

Uncommon Solutions

JAMS neutral Patricia Gillette got used to settling emotional, complicated cases as a litigator.

By Chase DiFelicianantonio
Daily Journal Staff Writer

SAN FRANCISCO — For Patricia Gillette, creativity and uncommon solutions have often been the path forward in her more than 40 years as an attorney.

Now a mediator at JAMS in San Francisco, Gillette spent her career as a litigator working in defendant-side employment law. She continues to specialize in employment cases in her mediation practice and said that throughout her career she has sought to find unorthodox solutions to cases, often with an eye toward settlement.

"I really believed in the mediation process as a litigator because I just think litigation is a terrible way to resolve things for most people on both sides," Gillette said.

While Gillette described herself as a hard-[nosed] litigator, she said that as a practicing attorney, she was not afraid to call the defense counsel and ask to settle a case. "I didn't see that as a sign of weakness, I saw it as a sign of strength that I believed enough in my case," she said.

Her attitude toward settlement and the nature of her work as a defendant-side employment lawyer have also given her credibility as a mediator with a reputation for cooling tempers and finding mutually agreeable settlements in heated, often personal disputes.

"Her background of having handled cases and tried cases gives her a unique ability to articulate to both sides what their risks are in not settling," said Gary Lafayette, a partner at Lafayette & Kumagai LLP in Oakland, who has handled employment cases as a defense lawyer with Gillette as mediator.

"Having been an effective trial attorney on the defense side, she really knows what the weaknesses are of a plaintiff's case and what the strengths are," said Lori Costanzo, founding partner of Costanzo Law Firm in San Jose, who has worked as plaintiff's counsel with Gillette as mediator.

According to Tania Rose, principal attorney at Rosecounsel in Oakland who has both litigated against

Gillette and handled cases with her as a mediator, Gillette also brings an uncommon depth of experience in employment law.

Gillette, who began working as a part-time neutral in 2015 while a partner at Orrick, Herrington & Sutcliffe LLP in San Francisco, said that key to a good mediation is actively listening to understand what a person really wants to achieve.

"It's not really the money they want most of the time. It's the acknowledgment that they were treated badly or that they perceive that they were treated badly," Gillette said. "You don't necessarily agree with them but you let them know that you hear them."

"Pat ... can effectively peel away the layers of the onion and get to the heart of the dispute," said Douglas Silverstein, founding partner at the Law Offices of Kesluk, Silverstein & Jacob in Los Angeles. He has worked with Gillette as a plaintiff's lawyer in mediation.

Gillette described a case she handled as a mediator which involved a death, with the widow pursuing the mediation. Gillette said she tried to get the plaintiff to focus on whether her husband would have wanted her to spend the next several years of her life pursuing retribution, suggesting at one point that a memorial to the husband be erected in a public park.

"That's not what ultimately happened, but it made her feel so good to know that the company had thought about doing that," Gillette said.

Employment cases are often emotionally charged on both sides and it takes a particular set of skills to move the parties toward a settlement in mediation, according to Silverstein.

This was true in a case he worked on in mediation with Gillette. Silverstein said the case involved a high-level manager of a Silicon Valley company who was fired the day before he was set to take parental leave.

Silverstein said Gillette suggested converting the firing to a voluntary resignation so the employee did



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not have a termination on his record, again showcasing her penchant for creative resolutions.

Gillette said much of her work as a mediator involves managing expectations and that she is active in suggesting solutions.

"I never believe it, especially in the beginning of a mediation when someone says, 'This is it. I can't do any more or I can't accept anything less,'" Gillette said. "They wouldn't be in mediation if they were that rigid and if they are, then they shouldn't have come to mediation."

While she admits to initially wanting to represent plaintiffs in employment cases right out of law school, Gillette said she found she could make a positive impact for both sides defending companies in employment disputes.

"It morphed from being an advocate for these particular groups in the context of the plaintiff's side to being an advocate for these groups on the defendant's side," Gillette said.

Among other posts, Gillette was the head of the Personnel Law Section at Bank of America from 1978 to 1984. She said that representing many high-profile individuals being sued for discriminatory behavior or harassment made a difference to the defendant, the company and company culture.

She said her work also included helping companies implement preventive policies to avoid harassment or discrimination cases. "I really became committed to helping companies expand the way they thought about diversity ... and also how to incorporate that into culture," Gillette said.

She has sought to break from the

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norm in other areas of her career as well and is a co-founder of the Opt-In Project, a nationwide initiative with the goal of changing the structures of law firms to increase the advancement and retention of women.

"I'm trying very hard to change the industry and to change the way we think about what the role of women should be, what the role of minorities should be, the value of diversity in the workplace, and rethinking this crazy structure that we've had around for so long," Gillette said.

Gillette's work with the Opt-In Project has also led to a career as a speaker on issues related to gender and ethnic diversity, which began around 2006 during her time as a shareholder at Heller Ehrman LLP in San Francisco.

She said her speeches cover issues of leadership, self-promotion, business development and how to not think of oneself as a second-class citizen.

Here are some attorneys who have used Gillette's services: Marcia L. Pope, Pillsbury Winthrop Shaw Pittman LLP; Therese M. Lawless, Lawless & Lawless; David A. Lowe, Rudy, Exelrod, Zieff & Lowe LLP; Katherine Huibonhoa, Grube Brown & Geidt LLP; Douglas N. Silverstein, Law Offices of Kesluk, Silverstein & Jacob