can't presently fill.

Said Kline: "We can get through the cases with the assistance of *pro tem* justices" and the staff of the retired justices.