

VERDICTS & SETTLEMENTS

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No Nonsense

Mediator Joan Kessler enjoys the challenge of emotionally charged litigants.

By Paula Lehman-Ewing
Daily Journal Staff Writer

LOS ANGELES — Joan B. Kessler has a look. In her 30-plus years as a mediator and arbitrator, she's learned to deploy it rarely but effectively. "My children call it 'the eye,'" she said, taking a moment to widen her eyes and arch her brows. When asked what attorneys can do to avoid it she said, "Don't raise your voice and don't use profanity. It's very simple, and it rarely happens. Sometimes they do and usually it doesn't happen twice."

Kessler, who has been a full-time mediator at JAMS since 2017, is known for her embodiment of certain paradoxes: tenacious yet patient, professional yet personable. With a doctorate in communications from the University of Michigan, her ability to read the room is unparalleled, according to attorneys who have appeared before her. What she lacks in time on the bench, she more than makes up for in experience understanding people.

"Her process involves a bit of psychological back-and-forth, and she's an attention getter," said Farhad Novian, founding partner of Novian & Novian LLP who has used Kessler's services on several occasions. "A lot of times we learn after the fact that the mediator is a dud. They just give up or don't have the personality to get through to my client. Joan, on the other hand, I think she's a firecracker. She's dynamic."

"It's very important to me in any mediation to try to figure out



Sam Diephuis / Special to the Daily Journal

what is it that someone can relate to about me and I can relate to about them," Kessler said. "You just have to listen and watch and be aware and figure out where the link is."

Often, that connection is at the most basic level: language. Kessler sat down for this article on a day where she had introduced herself to a mediating party in Japanese and mentioned "a few words in Farsi" to another.

"We've always been told you should do unto others as you want them to do unto you, but really in the intercultural perspective it's beyond that golden rule," Kessler explained. "You need to think about how that person would like to be treated from their cultural perspective and think about treating them in that regard."

After graduating from the University of Michigan, Kessler enrolled at UCLA and earned a master's degree in speech communication. Intrigued by the

study of conflict resolution and intercultural communications, she went for her doctorate in the same area from Michigan. She spent the next decade teaching communication and researching jury behavior.

Not that she didn't make waves in the legal community even before her induction to the bar. An empirical study she conducted in 1973 for six- and 12-member jury decision-making was cited by the U.S. Supreme Court in multiple decisions. *Colgrove v. Battin* 413 U.S. 149 (1973) and *Georgia v. Ballew* 435 U.S. 223, 238, 242 (1978).

But once her children were in school, Kessler took a leave of absence from teaching. Having settled her family in Los Angeles, she attended Loyola Law School and earned her degree in 1986.

"It all sort of comes together," she said, "the various nontraditional paths I went down to get to this place."

Attorneys find Kessler's round-

Joan B. Kessler

JAMS
Century City

Areas of Specialty:
Accounting/finance,
arbitration, business/
commercial, employment,
entertainment and sports,
estates/probate/trusts,
health care, insurance, real
property

about way to the mediating table an advantage. She's able, they say, to provide insight into the different ways a case can go should mediation not succeed.

Tanja L. Darrow, a discrimination and class action defense attorney at Littler Mendelson PC, uses Kessler as her "go-to" mediator.

"A lot of judges litigate before they become judges, but she has a sense of discernment that I think her background assists her with," Darrow said, adding that Kessler has settled 100 percent of the cases she's brought to her over the last 10 years.

Kessler spent a few years as an attorney before opening a firm with her husband, Warren "Skip" J. Kessler, and settling into the role of mediator. While she still provided attorney services at Kessler & Kessler ALC, her bread and butter was in settling cases as a mediator and arbitrator, with affiliations at American Arbitration Association and ADR Services Inc.

Kessler and her husband worked as equal partners for over 20 years before closing the firm's doors last year, when

Warren took his tax practice to DLA Piper and Kessler became a full-time mediator at JAMS.

Her areas of expertise include employment disputes, estate and probate, real property and entertainment. But she said she's at her most valuable when the case involves "emotionally charged" litigants. In those matters, she rarely entertains joint sessions, defusing the situation by having the parties in separate rooms. Armed with information she's gathered from attorneys prior to the mediation date, she approaches each party using the communication skills she's honed over her career.

"When I walk in and somebody says to me, 'I don't think you'll ever be able to settle this,'" Kessler began before stopping to laugh. "I'm a very aggressive person, and I was a very aggressive litigator. Don't bring me a

case if you don't want to settle it. That's my job as a mediator, so if you had some other goal I'm probably the wrong person."

Her ability and determination when it comes to the more "heated" conversations has left a lasting impression on her clients. Darrow's favorite story about Kessler came from a "very ugly" discrimination case where she was representing the employer. The case didn't settle right away, and opposing counsel left town for the Thanksgiving break. Kessler, never one to give up on a case, located the opposing counsel's cell phone number, and got the deal done.

"You think a bulldog that just won't let it go," Darrow said. "That is Joan Kessler. If you have a case with bad facts, difficult counsel, millions of dollars apart and you don't see any light at the

end of the tunnel, give her a try."

Kessler's approach to combative litigants works well on invested attorneys as well. Michael D. Adams, a partner at Rutan & Tucker LLP, said Kessler has been able to bring together parties who were seemingly miles apart at the beginning of a mediation because of her diplomatic approach. She often acts as an interpreter even when both parties are speaking the same language.

"Joan was very good at taking the contrarian approach to my arguments and being very direct about it while at the same time building me up, not cutting me down," Adams said. "There's a certain skill in being able to dispute an argument without discrediting the source, and I think she's good at that."

Novian's experience was much more black and white: In the

morning, the joint session was a cacophony of angry parties, each trying to win their point with the volume of their voices. By day's end, the case had settled.

"She got everyone to shut up and then proceeded to organize the discussion," he recalled. "If she needs to be kind and funny, she will be, but if she needs to be aggressive and forceful, she has that ability as well."

Here are attorneys who have used Kessler's mediation and arbitration services: D. Alan Harris, Harris and Ruble; Tanja L. Darrow, Littler Mendelson PC; Margery N. Somers, Allred, Maroko & Goldberg; Farhad Novian, Novian & Novian LLP; Michael D. Adams, Rutan & Tucker LLP; David A. Wimmer, Swerdlow Florence Sanchez Swerdlow & Wimmer.