

VERDICTS & SETTLEMENTS

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Simplified Problem Solving

Anne Goyette is a construction law expert who often is appointed to act as a special master.

By Don DeBenedictis

Anne Goyette is unlike many mediators and arbitrators because she has spent much of her 23 years in the field working as a special master, either appointed by a judge or chosen by parties to take on management of complex litigation to assist the court.

The role includes refereeing disputes over discovery, but it is much more than that. "The goal of a special master is to support the court in streamlining and resolving complex cases, multiparty cases that involve complex issues," Goyette said.

Typically for her, those complex cases are sets of lawsuits over construction projects gone bad. The multiple parties are owners, designers, contractors, subcontractors and all their insurers. The issues involve liability, insurance coverage and discovery for thousands of documents.

Goyette oversees all that especially well, according to lawyers who've been before her. "I've found her to have an excellent ability to both master the subject matter and then get everyone to cooperate," said John Ralls of Ralls Gruber & Niece LLP in San Mateo. "I've seen people just perform for her."

Ralls said when Goyette sets deadlines for filings to be submitted, attorneys meet them. She keeps down sniping between attorneys and controls heated discussions among experts well, he added. "She brings out the best in people."

In addition, as a special master, Goyette works to settle her cases. Special masters are appointed "to both assist the court with case management issues and to assist the parties with settlement discussions ... within the context of settlement conferences," she said.



Gary Wagner / Special to the Daily Journal

These days, about half her caseload is as a mediator rather than a special master. She's good at that, too, according to attorneys.

"She lets the lawyers do the lawyering ... but she guides them gently to a resolution," said Terence J. O'Hara of San Jose's O'Hara Creech LLP. "Anne lets everybody have their say right or wrong, then moves through the logjam. . . . She has a delicate touch, but she is strong when she needs to be."

Goyette said that even as a child, she was something of a mediator. "I always had a natural tendency

not to solve a problem per se, but to talk through it with people and find a path to resolution," she recalled. Law, therefore, was an obvious career path.

The daughter of Irish immigrants, she grew up in Los Gatos, where her father was an engineer. She earned her undergraduate degree from UC Davis, and then went to Santa Clara University School of Law, graduating in 1988. While there, she took a class in alternative dispute resolution, which was a rarity then.

She next went to work at the large San Francisco firm, Bronson, Bron-

Anne M Lawlor Goyette

Griffiths Goyette
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Areas of Specialty:
Special Master

Complex Construction
Litigation

son & McKinnon LLP as a litigator. Her practice came to focus on what she calls “everything that touched the dirt,” meaning in particular representing architects, engineers and other design professionals in construction defect litigation. After a little more than nine years, she knew she wanted something different.

“I didn’t want to always be involved in situations where the goal was to drill someone down or get them up against the wall. I wanted to have other options,” Goyette said.

She found that in joining John Griffiths’ mediation practice. After the big construction boom in the late 1980s, there was a boom in construction defect litigation. Griffiths pioneered the use of special masters in those cases. “He was just a natural at it,” she said.

“John Griffiths was the king of mediation on construction cases,” O’Hara said, and as a result, Goyette “was taught by the best.”

The last case she worked on with Griffiths before his death in 2002 ended in a \$30 million settlement, the largest in a California construction matter at the time. “I had baptism by fire,” she said.

When Griffiths’ partner died two years later, Goyette became the owner of the firm. Overall, she has handled close to 1,000 cases as a mediator, special master and arbitrator.

One reason for her success is what the firm calls its advanced resolution framework to settle cases. The approach begins with setting goals and establishing common objectives among the parties. She starts each case with “strategic conferencing” with each attorney to determine the time frame of the case, identify obstacles and generally “get the lay of the land,” she said.

Moris Davidovitz of Cooper & Scully PC said Goyette talks with attorneys to understand the factual and legal issues in a case well before the first mediation session. “By spending time in advance ... she really hits the ground running,” he said. “So right at the beginning ... she already has a game plan.”

If she is working as a special master rather than a mediator, the next step is drafting the pretrial case management order for the court. Those frequently long documents can cover the powers of the special master, expected plead-

ing issues, discovery depositories, statements on insurance and scope of work, special interrogatories, site inspections and more, she said.

At the same time, she and the parties also determine what information they need to conduct meaningful settlement discussions, such as input from experts on claims, risks and needed repairs. For instance, in one case about a problem house, she suggested the two sides have the property appraised. That gave them necessary information and allowed them to work out a settlement.

She used a similar approach to resolve litigation over a large fire in Napa. The parties brought in experts whose insights led to a quick agreement on repairs – without any depositions or other discovery. “That was a great example of simplified problem solving,” Goyette said.

“If you can get a clear and purposeful approach to a case, if you can get the parties to identify the issues and the information they need, you can bring them together,” she said. “You just have to be able to communicate and listen and keep developing more options” to avoid going to trial.

Other large matters she has resolved either as a mediator or special master include a group of cases seeking millions in damages over a fire at a historic San Francisco hotel and another set of multimillion-dollar cases over a large landslide in Napa.

One of her biggest cases dealt with construction problems at 17 residential halls and student apartments at UC Santa Cruz. So many parties were involved that 140 people came to one meeting of experts. The litigation began in 2012 and settled in 2014 for about \$34 million, according to press accounts.

“That was a remarkable case,” said Ralls, who represented the university. “She just would not quit.”

The mediation side of her practice has grown recently with the pandemic and widespread use of Zoom. In particular, she is mediating many cases across the country from the vaginal mesh multidistrict litigation in West Virginia.

Goyette said one aspect of her work that she enjoys is learning about new topics and hearing new viewpoints. “That keeps it interesting, even when you’re on Zoom,” she said.