

# Court Watch

JUDGES AND THE JUSTICE SYSTEM

TUESDAY, MARCH 2, 2010

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## For longtime neutral, pension cases the latest thing

Norman Brand has been doing mediations with public entities long enough to know that when it's time to close, you'd better have an elected official in the room.

Any agreement is going to be available to the public, Brand said, and the people ultimately on the hook are the politicians. That the deal will see the light of day is not a helpful dynamic for the neutral to negotiate, he said.

"It always makes it harder. It is not a cudgel at all," Brand said. "At some point you have to bring into the mediation some public person. You can't just have the outside counsel, you have to have the city attorney there."

### On the Bench

Kimberly Colwell, who heads the litigation department at Meyers, Nave, Riback, Silver & Wilson, used Brand for a sexual harassment case brought by seven different officers against a supervisor. Parts of the case are still ongoing, but Colwell credited Brand for breaking the case into pieces that would be negotiated.

"He was tough on them when he thought they were overvaluing their case or that they were wrong on the law, or that they were being impractical," she said. "And he was tough on us for the very same reasons. He played fair, I thought."

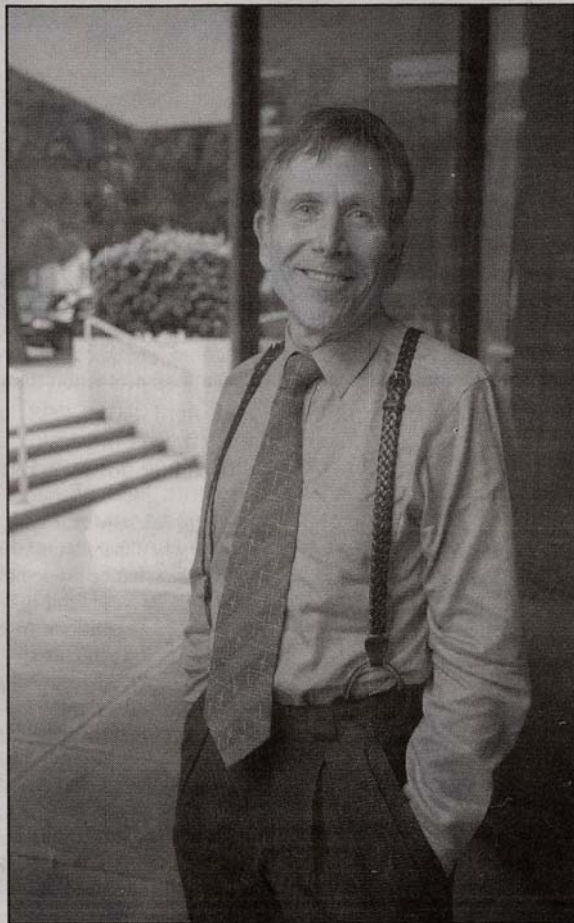
The plaintiffs had first suggested Brand, and even though Colwell had never used him, she said she readily agreed. He's in good standing in the plaintiff bar, she said, but his parallel reputation for evenhandedness gave her comfort. That she would accept Brand helps her own reputation with adversaries, Colwell said.

"I think he likes what he does and it shows. I didn't get the feeling that he was in it for the money," she said.

A slight man with a wiry runner's frame, Brand started out at UC-Davis in the early 1970s as an English professor, teaching African-American literature. But he decided to go to law school while still teaching.

After graduation, he moved east to work as a labor lawyer in New York state, which led to a teaching job at Albany Law School. It was then, in the late 1970s, that he began volunteer mediating collective bargaining disputes for public entities. A few more years in the snow belt and Brand was ready to come back to Northern California. He started his own San Francisco mediation shop in 1983.

These days, Brand works from a small office between the Embarcadero and the sheer face of Telegraph Hill, just



JASON DOY

steps from where he lives. He charges \$500 an hour, and \$5,000 a day.

Only about 25 percent of his time is spent mediating. The rest goes to arbitration — he is affiliated with ADR Services as well as the American Arbitration Association. Since the economy tanked, Brand says, he's devoted more and more time to pension cases, specifically those involv-

### Norman Brand

**AFFILIATION:** ADR Services

**AGE:** 64

**LAW SCHOOL:** UC-Davis School of Law, 1975

**PREVIOUS JUDICIAL EXPERIENCE:** None

ing the Multiemployer Pension Plan Amendments Act to ERISA.

When a business that is part of a multiemployer pension plan wants to withdraw — or if it fails — a specific dollar amount is levied against the business so that it doesn't escape any liabilities. Because of the economy, disputes and litigation over that money have skyrocketed.

"Those are great fun. I happen to like listening to actuaries," Brand says.

In wage-and-hour cases, plaintiff lawyer Arlo Uriarte of Liberation Law Group echoed Colwell's assessment that Brand can deliver tough case assessments, but in an effective way. Sometimes the employers in Uriarte's cases deny the plaintiff worked certain hours, when the evidence shows otherwise.

"It's up to a good mediator to make them realize their denials or untruths are so obvious they better drop that claim," he says.

He's also good with clients, Uriarte says, many of whom are immigrants.

"He does make an effort to speak Spanish, even though I can tell he's not 100 percent into it," Uriarte said. "He is very respectful, and makes clients feel like part of the process."

Uriarte says he's used Brand for four cases, all of which have settled.

Brand is married, has two daughters, two stepdaughters and five grandchildren. Besides running, he bikes and paddles.

— Dan Levine

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