

Managing People

Mediator Robert Baines wins praise for his low-key style

By Fiona Smith / Daily Journal Staff Writer

SAN JOSE — When going into a mediation, neutral Robert Baines always prioritizes understanding the people involved rather than focus on only the legal issues at play.

That's because the legal issues don't often drive the dispute, according to Baines.

"I want to spend a lot of time getting to know the players and find out what's going on, 'Why are they in this battle at that particular point?' and 'What do they expect to get out of it?'" Baines said. "Are the clients controlling the process or are the lawyers dictating where the case is going?"

When meeting with the parties, Baines also works to convince all the sides that it's to their benefit to settle — both because it could be less financially painful and provide them certainty compared to taking it to a jury.

He likes to share quotes with the parties to help drive his point home, including one attributed to Voltaire: "I was never ruined but twice; once when I lost a lawsuit and once when I won one."

"My goal always in a mediation is to have the parties to reach some peace on this dispute, because I have to assume that most players would rather be on to more fun things rather than dealing with lawyers and judges and disputes," Baines said.

Baines has been a neutral for 10 years, joining JAMS after retiring from the Santa Clara County Superior Court bench. He does both mediations and arbitrations on a wide variety of issues, and has done a particularly large amount of real property, employment and business and commercial disputes.

It's the variety of cases that is

one of his favorite parts of the job, including more unusual cases such as a business dispute over control of a fertilizer business serving pot farmers and an easement dispute between a dairy farmer and a railroad over moving cattle across the tracks.

Attorney Donna M. Melby had a contentious arbitration in front of Baines last year involving six consolidated lawsuits over a franchise business dispute. Baines paid close attention to detail throughout the process, said Melby, a partner at Paul Hastings LLP.

"I would use him again in an arbitration in a heartbeat," Melby said. "I would put him in the top 5 percent of arbitrators."

"I think he's one of the most focused, careful, civil professional jurists I've ever had occasion to deal with," Melby said. "He was fair, he was measured and reflected a good dose of common sense in pretty much everything he did."

San Jose-based attorney J. Michael Bewley, who has used him several times over the years in employment matters, said Baines has integrity and is very smart and solutions-oriented.

"He listens carefully to the parties," Bewley said. "When you're listening well, you hear openings and opportunities for resolving either factual or legal points and ultimately resolving the mediation in a favorable way."

He also listens carefully to the attorneys, as they might be "telegraphing a potential resolution many hours down the line," Bewley said.

Baines' style is not to pound the parties, according to Bewley.

"Judge Baines has a very kind of quiet, laid-back style that can be firm when it needs to be," Bewley said. "He's a true gentleman throughout, but there's a strength there that both sides respect."

He's low-key, easygoing, courteous and approachable, said Matthew E. Coleman, an attorney



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Robert A. Baines

**JAMS
San Jose**

Areas of Specialty: business/commercial, construction defect, employment, estates/probate/trusts, family law, insurance, intellectual property, personal injury/torts, professional liability, real property

focusing on real estate matters.

"My clients typically are individual homeowners and not necessarily experienced with attorneys, so his demeanor is good at projecting authority, but also putting clients at ease when working with them," said Coleman, with the Price Law Firm in Los Altos.

Coleman, who focuses on real estate matters, said Baines is well regarded and works very well with insurance counsel. "He'll work the phones after and conduct diplomacy over email — all the things he can do to get the case settled."

Before transitioning to JAMS, Baines spent more than 20 years on the bench in Santa Clara County where he handled a wide range of assignments. One of his most high-profile trials was a 1998 toxic tort lawsuit brought by a few hundred former IBM Corp. employees alleging they were exposed to dangerous chemicals while working in a company manufacturing plant.

He was also thrust into the spotlight in 2003 when he ordered a convicted child molester being treated at Atascadero State Hospital freed after he had completed a rehabilitation program for sexually violent predators.

Before he was appointed to the bench in 1983 by Gov. Jerry Brown, Baines worked at the San Jose city attorney's office and prior to that worked in legal aid — first at Santa

Clara County's legal aid program and then as director of what is now the Santa Clara County Bar Association Law Foundation.

Baines, who is married with one adult child, enjoys traveling and photography in his spare time.

Here are some attorneys who have used Baines' alternative dispute resolution services:

Matthew E. Coleman, Price Law Firm; Dean C. Rossi, Rossi, Hamerslough, Reischl & Chuck; Rutger J. Heymann, Law Offices of Rutger Heymann; Martin R. Deutsch, Law Offices of Martin Deutsch, Daniel W. Ballesteros, Hoge Fenton Jones & Appel; Richard F. Munzinger, Shartsis Friese LLP; Donna M. Melby, Paul Hastings LLP; Steven D. Guggenheim, Wilson Sonsini Goodrich & Rosati PC; J. Andrew Howard, Alston & Bird LLP; Michele L. McGill, Law Office of Michele L. McGill