



From the Court to the Conference Table: How Former Judges' Attributes Translate as Dispute Resolution Neutrals

By Hon. Douglas C. Mintz (Ret.) and Juliette G. Taylor

The pattern of former judges drawn to dispute resolution (DR) upon retirement from the bench is no mere coincidence. Indeed, two of the largest national DR administrators, JAMS and the American Arbitration Association (AAA) have wide and deep connections to former judges: AAA boasts over 340 former federal and state judges,¹ while JAMS itself was founded by a retired judge and began as the Judicial Arbitration and Mediation Services, Inc.^{2,3} With their legal knowledge, familiarity with litigation, and personal experience in decision-making, would not former judges be a natural fit for the position of DR neutral? As with most questions in the legal profession, the answer is: “It depends.” This article examines an assortment of potential benefits and disadvantages of utilizing former judges as arbitrators and mediators.

It is important to note that for most, if not all, of the characteristics discussed below, the inverse is also true depending on the context; one factor presented as a benefit of utilizing a former judge as an arbitrator may equally be a disadvantage of utilizing him or her as a mediator, and vice versa. What one practitioner sees as a benefit, another may see as a disadvantage. Moreover, whether a certain value falls into the benefit category or the disadvantage category may change from dispute to dispute and client to client. That being said, this article presents a broad survey, and by no means do the authors suggest there is a rigid or comprehensive formula on this topic.

I. Benefits of Former Judges as Arbitrators

Credibility

Judges' reputations precede them – quite literally. Even after retirement, judges retain the venerable title of “Honorable.” That gravitas imbues a former judge's decision as an arbitrator with immense credibility. Although former judges do not wear the black robes they once donned, and they most likely sit at the same height as everyone else present, they nonetheless invoke the same authority, and command the same respect, as an arbitrator as when they sat on the bench. Parties and counsel may conduct themselves more formally than they otherwise would. They might be more willing to accept procedural orders and ultimate awards from a former judge.

Additionally, as independent decision-makers, former judges were expected to leave aside any personal bias and evaluate disputes objectively. Presumably, former judges would apply the same practices as an arbitrator, which may make them more attractive in such position.

Experienced Decision Makers

Former judges have extensive practice in reviewing lengthy records, assessing witness credibility, digesting complex legal issues and arguments, and distinguishing the relevance, materiality, and probative value of evidence. One of the most basic

roles of a judge is to consider these factors with respect to each side, apply the law, and rule accordingly. For the most part, arbitrators must do the same.

Making a decision and issuing a well-reasoned, organized opinion is a fundamental part of a judge's job description. Thus, judges are generally experienced legal writers, having routinely prepared such written opinions. Accordingly, not only are former judges equipped to evaluate the dispute before them as an arbitrator, but they are also equipped to subsequently render a written award.

II. Disadvantages of Former Judges as Arbitrators

Accustomed to the Procedures of a Courtroom

Just as when they ruled from the bench, retired judges who become DR neutrals possess different approaches, perspectives, and experience. Nevertheless, regardless of whether they sat on state or federal courts, whether they were appointed or elected, or where they sat, all United States judges enforce rules of evidence. Former judges may understandably default to the rules and procedures that became engrained in them.

DR's less rigid approach to evidence may present an obstacle for former judges transitioning to arbitration. A former judge accustomed to strictly construing the rules of evidence may be less inclined to admit testimony or documentary evidence than other arbitrators. Likewise, he or she may be more willing to permit motion practice because that is what he or she knows and is comfortable with. That may be incompatible with the anticipated expediency of arbitration. If arbitration starts to look like a bench trial, it will cease to be an attractive method of dispute resolution.

Subject Matter Knowledge

A judge who presided over courts of limited jurisdiction, or certain dockets in a general jurisdiction court, will likely have a depth of knowledge in those specific areas of law. A former judge's subject matter expertise may make the DR process more efficient if he or she is conversant with the relevant law and unique terminology; however, that expertise may also create practical limitations on his or her actual or perceived ability as an arbitrator on other matters.

For example, a former family court judge may not be familiar with the applicable authority and concepts that govern a complex commercial dispute. Although that former judge has the requisite foundation and skills to learn new areas of law, he or she is faced with a handicap as opposed to a former complex civil litigation judge who historically decided similar disputes.

Moreover, counsel may have a difficult time considering a former judge as a suitable arbitrator for a dispute that falls

outside the confines of his or her judicial assignment, notwithstanding his or her actual capability to arbitrate the dispute. Consequently, former judges may receive fewer opportunities outside of their perceived areas of expertise.

