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Bates Has Adjusted Style With ADR's Evolution

John Bates Jr. has been in the mediation business long enough that he remembers when volunteers for the court were specifically instructed not to try to settle cases.

It was back in the 1980s, and Bates was a litigation partner at what is now Cooley Godward Kronish, dabbling in pro bono mediation work. The idea was to use the so-called mediators as case managers, Bates said, to streamline motions and discovery. Eventually, though, Bates brought up the possibility of settlement with some parties.

"Everyone said, 'Well, heck, we're here, let's take a run at it,'" Bates said.

The rest flowed naturally: One of those parties offered to hire Bates for mediation at his normal Cooley rate, which eventually led to him creating an independent mediation shop in the early 1990s that later combined with JAMS.

Now, 16 years after that merger, Bates is still running a full mix of employment, personal injury and commercial mediations. He charges \$6,000 a day, and he's still loving the work — especially the strategy of structuring a process that works for each individual and case he gets.

"That's what makes it fun. I don't sleep at night, I levitate," Bates said with a smile.

Bates has deep roots in the East Bay, and in the San Francisco legal community: His father, Jack Bates, was managing partner at Pillsbury, Madison & Sutro in the 1980s. It was the elder Bates who



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assigned Northern District Chief Judge Vaughn Walker — then a Pillsbury lawyer — the task of representing the International Olympic Committee against the Gay Olympics, a controversial suit that temporarily stalled Walker's ascent to the bench.

The JAMS neutral clearly enjoys talking about the nuts and bolts of mediation technique.

"Initially I always did a joint session, so each side could exchange ideas," he said, as it provides a platform for him to build on.

"Now, the market is much more sophisticated," he continued. Lawyers are trained in mediation in law school, he said, and so many will say they don't think a joint session is necessary.

Bates said he is deferring more in those situations, but will push back if he thinks they're wrong. For instance, if the parties will have to keep working together in

the future, Bates said, joint sessions are an important way to build trust.

David Kays, a McDermott, Will & Emery partner, recalls a trade secret case in which his client company was accused of conducting an employee raid. Bates conducted several submediations between Kays' client and the individual employee defendants to get them all on the same page, Kays said, before embarking on the larger session with the plaintiff.

The big mediation took place at Cypress Point Golf Club in Monterey. "I've never had another mediation on the golf course," said Kays, who credited Bates' creativity.

Kays said he's had 10 to 15 cases with Bates. "We've had a 100 percent success rate. I've never not settled a case with John," Kays said.

Bates has also handled a slew

John Bates Jr.

AFFILIATION: JAMS
LAW SCHOOL: Santa Clara University School of Law, 1974

of employment cases with Bank of America. He is adept at managing negative stereotypes, no matter where they're directed, says Assistant General Counsel Jay Price.

"I'm the big, fat Bank of America, and we don't give a crap about nobody.' That's how we're always going to be portrayed," Price said. "We're John Edwards, and they're Mrs. Edwards."

According to Price, Bates knows how to show plaintiffs he's attuned to their views, while not making Price's client sit through any unnecessary lectures. "He is very good about sheltering me and my clients from some of that, when appropriate," Price said.

These days, Bates says he doesn't travel around the country nearly as much as earlier in his career, because now ADR practitioners are ubiquitous. He does still work up and down the West Coast, and says in those cases, he doesn't charge for travel time or expenses out of the Bay Area. Bates chalks that cost up to marketing.

Mostly, he just wants to get a deal done by applying the right strategy and sense of timing.

"That's the driver for me. I feel my role is more of a chess master, or director of a play," he said.

— Dan Levine