



HON. WINIFRED Y. SMITH (RET.)

*Available for Mediations, Arbitrations, Discovery and
Judicial References*



The Honorable Winifred Y. Smith (Ret.) comes to ADR Services, Inc. with 21 years of experience as a Judge of the Alameda County Superior Court and 26 years as Deputy Attorney General in the California Attorney General's Office. During her tenure on the bench, Judge Smith presided over civil law and motion, civil direct, and complex litigation matters. She was also an integral member of court leadership, having served as a member of the Judicial Council, Supervising Judge of multiple courthouses, Supervising Judge of the court's Civil Division, and later as Presiding Judge.

Judge Smith has extensive experience in a variety of civil cases, including coordinated cases, class actions, employment, construction defect, and Proposition 65 matters, and has presided over many cases presenting questions of first impression. In her 13 years serving in civil assignments, Judge Smith presided over nearly 100 cases to verdict, including a Product Liability/Complex Litigation case which resulted in the largest civil award in California's history. She has been affirmed in 95% of her cases on appeal. In addition, Judge Smith served as a Justice *Pro Tem* for the California Court of Appeal, First Appellate District, Division Four.

Prior to her appointment to the bench, Judge Smith worked as a Deputy Attorney General with the California Department of Justice's Office of the Attorney General. During her tenure there, her assignments included working in the OAG's Health, Education, and Welfare Section representing state agencies.

Judge Smith is widely respected for her judicial demeanor and ability to deftly manage complex matters to resolution. She has been honored by many legal organizations for her commitment to judicial excellence, including being twice named Jurist of Distinction by the Women Lawyers of Alameda County and as Trial Judge of the Year by the American Board of Trial Advocates (ABOTA) in 2021. She has been invited to speak on numerous panels to offer her legal expertise and is currently a lecturer at Berkeley Law teaching Civil Trial Practice.

JUDICIAL EXPERIENCE

Alameda County Superior Court

Civil Complex Litigation	2016-2021
Presiding Judge	2014-2015
Assistant Presiding Judge	2012-2014
Felony Criminal Assignment	2012-2014
Supervising Judge of Civil Division	2010-2012
Civil Direct Calendar	2007-2012
Civil Law and Motion	2006-2007
Supervising Judge	2004-2005
Wiley W. Manuel Courthouse	
Allen E. Broussard Justice Center	

Felony Arraignments	2004-2005
Juvenile Court	2002-2003
Misdemeanor Pre-Trial	2001

California Court of Appeal, First Appellate District	
Associate Justice <i>Pro Tem</i> , Division Four	2018

HONORS AND AWARDS

Women Lawyers of Alameda County, Jurist of Distinction	2021
American Board of Trial Advocates, Trial Judge of the Year	2021
Women Lawyers of Alameda County, Jurist of Distinction	2014
California Association of Black Lawyers, Judicial Excellence Award	2013
Alameda County Bar Association, Distinguished Service Award	2010
Charles Houston Bar Association, Judge of the Year	2006

EDUCATION

J.D., Boston University School of Law	1974
B.A., Stanford University	1971

PROFESSIONAL AFFILIATIONS

Judicial Council of California	2008-2011
Consultant for Civil Proceedings Bench Book, CJER	2009-2010
Continuing Judicial Studies Committee, CJER	2007-2008
Judicial Council Access and Fairness Advisory Committee	2004-2007
Lawyer Delegate	1997-1999
Northern District of California	
Ninth Circuit Court of Appeals	

TEACHING EXPERIENCE

UC Berkeley, School of Law	2022
CJER Civil Experienced Primary Assignment Orientation	2021
CJER Complex Case Management and Trial	2021

BOARD AFFILIATIONS

Association of Business Trial Lawyers	2015-Present
Alameda County Bar Association, Volunteer Legal Services	2008-2014
David P. McCullum Youth Court	2003-2009