III. Benefits of Former Judges as Mediators

Perceived Impartiality

According to the Canons set forth in the Code of Conduct for United States Judges, judges are expected to perform their duties with impartiality. It is axiomatic that judges should not pre-judge the matters that come before them. This suggests that, by their nature, former judges are well suited to set aside any preconceived notions of a dispute when facilitating mediations.

The perception of neutrality may be invaluable. Parties may more candidly discuss the strengths and weaknesses of their cases when they trust that the mediator has no predisposition toward either side. Counsel may be more receptive to settlement recommendations or disappointing assessment when the news comes from a mediator whose previous position was associated with fairness and objectivity. As a result, mediations may be more straightforward and productive.

Temperament

A judge's job involves delivering difficult decisions or hard truths. To do that consistently and effectively, judges often possess (or acquire) qualities like patience and composure. These qualities are directly transferrable skills when former judges become mediators. Patience certainly helps when mediators are tasked with bridging an enormous gap where the parties are tens of thousands to millions of dollars apart. Composure helps when tensions rise and yet the mediator must maintain professionalism and decorum. A former judge's temperament may create a conducive mediation environment.

IV. Disadvantages of Former Judges as Mediators

Lack of Interaction With Litigants

Mediators must build rapport with parties. Mediation allows parties themselves to be heard, not just through counsel. However, most judges do not interact with litigants themselves, and indeed, unless the litigant was self-represented, direct interaction would be inappropriate. Judges instead communicate with counsel, who advocate on their clients' behalf. Even though a judge's decision may deeply impact a litigant's life, there is an impenetrable wall between them. After retiring, former judges may find it difficult to deconstruct that wall and to communicate with the people whose interests are at stake instead of conveying the same message to counsel.

Perception of Authority

The perceived authority of a retired judge mediator may undermine the collaborative nature of mediation. Parties and counsel may afford too much deference to a former judge's recommendations, or they may hesitate to challenge a former judge's assessment. Participants may feel intimidated interacting with a former judge. They may second guess their position on an issue because they think "what a judge says must be right."

Mediation is intended to be a party-driven process that mediators are meant to facilitate. The process would be obfuscated if the parties were to treat a mediator's opinions as authoritative rather than evaluative. While a former judge's experience may provide perspective, it should not dominate the parties' ultimate decision to settle.

V. Conclusion

Former judges spent years presiding over trials, ruling on evidentiary disputes, and managing contentious litigation. In other words, they oversaw the judicial resolution process. That experience is certainly valuable and translatable for a former judge who has since become a DR neutral. However, DR is innately distinct from courtroom litigation. While both judges and DR neutrals aim to resolve a dispute, arbitrators and mediators require a different skillset. Judicial experience

and the common characteristics of former judges are just two considerations that might inform their ability as DR neutrals. The suitability of any DR neutral, retired judge or otherwise, depends on numerous variables and skills that each person brings to the table, such as an individual's communication style, approach to problem solving, and, of course, their professional experience.

Hon. Douglas C. Mintz (Ret.) is a former Presiding Judge for Civil Matters in the Stamford/Norwalk District Superior Court in Connecticut and a partner in the Dispute Resolution practice at leading Connecticut law firm Carmody Torrance Sandak & Hennessey LLP. He is Chair of the ABA Dispute Resolution Section, a Member of the National Academy of Distinguished Neutrals and a Fellow of the American College of Civil Trial Mediators.

Juliette G. Taylor is an associate in the Litigation practice group at Carmody Torrance Sandak & Hennessey LLP in Stamford, CT, and is admitted in Connecticut and New York. Her practice focuses on commercial, intellectual property, and fiduciary litigation, as well as professional ethics and professional liability.

Endnotes

1. *Judicial Panel*, American Arbitration Association.
2. *History*, JAMS Mediation, Arbitration and ADR Services.
3. *The 'JAMS' Name*, JAMS Mediation, Arbitration, ADR Services.

150 Years | Committee on Attorney Professionalism

Award For Attorney Professionalism

To honor a member of the NYSBA for outstanding professionalism, which is defined as dedication to service to clients and a commitment to promoting respect for the legal system in pursuit of justice and the public good, characterized by exemplary ethical conduct, competence, good judgment, integrity and civility.

Presented by: Committee on Attorney Professionalism

Contact: Melissa O'Clair

Nomination Deadline: December 18, 2026

Date Presented: To be given on Law Day

Prize Awarded: Commemorative Plaque

The Committee on Attorney Professionalism administers the annual New York State Bar Association Attorney Professionalism Award. We are now seeking nominations for the Award. Nominations must be submitted and postmarked no later than **December 18, 2026 on the 2027 nomination form.**

Nomination Deadline: December 18, 2026

Nomination Forms: [NYSBA.ORG/ATTORNEYPROFESSIONALISM](https://www.nysba.org/attorneyprofessionalism)