Hon. Donald S. Black

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Current Employer Judge Donald Black (Ret.) Dispute Resolution & Consulting

Profession Arbitrator, Mediator, Referee, Consultant

Work History

Judge Donald Black (Ret.) Dispute Resolution & Consulting, 2019-Present

Judge, State of California, Fresno County Superior Court, 1998-2019

Attorney, McCormick Barstow LLP, Fresno, California, 1980-1998

Experience

As an ADR Professional: Since retirement from the bench practice has focused exclusively on alternative dispute resolution including mediations and arbitrations.

Member of the panels of the following organizations providing ADR services: American Arbitration Association; Federal Arbitration, Inc. and the Office of Independent Administrator for Kaiser Foundation Health Plan.

Have presided in over 300 arbitrations and mediations in disputes involving a variety of legal claims.

Representative Matters as an ADR Professional:

Wrongful termination and employment discrimination disputes, including claims of discrimination and harassment based on race, ethnicity, gender, sexual orientation and disability, retaliation, failure to accommodate and failure to engage in the interactive process

Individual and Representative Wage and hour claims, including exemption issues, overtime, meal and rest period claims and other issues

Construction disputes, including issues related to workmanship, timeliness and bonding issues

Contract disputes related to construction, real estate, aviation, motor vehicles, and employment issues Agricultural and crop loss disputes related to pesticides and other causes

Personal injury and wrongful death disputes including claims of negligence, intentional torts and products liability

Corporate and partnership disputes

Trust and estate disputes related to claims of undue influence, fraud, misappropriation and lack of capacity

Unfair competition disputes including claims of misappropriation of trade secrets and breach of fiduciary duty

Real estate and development disputes including issues related to leasing exclusivity, CC&R's, and commission disputes

Eminent domain including issues related to compensation for severance damages and business losses

Legal malpractice disputes

Medical malpractice disputes

As a Judge: Appointed to the bench in 1998. Starting in January 2003 until retirement in 2019, presided over a direct calendar unlimited civil assignment, managing a wide variety of cases from the pleading stage of the case through trial. At any given time responsible for 800 to 1200 unlimited civil cases.

Among the case types handled were personal injury, medical and legal malpractice, contract disputes, real property disputes, employment disputes, securities disputes, agricultural disputes and disputes involving agricultural entities, and complex class action litigation related to wage and hour law, securities law and construction defect law.

Conducted thousands of law and motion proceedings and settlement conferences and tried hundreds of jury and bench trials.

Starting in 2003 was also a member of the Fresno Superior Court Appellate Division and during the last ten years was the Appellate Division Presiding Judge. During that time participated in hundreds of appeals and appellate decisions.

For a five-month period while on the bench (August through December 2017) sat as a *Pro Tem* Judge on the Fifth District Court of Appeal in Fresno.

Representative Cases as a Judge:

Trials:

Employment discrimination case filed by terminated Fresno State women's basketball coach tried over three months to a jury verdict of over $19 million.

Breach of contract/bad faith case filed by real property developer against title insurer regarding insurance for access to property bordering the San Joaquin River. Tried over eight weeks to a jury verdict of $25 million.

Clergy sex abuse case tried over four weeks to a defense verdict after which a motion for new trial was granted as to one of the plaintiffs on the basis of the discovery of new evidence.

Another clergy abuse case tried over four weeks to a defense verdict.

Action by the local Episcopal diocese to recover property from breakaway faction tried to the court resulting in a judgment in favor of plaintiff requiring accounting be performed and property returned.

Complicated trust and estate dispute involving estate valued at over $10 million. Claims of misappropriation, undue influence, fraud. Disputes involving validity and interpretation of trust and amending instruments. Tried to the court over several weeks. Judgment issued construing trust and in favor of Petitioners for over $2 million.

Personal injury action arising out of catastrophic Greyhound bus crash on Highway 99 tried over six weeks to a defense jury verdict. Motion for new trial granted on the basis of insufficient evidence supporting the verdict.

Multiple plaintiff reverse discrimination case tried to plaintiffs' jury verdict of approximately $5 million after eight week trial.

Petition for writ of mandate/prohibition arising out of the jailing of petitioner for having tuberculosis tried to the court resulting in an order issuing a write of mandate commanding respondents to cease the housing of persons detained for tuberculosis in the Fresno County Jail.

Investor class action against leasing company and its principal alleging defendant was a fraudulent Ponzi scheme tried to a jury over four weeks to a verdict over $100 million. Alter ego allegations against principle's wife later found by the court to be proven true resulting in an award against that defendant of over $100 million.

Multiple plaintiff wrongful death action involving claims negligence and unsafe condition of railroad crossing tried over six weeks to a defense verdict.

Environmental tort case involving allegations that defendant, Shell Oil Company, knowingly distributed agricultural products containing the contaminant TCP which leached into groundwater and contaminated the City's wells. Tried over three months to a plaintiff's jury verdict of over $20 million.

<u>Non-trial matters:</u>

Attorneys' fees awarded to plaintiff under catalyst theory for causing changes to school district's sex education curriculum.

On habeas corpus the court found juror misconduct occurred which necessitated new trial for defendant teacher following convictions for multiple acts of felony lewd touching of school children.

Appellate Cases:

A conviction under Penal Code section 647(a) for solicitation to engage in lewd conduct requires proof beyond a reasonable doubt that the defendant knew or reasonably should have known that someone was likely to be present who could be offended by the requested conduct.

In an unlawful detainer action, the trial court's reliance on a 60-day notice to support defendant's eviction based on drug use or criminal activity was misplaced, since the 60-day notice did not mention that defendant was going to be evicted for either using illegal drugs or engaging in criminal activity on the premises.

A levy of a guarantor's stock by coguarantors who had taken an assignment of a judgment against the corporation supported a cause of action for converstion. Based on the facts alleged in the guarantor's complaint, the co-guarantor assignees obtained contribution far in excess of the guarantor's proportionate share of the debt.

As a Lawyer: Before being appointed to the bench in 1998, was a business litigator with McCormick Barstow LLP in Fresno. Partner in the firm from 1984 through appointment to the bench in 1998. During those 18 years, handled a wide variety of cases related to business disputes. Responsible for all phases of the litigation of such disputes from pleading through discovery, trial and appeal. Participated in a large number of jury trials, bench trials, and arbitration proceedings.

At the time appointed to the bench had achieved an AV Preeminent rating from Martindale-Hubbel.

Education

A.B. cum laude, Middlebury College, Middlebury, Vermont, 1976

Majors: Economics and Political Science

Departmental honors on graduation: Economics department

J.D. Santa Clara University, Santa Clara, California 1980

Editor, Santa Clara Law Review

Comment, The Highway Cases: Noise as a Taking or Dam aging of Property in California, 20 Santa Clara L. Rev. (1980)

Professional Licenses

Admitted to the California Bar

Rates

Arbitrations: $500/hour

Mediations: $500/hour

Half-day 6 hour minimum (including 2 hours preparation)

Full-day 10 hour minimum (including 2 hours preparation

Refereeing: $500/hour

Consulting: $500/hour

Travel outside Fresno: $250/hour plus mileage and expenses