

# Even Handed

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## **A. Howard Matz**

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Retired U.S. District Judge A. Howard Matz decided to step down from the Central District bench in 2013, in part, because he missed advocating.

"I loved being a lawyer," Matz explained. "And I wanted to continue to do that."

Matz said he learned a great deal about good lawyering while watching attorneys argue before him over his nearly 15 years on the federal bench. But at some point, he realized he missed the chance to advocate for clients himself, and after retiring as a judge, he returned to a firm he helped first launch in 1983 - Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow PC - where he tried cases again for several years.

"Advocacy is another word for changing people's positions," Matz said. "It's a great challenge, and I liked the challenge."

Matz doesn't try cases any more and has transitioned the bulk of his legal focus to mediation and arbitration work, where lately he's been handling many intellectual property matters involving patent and copyright issues as well as gig worker employment disputes, product labeling cases and a number of corporate contractual disputes.

Much like the time he spent advocating for clients, Matz said he really enjoys his role today as a private neutral, in part, because of the unique challenges inherent in every case.

"I like the opportunity to evaluate what is often a really interesting legal issue that's ripe for resolution," he said, "and getting to the right result in a way that is unique and applicable to a particular dispute."

Matz described himself as both pragmatic and flexible when it comes to mediation, saying he doesn't approach sessions rigidly. He does ask, however, that attorneys provide briefs to him beforehand, and he likes to speak with counsel on the phone or Zoom ahead of sessions. He also asks that both parties prepare briefs to be shared with the opposition.

"I don't want to have a mediation session begin with the decision-makers - namely the clients and the spokespersons for the clients - learning for the first time what the other side's contentions are," Matz explained.

On the day of mediation, Matz said he'll consider bringing parties together for joint sessions in situations where he thinks the approach will be fruitful, but he was quick to note those occasions are rare. Still, Matz was clear that bringing parties together can be helpful when everybody is onboard.

"A recognition of wrongdoing or mistake coupled with something akin to or explicitly an apology can make a real difference," he said. "But at some point, those have to be expressed directly, not through a mediator."

Matz said he's also made use of mediator's proposals more frequently in recent years, but he insisted they are never a cookie-cutter strategy.

"They are not appropriate in most mediations, but they are terrifically helpful in some," he explained. "I never explore the possibility of a mediator's proposal until a lot of effort has preceded it, so the divide has been narrowed. I've learned more about the case, I've developed a relationship with the lawyers and especially the clients. ... They're not going to consider, and I wouldn't even contemplate a mediator's proposal, if I don't think there's some level of respect or trust for my judgment and my neutrality."

Matz also enjoys working as an arbitrator, whether that's handling matters on his own or as part of a panel, and he said the often-changing nature of the arbitration landscape is another legal challenge he welcomes happily.

"Arbitration is more akin to judging," Matz explained. "Arbitration involves a more direct emphasis and mastery of substantive law."

Matz said that whatever attorneys submit for his consideration he will examine thoroughly.

"If they cite too many cases, I don't claim I read every case, but I have good judgment and a lot of experience with figuring out what cases matter," he said. "I will read the cases. I will read the exhibits. I will read parts of the docket. I will ask questions before the arbitration, and often before the mediation. ... I show up prepared."

Chicago-based intellectual property attorney David Rokach worked a few years ago with Matz on a patent infringement arbitration, and he said the retired judge employed a distinguished and thoughtful approach, where both sides got a fair shake.

"Overall, what people want most in an arbitration is to feel like you've got someone who's being even handed and is really working through the issues carefully," Rokach said. "And Judge Matz certainly did that."

Rokach said he wouldn't hesitate to use Matz again.

"He's very well thought out, and he has a great temperament," Rokach said of Matz. "And his written decisions, both those that went for us and those that went against us, were well thought out and well-reasoned."

Idaho-based attorney Donald Kilmer, who represented a group of vendors and 2nd Amendment advocacy groups that sued California over a ban on gun shows at the Del Mar Fairgrounds, worked with Matz to resolve the matter through mediation in September 2019.

"It's a very contentious issue," Kilmer said. "It had all the flavor of hot-button, political overtones as well as the legal issues that needed to be resolved. But I thought Judge Matz did a great job making both sides adhere to what was the law instead of letting things spiral out of control on the political issues."

Palo Alto appellate attorney Donald M. Falk worked with Matz on a patent infringement mediation over attorneys' fees as well as a prejudgment interest award and said there was "a huge difference" between the parties at the outset of negotiations.

"He used a good dose of reality," Falk said of Matz's approach in the mediation. "He spoke with authority when he said, 'Don't count on this or that,' but he was not - at least on our side - a screamer. ... He just kept pushing, and from our point of view, he got them from la-la-land to reality within two 4-hour sessions."

Falk, who noted the overall matter had been ongoing for 10 years, said he wouldn't think twice about working again with Matz as a mediator.

"He's the cream of the crop," Falk said. "He's certainly not a pushover, but he's not a jerk."

Here are some attorneys who have used Matz's services: David Rokach, Kirkland & Ellis LLP; Donald Kilmer, Law Offices of Donald Kilmer, APC; Donald M. Falk, Mayer Brown; Michael J. Lyons, Morgan, Lewis & Bockius LLP; Quyen L. Ta, King & Spalding LLP

--Shane Nelson