PROFESSIONAL MEMBERSHIPS

California Judges Association
Alameda County Bar Association
Women Lawyers of Alameda County
National Bar Association
California Association of Black Lawyers
Charles Houston Bar Association
Earl Warren Inn of Court

REPRESENTATIVE CASE SUMMARIES

EMPLOYMENT

- Age discrimination case alleged against an insulation installment company under FEHA and under common law.
- Sex discrimination against major shipping company in which plaintiff alleged she was subject to a different standard for performance than her male colleagues. Case tried to verdict but settled before punitive damages phase of the trial.
- Discrimination alleged by professor seeking tenure.
- Plaintiff alleged wrongful termination from a medical center claiming that she was retaliated against for engaging in union activities.
- Plaintiff sued a university for wrongful termination from her position as an assistant professor when she failed to return to work after medical leave. The core issues in the case revolved around failure to achieve tenure and the status of her academic research. The case was tried to verdict and the Court of Appeal affirmed Judge Smith's orders denying plaintiff's motion for reinstatement to her position as professor.
- Class action against a car manufacturer for racial bias on the production floor.

BUSINESS / CONTRACT

- Action for breach of contract, fraud and concealment following the sale of stock in a newspaper publishing corporation.
- Dispute over purported ownership of a nightclub. Plaintiff alleged defendant granted him half ownership in exchange for his capital investment then excluded him for ownership and management of the club.
- Action by a bank against a title company for negligence in managing an escrow to which the bank was not a party. The theory of liability was that the bank had a financial interest in the outcome of the escrow and was therefore owed a duty of care.
- Declaratory relief sought against homeowners' association to determine that amendments to development's covenants, conditions and restrictions deprived owners of significant property rights.
- Action involving a dispute over competing claims for the surplus proceeds from a foreclosure sale of a residence.
- A case resolving the disputed financial matters of a couple who broke their engagement. The Court of Appeal affirmed the order apportioning the various assets owned or controlled by the parties.

PERSONAL INJURY

- During her tenure as a Direct Calendar judge, Judge Smith tried numerous personal injury cases ranging from catastrophic injuries to injuries sustained in motor vehicle and other accidents.
- For five years, Judge Smith was one of two judges assigned to try asbestos cases filed in Alameda County. She tried over a dozen cases to verdict and managed hundreds more.
- In a bellwether trial, part of a larger coordinated matter assigned by the Judicial Council, a couple alleged that their use of a popular fertilizer resulted in their contracting non-Hodgkins lymphoma. The trial resulted in the largest personal injury award in the state of California.
- Action against tire manufacturer for strict product liability and negligence for failing to provide warnings about the danger of older tires.
- Action against an airport shuttle company for injuries sustained in transit to a local airport.
- Dispute involving whether an airline carrier was liable for the injuries of a TSA airport screener when screener carried an oversize bag.

CLASS ACTIONS

- Class action filed on behalf of over 80 thousand employees of a health care organization alleging that they were underpaid regularly and owed overtime wages due to the rounding of time entries when they clocked in and out of work.
- Consumer class action challenging wireless phone carrier's policy of charging early termination fees to consumers for terminating service before defined contract periods expired.
- Class action seeking injunctive relief under the UCL against a health plan for failing to provide coverage for necessary mental health services.
- Representative action brought by plaintiffs against defendants for their participation in illegal internet payday loan practices.
- A class of retirees from employment at a university sued to determine if there is a legal duty on the governing body of the university to pay retroactive monthly retirement benefits for periods of time prior to the date on which a retirement plan member submits a request for benefits under the plan.
- Plaintiff class sought damages from company utilizing automated debt collection practices which caused financial harm.
- The class sought an order requiring national retail chain to provide seating at cash registers.

- Class sought damages against major grocery store chain for misrepresenting the origin of the olives in the store label olive oil.

