

Ex-federal lawyer hired by former friends, foes

Mediator Gail Killefer says there aren't many better places to get trial experience than the U.S. Department of Justice.

"You can take one or two cases to trial every year if you want," said Killefer, who spent 19 years in the department, her last three as head of the San Francisco U.S. attorney's civil division.

After spending so many years in court, Killefer said recently, she wanted to do something new that built on that experience when she left government in 2001.

"It wasn't just that I was coming from the federal government," she said, "but the fact that I've done plaintiff work for the government and defense work."

On the Bench Since 1993, she'd also been volunteering on the San Francisco federal court's neutral panel. "I loved settling cases and moving cases toward settlement," she said.

Rather than join an established mediation firm, Killefer hung up her own shingle six years ago. Since then, she's built up a practice working on such common mediation fodder as employment cases, as well as touchier, government-oriented litigation, like False Claims Act suits that draw on her government expertise.

Lawyers who hire Killefer tend to cite that experience, and say she combines it with an ability to empathize with litigants — particularly angry plaintiffs.

Cheryl Sabnis, an associate at Drinker, Biddle & Reath, said she works with Killefer because the mediator can communicate the risks of litigation — and benefits of settling — with "people who aren't very practical and are coming at a lawsuit from emotion."

Sabnis, who defends corporate clients, has worked with Killefer in several employment cases and said that by gaining the client's trust, she was able to separate the personal side of the litigation from the money aspect.

"She's not automatically split-the-baby," Sabnis said.

San Francisco solo Michael Lee agreed. He first worked with Killefer when the federal court mediation panel assigned her to one of his cases. Since then, he's worked with her to settle several suits. In some, Lee said, he represented the plaintiff, and in others the defendant.

He said that Killefer can quietly and firmly back recalcitrant lawyers — and clients — down from un-



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reasonable positions.

"She's very persuasive without being overbearing," he said. "She gets me to do things that my client had no intention of doing."

Alex Tse, who worked for Killefer in the U.S. attorney's civil division, says that comes from Killefer's experience in court.

"She was quite aggressive in resolving cases, so we weren't settling them on the high end," said Tse, who now works on gang injunctions for the San Francisco city attorney. "That's translated into her role as a mediator, being fairly tenacious."

In practical terms, Killefer said, that means both spending the time to mediate the case and also making sure her job is done at the end of the day by getting litigants to sign a document.

"It's preferable to get a signed, written agreement with people in the room, because when people leave there can be buyer's remorse," she said.

During her time in the Justice Department, Killefer defended the government in a widely publicized case in which a woman was subjected to full cavity searches and forced to defecate in front of federal officials looking for drugs. They didn't find any, and the case resulted in a jury award of \$450,000 in 1998, but no injunctive relief aimed at the government.

On the plaintiff side, Killefer tried several False Claims Act suits, including a bench trial in Oakland federal court that resulted in a 1999 verdict of more

Gail Killefer

AFFILIATION: Killefer Mediation

BORN: Aug. 23, 1953

LAW SCHOOL: Vermont Law School, 1980

PREVIOUS JUDICIAL EXPERIENCE: None

than \$700,000 against a man accused of Medicare fraud. Killefer fought off a Ninth Circuit appeal. Since she left the U.S. attorney's office, Killefer's opposing counsel in the case, L.A.-based Patric Hooper, has hired her to mediate several suits.

Tse has also run into Killefer in her private-sector role, including in a case he handled for the government that involved a lien against a defendant. "She was going after me in terms of making sure we reduced our lien as much as we could," he said.

Several lawyers said they seek out Killefer because, as a solo with relatively little overhead, her rate of \$300 an hour is less than many neutrals with similar experience. And for cases where amounts of less than \$50,000 are being disputed, she charges a flat rate of \$1,000 for a half-day mediation.

Killefer said the rate structure lets her take on a wider variety of smaller cases than she otherwise could.

It's something that her repeat clients notice. When it comes to fees, "she's very reasonable," Lee said.

In addition to mediating, Killefer does some False Claims Act litigation and teaches mediation at Hastings College of the Law.

She's remained on the federal court's mediation panel, and is going to India next month as part of a group helping to set up court-administered mediation programs.

Killefer has also spent the past year or so as a consultant to the L.A. state court system, helping it set up an early neutral evaluation program.

— Justin Scheck

Killefer Mediation
417 Montgomery Street, Suite 300
San Francisco, CA 94104
Tel: (415) 362-8640
www.KilleferMediation.com