

Changing Tactics

Former Commissioner Everett Hewlett pivoted after SF court layoffs to mint an alternative dispute resolution practice.

By **Laura Hautala**
Daily Journal Staff Writer

Retiring to become a private judge was not Commissioner Everett A. Hewlett Jr.'s idea when he took the bench. But when he was laid off in a round of cutbacks at San Francisco County Superior Court, he opted for private dispute resolution.

It wasn't an easy task to get started. Hewlett calls the market for private judges "mature," and that's not a jab at the age of many neutrals. With lots of experienced former judges, commissioners and lawyers to fill the role of neutral, one has to stand out to succeed. Hewlett had thought his expertise in discovery could help carve out a niche for him.

"It hasn't proven to be as much the case as I'd anticipated," he said.

While Hewlett has had some success building a business as a discovery referee, he has also branched out to mediate and arbitrate in other areas of civil law such as personal injury and employment disputes.

Judith Z. Gold, an attorney at the Public Interest Law Project, used Hewlett's services as a discovery referee for a contentious discovery battle and said, "It was a very heated up situation and he managed to keep a lid on it."

When choosing a referee for a particular case, Gold said she felt in good hands with Hewlett. "I trusted him to be very knowledgeable about discovery rules," she said.

Gold said discovery can get especially challenging in federal court, where the rules for depositions are stricter. Without the ability to call up a judge on the spot, parties can get entrenched in their positions and wait until the next hearing to get a ruling before proceeding.

Hewlett agreed that waiting caus-

es much of the animosity that arises in discovery disputes.

"There's a frustration that comes about when you have a discovery request pending," he said.

Gold added that Hewlett's role as an adviser and not a decision maker helped both parties move forward. "He can give his wise counsel about whether objections that were being asserted were valid, and in doing so head off these lengthy arguments that tend to happen."

Aaron P. Minnis, a partner at Minnis & Smallets LLP, used Hewlett's services for mediation in a non-discovery matter. He echoed that Hewlett's advice helped parties assess their odds in court.

'I trusted him to be very knowledgeable about discovery rules.'

— *Judith Z. Gold*

"He was direct with me and then by extension my client with what he thought about how a certain issue would play out if the situation did not resolve," Minnis said. The case resolved, he said.

Hewlett said one of his goals is to help attorneys beyond the current impasse.

"What you hope," he said, "is that they recognize there's consistency. Everything is not all new."

Minnis and Gold both appeared before Hewlett when he was a discovery commissioner, and Minnis said the mediation process lets Hewlett get a little more personable.

"You can't maintain that while sitting up on the perch or behind the bench in a mediation. You have to get down and meet the parties," Minnis said. "And he did that quite well."

Hewlett started out in an area of the law that required a lot of listen-



Laura Hautala / Daily Journal

Everett A. Hewlett Jr.

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Areas of specialty: discovery, employment disputes, personal injury

ing and compassion for the parties: criminal defense. After graduating from Golden Gate University School of Law, he started at Bayview-Hunters Point Community Defender, and after five years, opened a private defense firm.

All that changed when the San Francisco County Superior Court hired him as the court's first black commissioner in 1986. "They said, 'We know you can do criminal. Show me you can do civil law.'" He made the transition, though he said it was a "pretty steep learning curve."

Hewlett moved from discovery to juvenile court to civil trial court and back to discovery during his tenure on the bench, he said.

Looking back on his varied career, Hewlett said writing was the most important and most overlooked aspect of practicing law. His time in the U.S. Air Force before law school made him a strong writer, he said. He worked for the press office and the Air Force newspaper while stationed in Marin, and when he spent a year in Thailand, he compiled a history of the base where he was stationed.

Now as he builds his practice in alternative dispute resolution, Hewlett notes a lack of diversity among his colleagues. Even though law firms have helped make the bench a more diverse place, they haven't taken as active a role in seeking mediators and arbitrators from diverse backgrounds, he said. "There has not been the same emphasis."

This creates an environment in which not all parties feel trust in alternative dispute resolution, he said, "in the sense that all parts of society feel they have representatives in that process, knowing that it's not all one uniform block of people."

Here are some attorneys who have used Hewlett's services:

Judith Z. Gold, The Public Interest Law Project, Oakland; Stephen R. Raab, Office of the Marin County Counsel, San Rafael; Jahmal T. Davis and David A. Abella, Hanson Bridgett LLP, San Francisco; Aaron P. Minnis, Minnis Law Office, San Francisco; Jack D. Eskridge, Gumbiner & Eskridge LLP, Walnut Creek; Simon Kisch, Law Offices of Simon Kisch, Berkeley; Walter Schey, Law Offices of Walter M. Schey, San Francisco; D.L. Rencher, Rencher Law Group, San Francisco; Noelle M. Natoli-Duffy and Keith M. Ameele, Foley & Mansfield, Los Angeles; Thomas M. Frieder and Kendra J. Pappas, Hassard Bonnington LLP, San Francisco.