

VERDICTS & SETTLEMENTS

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Making it Matter

Neutral Kevin Culhane finds satisfaction in resolving cases like wrongful deaths of children.

By Shane Nelson

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Retired judge Kevin R. Culhane wants to help litigants move beyond the pervasive hardship of a protracted dispute.

“It’s the first thing you think of every morning, and the last thing you think of every night,” Culhane said. “It can deaden things that are artistic, musical, religious, inquisitive, creative - all those personal qualities people typically want. One thing that’s going to happen when this case gets resolved is you’re going to get all those capacities back again.”

A 1976 McGeorge School of Law graduate, Culhane worked for 32 years as a litigator, regularly defending attorneys in malpractice cases. In 2008, Culhane was elected to the Sacramento County Superior Court, where he handled civil, family law and probate assignments and presided over more than 150 jury trials before his retirement in April 2022. Culhane also was presiding judge from 2016 to 2017, and he taught at McGeorge for 48 years.

In late spring of 2022, Culhane joined the JAMS roster of private neutrals, and he’s since been tackling disputes as both a mediator and arbitrator, including wrongful death, probate, professional liability, employment and CEQA cases.

“I usually say to lawyers in the management conferences, ‘Look, we’re trying to be user-friendly here,’” Culhane said of his approach as an arbitrator. “If there’s something we put in a scheduling order that doesn’t work, just let me know. We’ll get together and change it. We’ll make it work for you.”

Before mediations Culhane said he likes to receive briefs from all



Malcolm Maclachlan / Daily Journal

the parties and speak over the phone with counsel.

“The way I think about these things is I need to know about the case, and I need to know about the people,” Culhane explained. “And I need to know about it before we ever get to mediation day.”

Sacramento defense attorney Karen L. Jacobsen appeared before Culhane when he was on the bench and has since used him as a mediator on about a dozen premises liability and trucking disputes. Jacobsen said the pre-mediation phone calls were especially helpful.

“That way he knows where everybody’s at, and I think that really helps him,” Jacobsen said. “Going in, he

knows the obstacles to resolution, so he was just very prepared to address those issues throughout the mediation process.”

Culhane noted that while he certainly applies evaluative strategies where he feels they will be productive, much of the work he does as a mediator is more facilitative. He also mentioned that not all cases are the same, and he’s especially thoughtful about how he approaches each one. As examples, he pointed to four disputes involving the death of children that he mediated this year.

“I’ve seen cases where you need to be a better human being than you are a mediator in terms of being

Hon. Kevin R. Culhane (Ret.)

JAMS

able to talk to some of these parties involved, particularly in a wrongful death of a child,” he said. “Plaintiff parents sometimes feel the day they settle their lawsuit is their worst day because now they’ve got to get their feet under them. And they feel, in a way, that it almost abandons the cause. ... Those kinds of cases require a much different way of

thinking about them than say, a contractual business dispute.”

Sacramento plaintiffs’ attorney Roger A. Dreyer tried cases in Culhane’s court and has since used him to mediate sexual abuse and personal injury cases.

“He’s got a very calming and professorial persona,” Dreyer said. “My clients like him. He’s very receptive to them, and he can be a very calming influence.”

Jacobsen agreed, saying Culhane was excellent with her clients.

“Judge Culhane is a mediator who really cares about the parties,” she said. “And I think it’s his kindness and his desire to help people in times of trouble that really resolves these cases.”

Sacramento probate attorney Danielle F. Diebert also appeared before Culhane in court, and she’s since used him as a mediator in three estate disputes.

“He’s just a very thoughtful, consi-

derate and intelligent gentleman,” Diebert said. “And he’s been effective in those really contentious, deeply emotional types of disputes that are sometimes a little bit more difficult to resolve.”

Diebert also said Culhane has extensive expertise in her probate and estates practice area.

“I’ve had some very complex cases, and some are low value, some are high value,” she explained. “It hasn’t always been obvious what the right path towards a resolution would be with a lot of these matters. ... But he takes the time to try to figure out what’s really going on. Because sometimes it seems like it’s about one thing, and then you find out throughout the day that it probably isn’t about that thing.”

Dreyer added that Culhane’s more than three decades defending attorneys in malpractice disputes means he is very good with insurance companies.

“He can speak their language and understands the nuances of adjusting and evaluation of cases,” Dreyer said.

“It’s helpful to have someone who actually has been in the trenches and understands how insurance companies think and operate, so they feel like they’re getting someone who is neutral and capable of making their points and respecting their interests.”

Culhane said he’s enjoying his work as a private neutral, mentioning a few different reasons for that fulfillment. But there was one that seemed to stand out.

“It gives you the chance to come home some days and say to the people around you, ‘Today was one of those days that mattered,’” he said. “Some of the work I did as a judge, I wondered if we moved the needle at all that day. Yes, we processed the case, and if someone said, ‘The objective here is to ensure fair and responsive process,’ we got that done.

But in terms of actually impacting the lives of the people there in a positive way, that wasn’t every day as a judge.”

Culhane pointed again to one of the cases he resolved this year as a mediator that involved the death of a child, recalling his interaction with the mother after a settlement was reached.

“She puts her arms around me ... and tells me, ‘Thank you. You helped me today,’” Culhane said. “So yeah, there are days when it matters, and that’s what keeps you doing it.”

Here are some attorneys who have used Culhane’s services: Roger A. Dreyer, Dreyer Babich Buccola Wood Campora LLP; Karen L. Jacobsen, Jacobsen & McElroy PC; Danielle F. Diebert, Buchalter APC; Matthew C. Jaime, Matheny Sears, Linkert & Jaime; Christopher J. Beeman, Clapp Moroney Vucinich Beeman & Scheley.

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