

VERDICTS & SETTLEMENTS

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Chiefly Experienced

Retired chief justice Tani Cantil-Sakauye applies experience and practicality to mediation.

By Shane Nelson

Special to the Daily Journal Staff Writer

Former Chief Justice of California Tani G. Cantil-Sakauye hasn't forgotten an acronym she and her colleagues at the Sacramento County District Attorney's office used to describe cases in the 1980s.

"DBW - no case is a dead-bang winner," Cantil-Sakauye said. "You might have the best case in the world, and all your evidence is text-book admissible, but you may still not win. You may still get terrible rulings. You may still have your star piece of evidence excluded. These things can happen."

A 1984 UC Davis School of Law graduate, Cantil-Sakauye spent four years as a Sacramento County deputy district attorney, prosecuting misdemeanors and felonies before she joined Gov. George Deukmejian's legal and legislative affairs staff from 1988 to 1990.

From there, Cantil-Sakauye spent 32 years working at all three levels of California's court system, starting in 1990 as a Sacramento Municipal Court judge followed by her elevation to the Sacramento County Superior Court in 1997. She was then appointed to the 3rd District Court of Appeal in 2005 before taking over as chief justice of the state in 2011.

"What it's given me is an appreciation of the vagaries a lawyer will experience in a courtroom," Cantil-Sakauye said of her more than three decades on the bench.

"Sometimes you win when you should lose, and you lose when you should win," she continued. "And that's something I bring to try to explain why mediation can provide a very good option."



Jana Ašenbrennerová / Special to the Daily Journal

Cantil-Sakauye joined the ADR Services Inc. roster of private neutrals in May last year, and she's since been handling moot courts, appellate consultations and mediations, during which she's worked regularly to resolve class action, personal injury, employment and insurance disputes.

"It's offered the perfect opportunity to still work on cases as needed and to stay involved in legal issues and work with lawyers," Cantil-Sakauye said. "And I enjoy it. I love hearing the attorneys' strategies and their experiences and their reactions. I genuinely enjoy the company of lawyers."

Although the former chief justice isn't currently handling arbitrations, she hasn't shut the door entirely on that form of alternative dispute resolution work.

"I view arbitration essentially as a mini-trial, and it requires time and attention and continuity," Cantil-Sakauye explained. "And since I have a job as the CEO of the Public Policy Institute of California, I'm not putting myself in the arbitration mix. But eventually? I love trials, I loved being a trial attorney, and I loved being a trial judge. I hope it's in my future eventually, but not yet."

Prior to her mediations, however, Cantil-Sakauye said she likes to

Tani G. Cantil-Sakauye

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receive briefs from all the parties and will speak over the phone with counsel beforehand. The chief justice also noted that she encourages parties to exchange their briefs prior to mediation.

"It helps the other side to better understand each other," she said. "It also helps to save time and surprise during the precious time we have together for the mediation."

She noted that roughly half the mediations she conducts today take place over Zoom while others are a hybrid of in-person and remote proceedings. After introductions, Cantil-Sakauye said she likes to speak directly with clients.

"I ask them a lot of questions about themselves and this litigation and what they want and how it's felt for them," she explained. "The situation is often - and usually - a singular event in their life. I think it can be very foreign. ... So, I really try to engage them and not overwhelm them with legalese or procedure."

San Diego trial attorney Ross H. Hyslop used Cantil-Sakauye recently to resolve a complex class action, and he said the former chief justice was a good listener and very empathetic.

"I didn't feel like there was any

sense on her part that she was better than us or anything like that," Hyslop said. "She just basically rolled up her sleeves and got right to the meat of the issues pretty quickly but with an understanding that each side had their own viewpoints, and she was going to respect that and see if she could bridge the gap. And she did."

Hyslop was also impressed by Cantil-Sakauye's preparation and willingness to really dive into the case.

"There's a lot of mediators out there who I think have a tendency to scan the mediation briefs and don't really delve into the details," he said. "But she really understood things and pointed out things that were deep in our papers that were important details to us, but many mediators might've lost."

San Francisco defense attorney Matthew D. Peng used Cantil-Sakauye recently as a mediator on a difficult transportation dispute, and he also said she was very good with clients.

"Certainly, for someone that's a chief justice, she does not come across as stuck up," Peng said. "She's a very personable person, and she's easy to work with, and she was just tough and worked extremely hard on the case."

Peng noted the parties chose Cantil-Sakauye, in part, because they wanted an expert opinion about how an appellate court might view their legal arguments.

"I don't think there's anyone who understands that better than she does," Peng said. "If you need someone to tell you about the appellate landscape because you're thinking past trial and interested in having someone help to resolve those appellate issues, I think she is fantastic."

San Francisco plaintiffs' attorney Michael A. Kelly used Cantil-Sakauye recently as a mediator in a trucking industry case, and he said she had a terrific temperament for dealing with the dispute's difficult issues and difficult personalities.

"This was a highly contentious case with lawyers with strong personalities," Kelly said. "And she really brought a calmness and a business-like analysis of the facts. ... And she was a really good listener. Even if one side or the other was making an argument that was silly or flawed or didn't have much underpinning, she was willing to listen."

Like Hyslop, Kelly was impressed by the former chief justice's exhaustive preparation prior to the mediation but also her willingness

to approach the matter with an open mind.

"She took a fresh look at everything," Kelly said. "Oftentimes, mediators come to cases, and they've decided before they hear anything where it's going to end up. She was not that person. She was a person who was anxious to have practical questions answered in a non-emotional, wholly factual way that were ultimately going to be important in the trial of the case."

Kelly added that Cantil-Sakauye was unafraid to share her thoughts on the matter's merits.

"She did not suffer fools," he said with a chuckle. "You better have had a good answer or explanation for her questions about, 'What will this witness say? How will the judge rule? What is the legal principle?' Because she knew it."

Here are some attorneys who have used Cantil-Sakauye's services: Michael A. Kelly, Walkup, Melodia, Kelly & Schoenberger; Ross H. Hyslop, Pestotnik LLP; Matthew D. Peng, Gordon Rees Scully Mansukhani LLP; Gregory G. Rizio, Rizio Lipinsky Law Firm; Julie S. Pearson, Scali Rasmussen PC
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