

Rescuing Relationships

Zela Claiborne excels at disputes where parties must work together in the future, lawyers say.

By Shane Nelson

Special to the Daily Journal

Neutral Zela G. Claiborne began her professional life as a college English professor, and some of the skills she first honed as an educator proved valuable when she started working as a litigator.

“My teaching background was very helpful in court,” Claiborne said, “because I really liked standing in front of a jury and teaching them about my client’s view of the case.”

When it came time to decide between pursuing a Ph.D. or completing a legal degree, Claiborne chose to enroll at UC Berkeley School of Law, where she graduated in 1982. After passing the bar, she spent 16 years at the now-defunct Bronson, Bronson & McKinnon LLP in San Francisco, where she litigated commercial matters as well as tackling professional malpractice and construction cases for both plaintiffs and defendants.

Claiborne said she started mediation and arbitration in the mid-1990s while she was still practicing as an attorney, but she struck out as a full-time neutral in 1999, in part, because she liked helping people solve problems.

“In mediation, if things go well, the problem is solved, and business can go on,” Claiborne said. “And in arbitration, a lot of times companies are stuck in these disputes that go on for a long time, and to have an arbitrator hear the evidence and make a decision is in a lot of ways very helpful.”

Claiborne has been a member of the JAMS roster of private neutrals for 16 years now, and she tackles disputes as a mediator, arbitrator and special master. Claiborne said



Jana Ašenbrennerová / Special to the Daily Journal

roughly 75% of her work is arbitration, with the remaining 25% primarily mediation. She routinely tackles commercial and intellectual property disputes – both domestically and internationally – but has also been working to resolve energy cases involving solar and wind issues in recent years.

Claiborne noted that during her initial preliminary conference with attorneys as an arbitrator she likes to collaboratively design a plan for handling the case.

“We have a discussion about what kind of discovery has to take place, where the case is going to be heard, when we’re going to do it – all of that – and then I issue a scheduling

order,” Claiborne explained. “And the scheduling order is like a blueprint for the case we use throughout.”

The JAMS neutral noted that she also does her best to make herself available to counsel to address any issues that may develop before the arbitration hearing.

“We can have a call or they can send me a note or whatever, so we can solve problems pretty quickly,” Claiborne said. “They don’t have to wait two weeks for me to get back to them about something. I’m really trying to help them move forward efficiently and fairly hear from both sides.”

San Francisco defense attorney Dipanwita D. Amar used Claiborne

Zela G. Claiborne

JAMS

recently as an arbitrator in an employment case, and she was impressed by the neutral’s prehearing approach.

“She kept the parties on a very tight schedule,” Amar said. “The inception of her being appointed the arbitrator through the hearing

date was less than a year, and she was incredibly available to deal with any discovery issues and kept us to our schedule. She was really very efficient, and that's primarily why I think arbitration is a preferable forum in many cases because it's designed to be fair and efficient. And that's exactly what this was."

Amar also described Claiborne as a thorough and fair arbitrator who operated with an exceptional judicial demeanor.

"She treated witnesses and counsel with a tremendous amount of respect while at the same time cutting through all the issues and getting to the nub of the matter," Amar said. "And she wrote a very well-thought-out and well-reasoned opinion after the arbitration that assessed all of the parties' arguments but more importantly the key pieces of evidence. And I thought that was very, very helpful."

Before a mediation, meanwhile, Claiborne said she likes to receive briefs from parties but also wants to speak over the phone with at-

torneys. On the day of mediation, Claiborne said she typically keeps parties separate to begin and does a lot of listening and question asking early on – both skills she first sharpened as a teacher – to give litigants a chance to tell their stories.

Claiborne noted, however, that under the right circumstances she will bring disputants together later on.

"My focus is generally on signing a business deal. Is there a business solution or plan? Can the parties work together later?" Claiborne explained, adding that she will also occasionally bring clients together without their attorneys.

"With counsel's permission, I often bring the principals together with me to talk," Claiborne explained. "And at that moment, we can generally shape something that then the principals can go back to their counsel and say, 'Well, what do you think of this?' And often we settle that way."

San Jose litigator Elizabeth M. Pipkin used Claiborne recently to

resolve a cargo theft dispute, and said the JAMS neutral employed an often creative approach while working well with the litigants.

"She was great at listening to the client, understanding where the client was coming from and being able to translate that into something that was effective in the process," Pipkin said. "When you're listening to clients and then you're trying to go to the other side and explain where other people are coming from, obviously the mediator has to be able to translate that into something the other side can hear and that will help with the process. As opposed to just being a messenger – going back and forth. And she was excellent."

San Francisco commercial litigator Jeffrey J. Lederman said he's used Claiborne to settle 10 cases over the past 20 years, and said she operates with a calm demeanor.

"I would be lying if I didn't say at a couple of points in time over those 20-plus years she hasn't looked me squarely in the eye and said, 'You

know, Jeff, calm down a little bit. Think about where your client is heading and where the other side's client's heading,'" Lederman recalled. "She's very conciliatory and non-adversarial as a mediator."

Lederman said one of Claiborne's greatest strengths is her ability to navigate volatile and adversarial disputes in which the parties will need to work together in the future.

"There's nobody better at that than her," he insisted. "Somehow she manages to settle cases without having the parties alienate each other to the extent they can't work together. And there are very few mediators who are able to do that."

Here are some attorneys who have used Claiborne's services: Jeffrey J. Lederman, Joseph & Cohen Del Vecchio PC; Dipanwita D. Amar, Arnold & Porter Kay Scholer LLP; Elizabeth M. Pipkin, McManis Faulkner; Felicia A. Draper, Shartsis Friese LLP; Laura C. Hurtado, Pillsbury Winthrop Shaw Pittman LLP.

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