

Q&A

Hon. Karen Brown Willcutts (Former)



Q. Can you provide a brief overview of your legal career prior to joining JAMS?

A. I began my legal career in 1985 with the Dallas law firm Strasburger & Price, which is now part of Clark Hill. I was a member of the business litigation section for 17 years and became a partner in 1992. When I joined the firm, there were not many female attorneys and very few female partners, but I was fortunate that a female lawyer just one year ahead of me befriended me and gave me her litigation forms, even though she and I were in different sections. I was also blessed to have two wonderful male partners who mentored me, had faith in me and gave me great responsibility and opportunities to excel.

From November 2002 to May 2004 I served as a civil associate judge in Dallas County, Texas. After resigning, I joined JAMS in September 2004.

Q. How did you get interested in ADR?

A. As both a litigator and a judge, I saw firsthand the significant downside of litigation for the parties—not only the cost in time and money, but also in the unpredictability of jury verdicts, drawn-out appeals and the resulting psychological and emotional stress. I had several friends who had left their law firms or courthouses to become mediators and/or arbitrators, and after talking with them, I decided I wanted to spend the rest of my career helping parties resolve their disputes outside of the court system.

Q. What are some of the highlights of your career to date, whether in ADR or litigation?

A. While in private practice, I was part of a team of lawyers who arbitrated to conclusion a matter involving a claim for tens of millions of dollars in environmental cleanup costs brought by a purchaser of numerous gasoline stations against a national oil company. One of my roles was to

work with an oil and gas expert and a computer graphics company that designed outstanding computer graphics to illustrate to the panel not only the mechanics of the underground storage tanks, but also how the leaks from the aging tanks could spread to the surrounding area. Ever since law school, oil and gas/energy law has been a fascinating area of the law to me. I love the technical aspects of the cases and, in recent years, have enjoyed working with a number of clients to settle their oil and gas disputes.

Another highlight of my career was the privilege of serving for seven years as a council member of the Antitrust and Business Litigation Section of the State Bar of Texas, including one year as the chair of that section. One of the primary activities of our section was to put on CLE conferences. Working together with some of the brightest and best lawyers in Texas to plan and produce these conferences was a joy, and the collegiality I experienced as part of that group is a memory I will always treasure. I believe that when lawyers serve together in bar activities and community service activities, the level of civility and cooperation in the profession is greatly enhanced.

Q. How would you describe your ADR style?

A. Overall, I would describe my style in both mediation and arbitration as hands-on and detail-oriented.

Prior to every mediation, I send the lawyers an article I wrote years ago about preparing for mediation. I ask them to submit a confidential mediation position statement, and then I follow up with a pre-mediation conference call so that I can ask questions and learn any additional information they want me to know. I want to walk into every mediation as well prepared as possible. My style is a combination of facilitative and, when the parties are open to it, evaluative. I like brainstorming with the parties to help them come up with outside-the-box solutions, solutions

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that they could never get from a judge or jury and that are often especially important in ongoing business relationships.

In arbitrations, I spend a fair amount of time in the preliminary scheduling conference call developing a schedule and procedures and that are detailed, realistic, efficient and appropriate for the dispute. I require the parties to confer and try to reach agreement regarding discovery disputes, but I also urge them to contact me promptly for a conference if they are unable to do so. I do not want cases to get bogged down with discovery disputes. I write my own detailed orders and awards, and I spell out my rulings as clearly as possible. I not only read the briefs that the parties submit, but I also verify every reference to the evidence and the law that is cited by the parties. I try to hold myself to the same high standard that I expect of the parties.

Q. What do you enjoy the most about your role as a mediator?

A. I enjoy getting to know the parties, learning about the issues that are most important to them and assisting them in realistically evaluating the strengths and weaknesses of their case and the risks of going to trial. Helping parties settle their disputes—knowing that it will save them a lot of time, energy, stress and money—is one of the most fulfilling things I have done in my legal career.

Q. What has the experience of conducting virtual ADR sessions been like for you?

A. Like most lawyers, I have learned a lot of practical things over the past year, such as to sit facing the light in the room, not with the light behind you, and to try to have a pleasant expression on your face! I have also acquired essential technical skills like moving from room to room in mediations and screen sharing. I have been pleasantly surprised at how well the process has worked, and I've successfully conducted both entirely virtual and hybrid sessions. Although I miss the in-person sessions, I am grateful that, in the midst of a global pandemic, we have found ways to keep resolving disputes through the use of this amazing technology.

Q. What practice areas are you passionate about and why?

A. As a fellow of the Chartered Institute of Arbitrators, I am excited about the opportunities that will follow as JAMS' international practice continues to grow. As a former teacher with a daughter and three sis-

ters-in-law who are educators, I am interested in developing more of a practice in the field of education, specifically handling Title IX matters. And as the wife of a doctor and mother/mother-in-law to one doctor and two medical students, I am interested in expanding my practice in the health care field.

Q. Why is diversity and inclusion in the ADR field so important?

A. The more diverse our profession is, the better we will be able to serve our diverse clients. People from different backgrounds bring different insights and perspectives, and may also help diverse parties to feel that they are seen and heard.

We have come a long way with respect to women in the profession during my 35 years as a lawyer. During most of my years as a litigator, I routinely found that I was the only female attorney in the room at hearings, depositions, mediations and trials. Thankfully, the number of female attorneys in litigation and ADR has increased greatly. Even so, it was only a few years ago that, for the first time in my career, I arbitrated a case in which all the lawyers involved were women! We have made progress, but there is more to be done.

Many parties seem to want mediators and arbitrators who have significant years of experience in the legal profession. As more law firms and corporate legal departments become proactive in not only hiring, but also mentoring, promoting and retaining women and minorities, I am hopeful that there will be more diverse lawyers who will be drawn to the field of ADR.

Q. What is the best piece of advice you have received?

A. The best piece of career advice I ever received was not a statement, but a question. Before going to law school, I was a teacher for a few years. After applying and being accepted to several law schools, I had lunch with a dear friend and expressed my concern about whether I should really go to law school because I would be "so old" when I graduated. Twenty-nine seemed old to me at the time! He said, "In three years, you will be 29 no matter what you do. Would you rather be graduating from law school at 29 or doing the same thing you're doing now?"

Q. What do you like to do in your free time?

A. I love hiking and just being out in nature. When I have time to read for fun, I enjoy biographies, historical fiction and political thrillers.