

Change Agent

Bette Epstein helps litigants navigate intense emotions in trust and estate disputes.

By Shane Nelson

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Longtime probate litigator Bette B. Epstein began her professional life as a licensed psychotherapist, but she started to rethink that career choice after recognizing a fairly consistent pattern among her patients.

"I found that people weren't really interested in making changes in their lives. They just wanted to complain," Epstein said with a laugh.

A 1986 University of San Francisco School of Law graduate, Epstein said she'd had dreams of a legal career for decades before a visit to a divorce courtroom in the early 1980s to support one of her therapy clients spurred her career change.

"I watched the lawyers get up and make their arguments," Epstein recalled, "and I thought to myself, 'I could do that.'"

Epstein then spent nearly three decades litigating trust and estate cases as well as contested conservatorships and elder abuse matters, representing individuals, banks and private fiduciaries.

"I wanted to practice law in an area that had a real human element to it as opposed to representing corporations or ... handling intellectual property or any number of areas that weren't really people focused," Epstein explained, mentioning the often emotionally fraught nature of trust and estate disputes. "I really still wanted to practice in an area where I could use my training and experience as a therapist."

After first joining ADR Services, Inc. in 2015, Epstein decided to focus full time on mediation, arbitration and discovery referee work in 2017.



Gary Wagner / Special to the Daily Journal

"I wanted to take control of my life," she said. "As a litigator — with the demands of your clients, or from opposing counsel, from the court — you have very little control over your time."

Epstein noted that about 90% of her private neutral work these days is mediation while arbitration and refereeing make up the other 10%. Many of the disputes Epstein tackles feature probate or trust and estates matters, contested conservatorships or real property issues.

As an arbitrator, Epstein said her extensive experience plays a big role in her decisions.

"I litigated these issues for almost 30 years," she explained. "And during that time, I represented all of the

kinds of parties that appear in probate court proceedings, including representing individuals, banks and private professional fiduciaries."

Before her mediations, meanwhile, Epstein likes to receive briefs from all the parties and to speak with counsel. Roughly 90% of Epstein's mediations take place over Zoom these days, but she noted that she is handling more in-person sessions at ADR Services, Inc.'s Oakland office. Whether they're online or in-person, Epstein said she typically keeps parties in separate rooms throughout.

"I have the most comfortable conversations with people when their adversary is not participating," she explained. "I want to hear their

Bette B. Epstein

ADR Services, Inc.
Oakland

Areas of Specialty:

Probate
Trusts
Estates
Elder Abuse
Real Property
Contested
Conservatorships

story. That's an important part of the mediation process — them telling me their story. And I think that's best done outside the presence of the opposing parties.”

Epstein described her mediation approach as primarily facilitative but noted she will turn to a more evaluative strategy later in the day and will make mediator's proposals if all the parties agree.

“One thing I also really insist on is that when a settlement is reached, they document it during the mediation process, and that it gets signed by everybody who needs to sign it,” Epstein added. “Now that I've got DocuSign available, it works really well.”

Redwood City probate attorney Kathleen A. Durrans opposed Epstein on cases in the past and has since used her to mediate half a dozen disputes.

“She has a very, very calm demeanor,” Durrans said. “Even when things are getting out of control, she stays on this calm but concerned level, which helps clients

a lot because it brings down the tone. There are just some people that when you talk with them you know they're really listening, and Bette is just really good at that. ... And that works well for me when I have a client who is frustrated and highly emotional.”

Menlo Park attorney Steven P. Braccini has used Epstein to mediate a dozen trust and estate disputes, and he described her knowledge of the practice area as extensive.

“Trust and estate cases have an interspersing of tax, and Bette is conversant in tax,” Braccini said. “So when I say she has a deep knowledge base of this area of law, she is conversant in tax as well, so that is very, very helpful — rather than having a mediator who perhaps is not well versed on those issues.”

Walnut Creek trusts and estates litigator Rachel H. Rosenfeld said she has used Epstein as a mediator in four heated cases.

“I chose Bette because I think

she's very well versed in trust and estate law, and I think she really knows our cases,” Rosenfeld explained. “She will break down the case and talk about what she sees as the likelihood of success, the strengths and weaknesses.”

Like Durrans, Rosenfeld said Epstein is terrific for cases where emotions may run high.

“She has that psychology background, which is really helpful for us when we're dealing with very sensitive family dynamics,” Rosenfeld explained. “When you're having a litigation that involves a death in the family or an older adult with cognitive impairment, it's very, very sensitive. And we use her in cases where we have those very sensitive family issues, and we know our clients are coming in with a lot of emotion. ... We know Bette is going to make our clients feel heard and then also help them with a resolution and ask tough questions but do it gently.”

Epstein added that even after all these years, it's still the human el-

ement of her work that she finds most interesting and fulfilling.

“Oftentimes, these people are really in pain because there's been a loss,” she explained. “Typically, in all these cases, someone has passed away. And there's just a part of me that says, ‘I can be of help here. I can help alleviate the pain. I can't eliminate it, obviously, but certainly alleviate it and provide an ear.’ And I think talking about whatever the issue is is really helpful. That's part of my training as a therapist and as a lawyer, so that's what continues to motivate me.”

Here are some attorneys who have used Epstein's services: Rachel H. Rosenfeld, Heisler Rosenfeld LLP; Kathleen A. Durrans, Aaron Reichart Carpol & Riffle APC; Steven P. Braccini, Shephard Mullin; James P. Cilley, Temmerman Cilley & Kohlmann LLP; James R. Cummins, Barulich Dugoni & Suttman Law Group.

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