

# VERDICTS & SETTLEMENTS

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## Fast and Flexible

*Lisa Jaye, who specializes in Title IX hearings, quickly adapts to unexpected developments, lawyers say.*

By Craig Anderson  
Daily Journal Staff Writer

SAN FRANCISCO — As a hearing officer in Title IX hearings at California universities, Lisa Jaye said she sees her role as more of a parent.

The JAMS neutral handles arbitrations and mediations, but has done 15 Title IX hearings during the past two years, roughly twice a month. Before that, she presided over a few hearings as a mediator at the 9th U.S. Circuit Court of Appeals.

“I find myself, at least in administrative hearings, using more of my parenting skills than my legal skills,” said Jaye, whose son and a daughter are now adults. “I try to be fair but firm, get the facts and assess credibility.”

Title IX hearings following university investigations of alleged sexual misconduct or harassment have been a source of controversy during the last decade. The Barack Obama administration took a hard line and the U.S. Department of Education’s Office of Civil Rights wrote a now-famous “Dear Colleague” letter to universities in 2011 about how to protect students against campus sexual violence and how investigations should be handled.

That guidance precluded cross-examination of alleged victims in an effort to avoid forcing them to relive a traumatic event. The practice sparked a backlash from critics who said alleged perpetrators, usually men, were being denied due process rights. President Donald Trump’s administration changed those rules in August, requiring cross-examination, but Jaye has yet to see how that will play out.

“Ask me in six months” about the impact of the changes, said Jaye, who is not sure how the new rules will work in practice. “As a hearing officer, you’re determining whether a question is appropriate or not,” she said.

Under the Obama administration rules, students could submit written questions and were able to submit follow-up questions through Jaye. “We go back and forth until all of their questions are asked,” she said. “You’re just trying to get the facts out. There’s plenty of opportunity to get someone’s perspective of those facts.”

The standard in Title IX hearings is a preponderance of the evidence, and Jaye said some of the cases she has handled also involve ongoing criminal investigations.

“There hasn’t been a case



Jana Ašenbrennerová / Special to the Daily Journal

where I feel the facts didn’t come out,” said Jaye, who declined to identify the universities where she works as a hearing officer. “Parties may not agree with a decision but understand how I arrived at it. I don’t think anyone is surprised at the end.”

Before starting her own firm, Jaye worked as a mediator at the 9th Circuit, where she started co-mediating cases involving attorney fees stemming from litigation involving the Exxon Valdez oil spill and a host of Enron lawsuits by companies from Canada to Mexico that supplied energy. She worked with Senior Circuit Judge Edward Leavy on cases that lasted a long time.

“I thought I would be at the court five years,” she said. Instead, Jaye stayed from 1998 to 2016, when she formed her own mediation firm. She joined JAMS in April 2018,

### Lisa Jaye

JAMS  
San Francisco

**Areas of specialty:**

Title IX hearings, business/commercial, employment, financial institution disputes, trusts and estates, insurance coverage, intellectual property, personal injury, professional liability

where she has a new mediation partner, former Marin County Superior Court Judge Lynn Duryee.

Co-mediation makes sense in large, complex cases. In one, she and Duryee resolved a will and estate cases that was complicated not only by feuding brothers who needed to resolve their differences so they could pass money to younger family

members but also cope with a long list of creditors.

“I was asked to deal with the creditors so we know how much to divvy up,” Jaye said. “Typically, I will do the insurance piece.”

Duryee said Jaye is terrific to work with. “She has a ton of experience and amazing people skills,” the former judge said. “She keeps people focused, heard and understood.”

One advantage of co-mediating with Jaye, Duryee said, is an extra pair of eyes and ears.

“She’s noticing all sorts of different things going on in the room,” Duryee said. “It’s great having one person devoted to the needier litigant.”

James F. Burke, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in White Plains, New York, praised Jaye’s ability to quickly adjust when Gov. Gavin Newsom’s emergency orders shut the San Francisco Bay Area down in mid-March. Burke was in California on an unrelated matter and planned to fly to San Francisco for an in-person mediation in a difficult case.

“We had to scramble and put together a way to do this by Zoom,” Burke said. “Lisa did a good job quarterbacking that. ... We had to go through a new playbook and had to do it immediately.”

While handling mediations on videoconference, complete with the now-familiar breakout rooms, has become routine, it was not at the time, and Burke believes his case was one of the first virtual sessions to end with a settlement.

“She just switched gears and got it done,” Burke said. “She took the time to understand the nuances of the case, including the emotional aspects.”

A native of Providence, Rhode Island, Jaye grew up in Massachusetts, later attending Georgetown University as an undergraduate and for law school. She married a Californian, which is why she moved to the West Coast. She worked as an equity partner at Hancock, Rotherth & Bunshoft LLP, which subsequently was acquired by Duane Morris LLP, before joining the 9th Circuit.

Handling mediations on appeal is different because one side has already prevailed in court but the case is not final. She logged a lot of miles during that time. At JAMS, Jaye also handles mediations involving financial institutions.

While her first marriage ended in divorce, Jaye is now engaged to plaintiffs’ attorney William B. Smith of Abramson Smith Waldsmith LLP. The wedding, originally scheduled for March, has been postponed due to the coronavirus.

Lawyers who have used her mediation services describe her as very focused and say she avoids the occasional penchant of retired judges to tell war stories about old cases and instead gets straight to business.

Maureen K. Bogue, an attorney with Pacific Employment Law LLP, represented a restaurant chain in an employment case and a senior regional manager who was openly skeptical of mediation and neutrals. It didn’t take Jaye long to change his mind.

“She won him over by being direct, by being straight,”

Bogue said. “She listened him, and he described his business. Not all mediators let clients on the defense side talk. There’s nothing inauthentic about her at all,” allowing her to adapt easily to different personalities.

Jaye said she likes to move quickly on mediations, asking questions during phone calls that she then asks be addressed in briefs before a meeting, in-person or virtual. Her goal is simple: “How can I help you?”

*Here are some attorneys who have used Jaye’s services:*

Eric R. Brenneman, Demler Armstrong & Rowland LLP, Gold River; Kymberleigh A.N. Damron-Hsiao, Kading Briggs LLP, Irvine; Joseph A. Piasta II, Law Offices of Joseph A. Piasta II, Santa Rosa; Donald J. Verfurth, Gordon Rees Scully Mansukhani LLP, Seattle; James F. Burke, Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains, New York; Maureen K. Bogue, Pacific Employment Law LLP, San Francisco

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*craig\_anderson@dailyjournal.com*