

## VERDICTS &amp; SETTLEMENTS

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## Neutral infuses negotiations with dose of reality

Former litigator and judge William C. Pate impresses upon parties that their best interests would be served by settling rather than going to trial.

By Mandy Jackson  
Daily Journal Staff Writer

Retired Superior Court Judge William C. Pate, a neutral at JAMS in San Diego, uses his 34 years of experience as a litigator and judge to help parties understand the benefits of settling their disputes rather than taking them to trial.

"I feel like I'm really helping parties resolve their cases without the trauma of trial," Pate said. "It can be more of a win-win situation than a win-lose situation that happens in a courtroom. It's a more pleasant experience."

About 80 percent of Pate's neutral practice is mediation, another 15 percent involves arbitration, and in the other 5 percent of his time, he serves as a discovery referee. He tends to handle complex cases and class actions, including employment, financial and general commercial disputes.

Defense lawyer Maria C. Roberts, a shareholder and managing partner at Stokes Roberts & Wagner, ALC in San Diego, has used Pate as a mediator and as a discovery referee in roughly 10 employment disputes and general business cases.

Roberts said Pate has a knack for showing the parties involved in mediation the weaknesses of their cases, something that helps both sides move toward compromise.

"He has a lot of experience as a trial judge and an attorney," she said. "He can talk to us realistically about what it will be like at trial. I think that is really very effective."

Before his appointment to the San

Diego County Superior Court bench in 1986, Pate was a litigator at Legro Rentto Pate & Tower, then at Jennings Engstrand & Henriksen. He graduated from the University of San Diego School of Law in 1971.

In mediation, Pate said it's his job to inject a dose of reality into the process, because parties in a dispute should understand that their chances of winning at trial aren't guaranteed, especially if issues beyond the legal matter at hand are driving the case.

"[I look] for the hidden-agenda issues that sometimes are there, especially with corporations," he said. "They'll be thinking of what precedent this establishes or some economic issue that they've got ongoing, like maybe there's a merger or acquisition that's down the road that could be impacted by the settlement. I try to find those out."

Pate said he likes to jump right into negotiations if the parties, such as insurance company representatives and corporate executives, are experienced with the process. But oftentimes, at least one side is new to mediation.

"I try to explain to them my role in the process and their role in the process, which is a very important role — the most important role," he said. "I want to do everything that I can to make them feel comfortable with what we're doing."

James R. Patterson of The Patterson Law Group in San Diego said parties and their lawyers tend to be comfortable working with Pate, regardless of the outcome of their disputes. Patterson has represented plaintiffs and de-

fendants in a dozen complex consumer and employment cases — including eight class actions — that Pate mediated.

"One nice thing about using him as a mediator is that it seems both sides are typically of the opinion that they got a fair shake," he said. "I've never used him in a mediation where the opposing counsel told me they thought he was biased one way at all."

For lawyers and their clients, Pate offered two pieces of advice that they should keep in mind as they prepare for mediation.

First, they should be realistic about what they can expect to get out of the negotiations "because mediation is compromise, which means that they naturally have to give up something so they get an earlier result," he said.

Second, Pate said lawyers and their clients should plan a strategy for their negotiations — what demands or offers they will make and how they'll respond to the other side's likely demands or offers.

"Every time you take a position — you make an offer or a demand in the case — you're doing two things," he said. "You're communicating a number, but you're also communicating a position. If you tell the other side something that communicates to them that the case is not going to settle, then they're not going to put their best effort forward."

Pate's dedication to realism and strategy extends beyond the mediation session, because complex cases often don't settle with just one round of negotiations.



S. Todd Rogers / Daily Journal

**William C. Pate****Affiliation:** JAMS**Location:** San Diego**Area of specialty:** Class actions, general commercial disputes, employment cases and financial matters

John D. Hershberger, a partner at Best Best & Krieger LLP in San Diego, used Pate to mediate two real estate disputes. In one, Hershberger represented a lender involved in a general contractor's foreclosure on a mechanics lien on a high-end home in Rancho Santa Fe.

"Judge Pate played a role in allowing the parties to come together to reach a sensible settlement," he said. "Even after the parties left not having resolved their dispute on the first go-around, Judge Pate worked until 11:30 that evening as an advocate of rational economic behavior. We went back and eventually reached a settlement that was sensible for the case."

*Here are some lawyers who've used Pate's mediation, arbitration and discovery referee services:* Norman B. Blumenthal, Blumenthal Nordrehaug & Bhowmik, San Diego; John D. Hershberger, Best Best & Krieger LLP, San Diego; George S. Howard Jr., Jones Day LLP, San Diego; James R. Patterson, Harrison Patterson & O'Connor LLP, San Diego; Maria C. Roberts, Stokes Roberts & Wagner, ALC, San Diego; Gerald B. Singleton, Law Offices of Gerald Singleton APC, Encinitas; and David P. Strauss, Law Office of David P. Strauss, San Diego.