

## VERDICTS &amp; SETTLEMENTS

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## Neutral's legal business savvy settles cases

## Brian Van Camp's long focus on company issues aids resolutions

By Paul Jones  
Daily Journal Staff Writer

SACRAMENTO — Brian Van Camp recently left the bench after 16 years, but his idea of retirement involves continuing to focus on business. As a neutral with ADR Services in Sacramento and the Bay Area, Van Camp now uses his significant background in business law to settle disputes over everything from broken contracts to employment issues.

"I'd thought of moving into mediation and arbitration for a few years," Van Camp said. Before joining the bench, "For 25 years, business was my practice. ... I always enjoyed it, and missed it a little bit. This provided a nice opportunity to specialize more in that field."

Van Camp said he was drawn to legal work and public service by President John F. Kennedy's exhortation that citizens seek out opportunities to serve their country. But his career seems also to have incorporated some of President Calvin Coolidge's pronouncement that the business of America is business.

Van Camp's tenure at Sacramento County Superior Court handling civil litigation is only part of a life focused on commerce: he served as acting secretary for the State Business & Transportation Agency for a two-year period during Ronald Reagan's governorship, then moved on to work as California Commissioner of Corporations. He spent a quarter century in business law at three firms before being appointed to the bench.

"In business, you certainly have the personalities, desires and different views of the situation [that complicate cases]," Van Camp said, noting business disputes can be just as emotional as other civil matters.

But he said he likes the clarity of the law addressing business issues.

"You've got the Corporations Code, you've got the Partnership Act, you've got the Securities Code — and that sets down some fairly bright lines that enable you to keep the issues focused to a greater extent" than with other civil matters, he said.

Van Camp said his style of mediation is similarly straightforward. Unlike familial matters or cases involving injuries where a mediator's ability to communicate empathy is sometimes as or more important than the law, Van Camp said his knowledge of business law is key to getting clients to settle.

"With my experience on the bench dealing with juries in those cases, you can

share that with the people and say, 'I know where you'd like to go, but it's beyond your ability to get that in court. ... So what can we do alternatively?'" he said.

One recent case involved shareholders seeking damages from a company chairman who, along with a different company, sought to pursue a business opportunity that cost investors in the first business.

"It was, in my view, a pretty clear case of transfer of corporate opportunity," Van Camp said. "My experience at the Department of Corporations and practicing corporate law enabled me to say with a little more firmness what I thought the likelihood would be at the court. ... I was sympathetic to both sides, but, in the end, you had to pretty well let everybody know what the law requires."

Van Camp's approach doesn't work in all cases. He said he's encountered parties unwilling to compromise for emotional reasons. In one case, a nonprofit's manager was refusing to settle a case despite "what were generous terms being offered," according to Van Camp.

"I've seen other cases with parties who absolutely cannot divorce themselves from the conviction that they are so absolutely right that they can't broach any other solution," he said.

However, he said it's not common.

"By the time they've engaged a lawyer and paid the legal fees, [they have] a little more clarity."

Attorneys who have used Van Camp said his knowledge of business law has been useful in cutting through disputes and pushing parties to resolve their issues out of court. Janlynn Fleener of Downey Brand LLP in Sacramento said she'd sought Van Camp's services in a case where a company, her client, was pursuing lost profits after the failure of a software contract with another company. Van Camp resolved the issue the first day, she said.

"He read everything, he came to it with briefs that were dog-eared, Post-Its — he absolutely grasped the fundamental issues," she said. "Within the first 10 minutes, the issues were out there and on the table, because of all his prep work and his ability to cut through everything."

Michael Sebree, an Oakland attorney with Fitzgerald Abbott & Beardsley LLP, said he had a case where two business partners were engaged in a divorce-related dispute.

"I've done about 50 mediations over the years ... and he was absolutely tireless in trying to get a resolution," Sebree said of Van Camp.

Despite trying a number of approaches, the mediation initially stalled. "[Van Camp] said, 'I feel I can get this matter resolved,' and he offered four free hours



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... and we resolved it," Sebree said.

Sebree said Van Camp's willingness to stake a position on the issues also helped ground the talks.

"He was able to communicate to the other side, 'This is what would happen,'" Sebree said. "Other mediators say that you can't anticipate what a jury would do, which is true, but a cliché. The counter is, if you can provide specificity ... the lack of ambiguity [is] helpful in getting the parties to come to a resolution."

Van Camp's sense of business law comes not only from his judgeship, but his years working with — and against — businesses and employers. During his time with the Reagan administration, he went after so-called "bucket shops" that encouraged betting on stock market changes without actually engaging in any stock transactions. In particular, he went after Goldstein-Samuels Inc., a \$100 million instance of investment fraud that was among the largest in California at the time.

"It took our state by storm," he said, comparing it to a Ponzi scheme. "It was a fraud in that [the shops] couldn't deliver anything" if people bet right on changes in the market.

There were run-ups on the market price of important commodities, such as silver, as a result of all the speculation. Van Camp said the only way to deal with the situation was stem the bleeding by issuing a stop order.

"At the time, I got calls and letters from legislators saying, 'You're ruining all these people. Let it ride!'" Van Camp said.

Later, as a judge, he also handled an employment suit where a whistleblower had revealed that federal money wasn't being spent properly in the education system, only to be ignored by state officials and reassigned to a back office job with minimal duties.

"The jury gave him a couple million bucks," Van Camp said.

While working on mediation cases, Van

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**Areas of specialty:** business and contract, employment, partnership and shareholder disputes, trade secrets

Camp says he remains interested in legal matters, and the intersection of the legal system and a healthy commercial sector. Most recently, he said he's become interested in the prospect of exporting Western ideas about business law to other countries.

"I was in China a year ago, and I sat down both with the presiding judge of the superior court in Shanghai and a law professor [from] Beijing who is very critical of the Chinese legal system," he said.

Van Camp said he's helping the professor to promote the American jury system. Chinese courts often eschew the use of juries, and the politicized justice system's judgments are subject to Communist Party approval.

"The judge decides the facts and the law," he said, "and almost all of the judges are members of the Party."

*Here are some attorneys who have used Van Camp in mediation:*

Richard S. Vermut, Rogers & Towers, Jacksonville, Fla.; Janlynn R. Fleener, Downey Brand LLP, Sacramento; Martin N. Jensen, Porter Scott APC, Sacramento; Robert Swanson, Boutin Jones Inc., Sacramento; Lauren A. Hamblin, Milstein Adelman LLP, Santa Monica; Joshua B. Bevit, Newmeyer & Dillion LLP, Walnut Creek; Michael M.K. Sebree, Fitzgerald, Abbott & Beardsley LLP, Oakland; John W. Busby II, John W. Busby II APC, Lafayette; Elisa W. Ungerman, Ungerman Law Offices, Sacramento; David W. Tyra, Kronick, Moskovitz, Tiedeman & Girard A Law Corp., Sacramento.