

VERDICTS & SETTLEMENTS

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When he speaks, people listen *Thomas Willhite Jr. leverages his judicial experience as arbitrator, mediator, referee.*

By Shane Nelson

Special to the Daily Journal

Retired appellate justice Thomas L. Willhite Jr. has been working full time as a private neutral for just over a year, but the approach he's employing as a mediator has already evolved.

"Early on in my mediations, I found that I went to the evaluative part far too soon," Willhite said. "When you put on your judge hat as a former judge, you are speaking with some level of authority or gravitas, but that's not necessarily the most important thing in the mediation."

Willhite joined ADR Services, Inc. on Feb. 1 last year, the day after he retired from the 2nd District Court of Appeal, where he wrote more than 2,000 opinions over his 18 years there on the bench. All told, Willhite's judicial career spanned more than three decades, including time as a Los Angeles County Municipal Court and Superior Court judge before his appointment to the appellate court in 2005 by Gov. Arnold Schwarzenegger.

"The most important thing in the mediation is establishing the groundwork in which people will be willing to listen," Willhite explained. "There are certainly times when you have to be more directive ... but [the parties] have to be ready to hear that. When I was getting into that evaluative part too early, it's not that we didn't settle the cases. But it would have been easier to settle them, I think, had I done more of the background work of just establishing the process and feeling what the dynamic was before I jumped into giving a qualitative analysis of the strengths and weaknesses of the case."



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A 1979 Loyola Law School graduate, Willhite went to work for the state attorney general's office after passing the bar, and he spent 10 years there handling appellate cases before his appointment to the municipal court in 1990.

Willhite was a history major during his undergraduate work at UCLA and was considering a career as a history professor before his father - a longtime educator - encouraged him to consider law school. It seems that suggestion lined up pretty well with how Willhite's mother saw her boy ultimately earning a living.

"My mom told me once that she thought I'd be one of two things - a priest or a judge," Willhite recalled with a laugh. "I guess I just always had a very calm personality and

enjoyed not inserting myself into controversy, but trying to resolve controversy in a calm, thoughtful way. My mom was like that, too, and I think she saw that in me."

Over the past year, Willhite has been tackling disputes as a mediator, arbitrator and discovery referee along with providing appellate consultation and some moot court work. While most of his private neutral calendar has thus far been filled with mediating business, real estate, employment, personal injury and landlord-tenant cases, Willhite has also moved into the management conference and law and motion stages for a few arbitrations.

"As an arbitrator, I want to create the kind of environment where the attorneys can do the best for their

Thomas L. Willhite Jr.

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clients,” he said. “Now, that doesn’t mean I don’t insert myself when necessary. I’m always prepared, but I’m not someone who’s going to try to take over the case in any sense. I want to create an atmosphere in which the attorneys can do their best, and then I’ll make the best call I can.”

Before a mediation, Willhite likes to receive briefs from all the parties and to speak over the phone with attorneys. On the day of mediation, he tries to begin by creating a comfortable vibe.

“When it’s virtual, I show them on the screen that I’ve got my cup of coffee with me, and they can get their cup of coffee, feel free to take snacks, that kind of thing,” Willhite explained. “I try to make a relaxed atmosphere, where we can really be candid and establish a sense of trust in the process, and I have found that to be very, very important.”

Willhite noted that most clients hire him as a mediator, at least in part, because of his extensive

background on the state trial court and appellate bench, and typically, that means they do eventually want to know what he thinks about the strengths and weaknesses of their case.

“The lawyers do want to hear that at some point, usually,” Willhite said with a chuckle. “Not always, but usually. And I do provide that.”

Los Angeles appellate attorney Julian W. Poon used Willhite recently to resolve a multimillion-dollar franchise and contract dispute, and described the neutral as a very sharp mediator with a friendly, easy-going demeanor.

“And it was his mediator’s proposal that succeeded in settling the case,” Poon said. “It was just high enough for the other side and just low enough for us. ... Justice Willhite is a great choice, especially if you have a matter in state court.”

Northridge defense attorney Anthony P. Serritella has used Willhite to resolve three employment disputes, and he agreed that

the retired justice’s affable personality is a strong suit.

“Some mediators like to be very heavy handed with the parties - as if they’re trying the case - but he makes it very clear that he’s not the fact finder,” Serritella said. “He’s not going to push anybody toward a settlement. He’s just trying to get the parties to reach a number they believe can help resolve the case.”

Encino plaintiffs’ attorney Boris Treyzon has used Willhite to mediate commercial and personal injury disputes, and said the neutral also has a terrific sense of humor.

“Sometimes when everything is really tense on Zoom, and you’re like, ‘Where is he? Why isn’t he coming back to me? Everything is taking so long.’ He’ll come back, crack a joke and everybody just becomes at ease,” Treyzon said. “And cases where people are at ease settle.”

Treyzon also described Willhite’s approach to mediation as kind and “non-pompous.”

“And that’s wonderful because our clients enter the process very often scared, confused, maybe even distrustful,” Treyzon explained. “And he really puts them at ease. He does a great job of that.”

Treyzon noted that Willhite’s distinguished background on the trial court and appellate bench means that his evaluative work during mediations is especially impactful.

“His level of expertise is very, very high,” Treyzon said. “He was at the highest echelons of our profession, and when somebody like that speaks, they carry a lot of credibility.”

Here are some attorneys who have used Willhite’s services: Boris Treyzon, Abir Cohen Treyzon Salo LLP; Anthony P. Serritella, Law Office of Anthony P. Serritella; Julian W. Poon, Gibson Dunn & Crutcher LLP; Sarkis Sirmabekian, Sirmabekian Law Firm PC; Jeffrey M. Cohon, Garrell Cohon Kennedy LLP.

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