WAGE AND HOUR/ PRIVATE ATTORNEY GENERAL ACT (PAGA)

Judge Smith handled over 200 hundred Wage and Hour and/or PAGA cases during her tenure in a Complex Litigation assignment. For example:

- Employees sued national company providing helicopter emergency services for wage and hour and PAGA violations. After a phase 1 trial on whether certain Labor Code provisions exempted plaintiffs from meal and rest break requirements, the parties resolved the remaining liability issues for an award in excess of 100 million dollars.
- Wage and Hour and PAGA claims alleging failure to provide meal and rest breaks against:
 - Fast food chain
 - Chain of restaurants operating in Northern California
 - National chain of nutritional products stores
 - Grocery store chain operating in northern and southern California
- Wage and Hour claims against a transportation company. The case raised issues of preemption by federal law because of the nature of the business.

COORDINATED PROCEEDINGS

During her years in a Complex Litigation assignment, the Chief Justice of the California Supreme Court appointed Judge Smith to manage a number of cases coordinated throughout the state as a single case. The following are examples:

- 31,000 cases nationwide filed in California in which plaintiffs sued the manufacturer of a non-surgical birth control device for various injuries. Judge Smith oversaw the case from filing to resolution.
- Over 200 cases in which the plaintiffs sued the manufacturer of a national brand of fertilizer because it failed to warn that users may develop non-Hodgkins lymphoma.
- Cases in Northern California filed on behalf of victims of clergy sex abuse.
- Cases alleging a cancer-causing ingredient in an over-the-counter medication against manufacturer and retailers.
- Cases alleging fraud by payday lending institutions.

COMPLEX LITIGATION

- Plaintiff, representing a trust created in Bankruptcy Court, sued defendant, an insurance organization, seeking a declaration that defendant was responsible for the obligations of certain insolvent insurers. This case was litigated for over five

years and went to the Court of Appeal twice. After phase 1 of the trial which addressed the scope of defendant's potential liability, the parties resolved how the defendant insurance organization would participate in future litigation stemming from the trust.

- Case resolved two related issues: (1) was the defendant university authorized to enter into contracts for certain benefits for retirees, and (2) whether it had entered into an implied contract to provide those benefits to the retirees.
- Plaintiffs filed a petition for writ of mandate and complaint for declaratory and injunctive relief seeking to enforce the due process rights of criminal defendants declared incompetent to stand trial under the US constitution to timely treatment to restore them to competency so that they may proceed to trial.

PROPOSITION 65

- Action against manufacturer of energy drinks alleging lead in excess of the permitted limits.
- Action against national retail chain to warn of toxic components in accessories sold in the stores.
- Action against manufacturer of energy drinks to warn of alcohol in excess of permitted limits.
- Action against manufacturer of uniforms to warn of chemicals used to treat fabric used to make the uniforms.

LEGAL MALPRACTICE

- Plaintiff asserted defendant pressured her into agreeing to a settlement of her claims against a non-profit organization and several governmental agencies and that defendant dismissed her lawsuit without authorization. The underlying lawsuit alleged that defendants intentionally thwarted her efforts to establish a facility for disabled children.
- This malpractice suit followed a probate action in which the defendant drafted a trust to effect the disposition of a client's real and personal property.

PUBLIC ENTITIES

- Plaintiff sued a school district for alleged constitutional violations in assigning students to the district's elementary schools and assigning students to academic programs in the district high school.
- Case addressed public agency immunity from liability for accidents involving high speed chases by peace officers.
- A county mental institution was sued for injuries sustained by a patient assaulted by a fellow patient. The case addressed the issue of governmental immunity for public entities tortious conduct committed by mentally ill patients.

- Class action for injunctive and writ relief statewide on behalf of recipients of certain public benefits in that they were deprived of equal protection and discriminated against in the administration and supervision of said benefits.
- Retirees sued pension fund for age discrimination following a change in formula used for calculation of retiree pension benefits.
- A consolidated case addressed how to determine the integrity of electronic voting machines under the California Elections Code.
- Case addressed the issue of the disclosure of meeting minutes at the public university pursuant to the Public Records Act.