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Chief Justice Veasey: Putting His Experience To Work

The Editor interviews ***The Hon. E. Norman Veasey****, Retired Chief Justice, Delaware Supreme Court, and Special Counsel, Gordon, Fournaris & Mammarella.*

Editor: Please tell us about your recent move to Gordon, Fournaris & Mammarella and your practice there. Are other retired judges also with the firm, and do they engage in ADR?

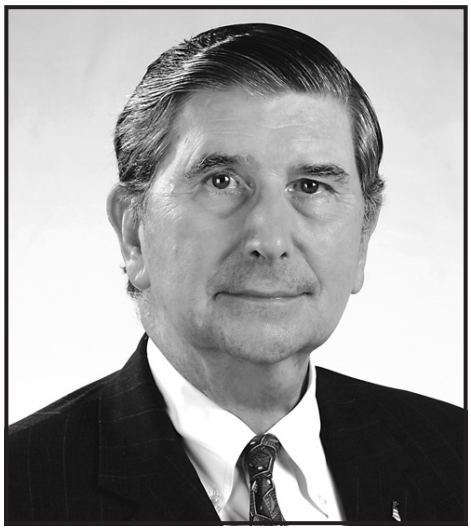
Veasey: I began as special counsel to this firm as of January 1 of this year, having retired from Weil Gotshal almost 10 years after my service as Chief Justice of the Delaware Supreme Court. At Weil, I was frequently prevented from accepting many ADR engagements because of the large number of Weil clients throughout the world. I decided to move to a smaller firm in Wilmington, Delaware, near my home, and I specialize in arbitrations, mediations, serving as a special master and other neutral work. Former Delaware Chancellor Grover Brown is another retired judge who also serves as special counsel to the firm and does arbitrations and mediations. We have a wonderful staff at my new firm.

Editor: Could you mention some of your past experience as a neutral?

Veasey: In general, it involved complex commercial disputes concerning mostly contract disputes arising under the laws of a variety of jurisdictions. The Delaware Supreme Court handled many contract disputes that involved not only the laws of Delaware, but also the laws of New York and other jurisdictions. When I was at Weil, I did quite a number of those and have done several in the months that I've been at the Gordon firm.

Editor: Describe your role as a mediator.

Veasey: Mediation is a great device for bringing people together to try to find a way to resolve their differences. It often is used when parties want to do business in the future together, and so they would prefer to try to work it out. An experienced mediator engages in shuttle diplomacy to find a way to get the parties to agree on a settlement. When you are an arbitrator, you're making a decision, performing a service as a judge and deciding the matter. It's quite different. You can't do both in the same matter. You can't be an arbitrator, then say, "I'll put on my mediator hat now and see if I can get the parties to settle." As an arbitrator, you encourage parties to settle, but you don't act as a mediator. These are two separate functions.



The Hon. E. Norman Veasey

Editor: Has the research for the widely acclaimed book entitled *Indispensable Counsel* been helpful to you in your practice as an arbitrator, and does it give you unique insights into issues affecting corporate counsel and corporations?

Veasey: Yes, it's been very helpful. It's been helpful for me and my co-author Christine Di Guglielmo to have some in-depth interviews with general counsel because it enabled us to get into their heads, to see what they're particularly interested in. They're interested, of course, in best practices, but one of the things that they're also interested in is cost-effective handling of litigation. General counsel want to find principled ways to resolve disputes without all the cost and publicity of heavy-duty litigation, so they will want to consider whether it's more cost-effective to have a mediation or an arbitration to handle a dispute. Some people believe that it's quite difficult to avoid the high expense of litigation through arbitration and mediation. My thesis is that it should be more cost-effective and more beneficial in many cases than full-blown litigation in court, if managed effectively by the arbitrator or mediator.

Editor: One of the great burdens of litigation is the cost of e-discovery. What impact does it have on arbitration and mediation?

Veasey: If you have an experienced arbitrator, you can find a way to cut through a lot of unnecessary wheel spinning in e-discovery. You have more flexibility as an arbitrator to keep e-discovery proportional to the needs of the case.

Editor: How does the Third Circuit's ruling affect ADR in Delaware?

Veasey: From a Delaware point of view, I think it is important for your readers to know (I am sure many already know) that the Delaware Court of Chancery and the Delaware Superior Court engage in opportunities for specialized litigation as well as opportunities for mediation. The ruling about arbitration by judges as being so-called secret arbitrations has no bearing on this mediation function. The Delaware

Please email the interviewee at e.normanveasey@gfmlaw.com with questions about this interview.

Superior Court and the Delaware Court of Chancery have been doing mediations for a long time. If a matter is pending before judge A, and the parties have agreed to have the dispute mediated, judge B or even an outside mediator can come in and mediate the dispute.

In Delaware, if you want to have a dispute mediated and the dispute involves a certain amount of money, you can file a paper in the court to have a judge mediate the dispute. It never becomes public, and it is perfectly consistent, in my opinion, with federal court decisions about arbitration, because it is not a decision. It is a mediation only; it is facilitating a resolution of a dispute. Where two parties are in a business dispute involving a certain amount of money, you can have a mediation-only proceeding in the Delaware Court of Chancery and the Delaware Superior Court with a judge sitting as a mediator to help settle that matter.

Delaware courts also provide expertise in complex business disputes through the Court of Chancery and Superior Court Rules and special procedures.

Editor: On the basis of your sensitivity to the attitudes of corporate counsel, what should they do when facing a choice between litigation or using arbitration or mediation?

Veasey: I have sat with arbitrators and mediators who are wonderful neutrals. AAA and CPR provide useful information about the backgrounds of their neutrals. I would urge general counsel to reach out and review the backgrounds of potential neutrals in a joint way with the other side and to interview neutrals who may be able to provide advice on how to resolve the dispute. Both sides in a dispute may wish to set up a conference call with a distinguished neutral to discuss ways to approach a particular matter.

Editor: What is the best basis for compensating neutrals?

Veasey: One of the things that needs to be done is for neutrals to post their hourly or daily rates, and they should be available online and elsewhere. A fixed fee may be appropriate in the neutral world of the mediator, because mediation is short-lived and intense. A neutral could work with both parties to a business dispute and get an understanding of the issues in the mediation and decide on a specific fixed fee or other arrangement.