

Daily Journal

VERDICTS & SETTLEMENTS

FRIDAY, APRIL 18, 2008

www.dailyjournal.com

Mediator Draws on Her Multifaceted Careers

By Maya Meinert

Daily Journal Staff Writer

LOS ANGELES — When describing herself as a mediator, Joan Kessler sums it up best herself.

"I'm a combination college professor, a jury consultant and a veteran lawyer," Kessler said.

The college-professor-turned-lawyer-turned-mediator holds four degrees, including a doctorate in speech communication, but she now focuses full time on mediation.

"I've been mediating my cases

ADR Profile

internally since the beginning of my legal career, trying to convince the other side to settle them instead of incurring huge expenses," Kessler said.

"It was never because I was afraid to go forward," she said. "I loved being in court. It was just that I knew how expensive in both money and emotion it was for the litigants. I was always applying those communication theories [I learned in school] to trying to settle my own cases."

And it has paid off.

In 2005, not long before she became a full-time mediator, Kessler represented petitioners in a shareholder breach-of-contract claim, which she settled in her client's favor for \$9.5 million. *Nalbandian v. Chun*, SS013734 (L.A. Super. Ct. Nov. 17, 2005).

Kessler's reputation as a tenacious litigator is well-known. She was once described as having the will of a Rottweiler, in a 2000 Daily Journal story.

"That was true as a litigator, and it is even more true as a mediator," Kessler said.

"Maybe not the Rottweiler," she added, "maybe a more compassionate, softer version of the Rottweiler."



ROBERT LEVINS / Daily Journal

"I've been mediating my cases internally since the beginning of my legal career, trying to convince the other side to settle them instead of incurring huge expenses," lawyer-turned-professor-turned-mediator Joan Kessler said.

As a mediator, Kessler has attracted even former opposing counsel to her services.

Barry J. Reagan, name partner and an insurance defense attorney with Procter, Slaughter & Reagan in Ventura, recalled a property law case he litigated against Kessler two years ago involving a neighbor dispute in Pacific Palisades.

"She did a very good job at working with her client and with me to eventually reach a resolution on a case that we tried three, or four times to settle," Reagan said. "She never gave up. That's what impressed me most."

"It would have been really easy to just give up and try the case, but we both knew that wouldn't be in the

best interest of our clients."

Soon after, he said, Kessler went into mediation full time.

"I knew she would be a good mediator because I knew what she was capable of," said Reagan, who has since used Kessler's mediation services twice. "She's just extremely bright and has a lot of litigation experience from a lawyer's perspective, so she knows the pressures that the attorneys are facing, as well as the clients."

Kessler, 62, said she always wanted to follow in the footsteps of her father and great uncle, who were both lawyers. But when she graduated from the University of Michigan with a degree in English in 1967, she said there weren't many

women going to law school.

Instead, she taught high-school debate in Ann Arbor, then at Beverly Hills High School, while attending UCLA, where she earned a master's degree in speech communication in 1969.

Kessler returned to the University of Michigan, getting her Ph.D. in 1973. Her dissertation, "A Content Analytic Comparison of the Six- and Twelve-Member Jury Decision-Making Process," has been cited in at least two Supreme Court cases. *Colgrove v. Battin*, 413 U.S. 149 (1973); *Georgia v. Ballew*, 435 U.S. 223 (1978).

After receiving her doctorate, Kessler taught communication skills to

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the legal community at Loyola University, Chicago, then at California State University, Northridge.

"I loved teaching and seeing my students learn, in much the same way I like seeing litigants have their revelations and become more realistic," Kessler said. "I encouraged many students to go to law school, and I finally went myself at age 38."

Kessler graduated from Loyola Law School in 1986.

She started her legal career representing banks at Frandzel & Share, now Frandzel Robins Bloom & Csato. She practiced there for four years, until joining Gold, Marks, Ring & Pepper, successor to New York firm Shea & Gould, where she had a broad complex litigation practice, including real estate, employment and partnership disputes.

In 1994, Kessler and her husband, tax and real estate attorney Warren "Skip" Kessler, formed their own firm, Kessler & Kessler. She expanded her practice there to other areas of business litigation, including construction, insurance and entertainment matters, as well as trusts and estates.

Kessler began serving as a neutral part time in 2003 and went full time as a mediator three years later.

In addition to her mediation practice, which takes up most of her time, Kessler also serves as an arbitrator, discovery referee and special administrator in estate matters.

"I've done plaintiffs' and defense work, so I come to [mediation] with a neutral approach because I can see both sides because I've been on both sides," she said. "I think that's why the plaintiffs' and defense bars respect me."



Joan Kessler

Mediator

Location: Los Angeles

Age: 62

Affiliation: ADR Services

Areas of specialty: Business (partnership and shareholder disputes), employment, commercial litigation, real estate, trusts and estate, insurance and entertainment

Rate: \$350 per hour

Cynthia M. Cohen, of-counsel at Paul, Hastings, Janofsky & Walker in Los Angeles, who practices complex business and commercial litigation, spoke favorably of her experience with Kessler as a mediator.

After having bad experiences with mediators in the past, Cohen said, she was "very pleased" with the way Kessler handled her case.

"She had a good assessment of the parties, of where they might or might not be willing to go, and she worked the parties to get them to a place where an agreement could be reached, which really required major effort on her part," Cohen said. "She set a professional tone. Nobody tried to bait anybody. The temperature in our room didn't go up once."

Cohen also noted Kessler's determination to get the case settled by bringing her own lunch.

"She gave us breaks for lunch, but she worked straight through the lunch hour," Cohen said.

Tony R. Skogen, an employment litigator and managing partner of Littler Mendelson's Century City office, also noted Kessler's determination.

"She is absolutely driven to get parties to settlement," Skogen said. "There is constant follow-up. She even interrupted her vacation when she was out of state to call numerous times, even when the other attorney had walked out of two previous mediation sessions. And she got it settled."

Kessler describes her style as a combination of facilitative and evaluative tactics to convince parties to reach a settlement. With her background as a lawyer and jury consultant, she is able to show people how a case could play out in front of a jury, which gets them to become more "realistic," she said.

"I might not settle everything," Kessler said. "Nobody does. But I settle a lot of them, and I'm able to identify issues and help people pull together even if I can't settle it in the

first session.

"I never gave up on that case [with Skogen]," she said.

Kessler hasn't given up on her alma mater, either. She has set up a scholarship fund at the University of Michigan for graduate students. She also is involved in the community at large and serves on the board of directors of the St. Vincent Meals on Wheels program.

But with all she has done, Kessler said she finally has found her niche.

"I have a lot of degrees, and I've decided not to get anymore degrees," she said. "I've loved every step in my professional development. I've enjoyed all of the different things I've done.

"But I particularly like mediation because it incorporates all of them."

Here is a list of some of the attorneys who have used Kessler's services: Patricia L. Glaser, Christensen, Glaser, Fink, Jacobs, Weil & Shapiro, Century City; Cynthia M. Cohen, Paul, Hastings, Janofsky & Walker, Los Angeles; Tony R. Skogen, Littler Mendelson, Century City; Barry J. Reagan, Procter, Slaughter & Reagan, Ventura; Joseph R. Taylor, Liner Yankelevitz Sunshine & Regenstreif, Los Angeles; M. Laurie Murphy, Valensi Rose, Century City; Bryan J. Freedman, Freedman & Taitelman, Century City; Farhad Novian, Novian & Novian, Century City; Steven J. Revitz, Raiskin & Revitz, Century City; Michael G. Steiniger, Law Offices of Michael G. Steiniger, Sherman Oaks.