

# VERDICTS & SETTLEMENTS

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## Persistence is Pivotal

*Phyllis Cheng thinks building trust in mediations is key, and she sticks with it.*

By Justin Kloczko  
Daily Journal Staff Writer

**L**OS ANGELES — By the time Shawn McMillan's case was assigned to Phyllis W. Cheng, the San Diego attorney had been through a number of judges and neutrals in about six years, racking up \$327,000 in costs and 8,000 hours in attorney fees.

The case, involving a dispute over a baby who was seized from her mother by Los Angeles County, had reached an impasse. The matter had become deeply personal. Attorneys were hurling insults at each other and filing multiple motions.

"Every motion that could be filed by a defendant, they filed it. We filed 37 motions to compel," McMillan said. "We just didn't get along."

Eventually the case went to trial, resulting in a \$3.1 million verdict, but both sides appealed it along with the fee award. There were four appeals pending. That's when Cheng came into the case. Although she wasn't able to settle the matter during the first day of mediation, she helped facilitate a huge leap by merely getting both sides to start talking to each other again.

After another day of mediation, Cheng kept tabs on the matter via phone and over email for nearly a year. She ultimately got the case resolved for \$6 million.

"I think the important thing



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was getting everybody to step back from their personal emotional investment and look at the whole situation pragmatically," said McMillan.

Tomas A. Guterres, a partner at Collins Collins Muir & Stewart LLP who represented the county in the matter, did not respond to a request for comment.

McMillan's client recently received full custody of her son after seven years. He said it was one of the more complex and difficult cases he has ever handled.

"It is one I didn't think would settle," said McMillan, recommending Cheng to parties who especially have trouble getting along.

Cheng said establishing trust with parties is vital to a successful mediation. Persistence is key.

Another important factor is

connecting with clients by simply giving them an opportunity to be heard.

"This is important, because parties do not have the opportunity to be heard in this way by a court," said Cheng, who has worked with ADR Services Inc. for about a year and a half.

Gail A. Glick of Alexander Krakow & Glick said Cheng understands laws from a legislative and policy perspective, but at the same time, she is sensitive to parties' needs on the emotional and rational levels.

Glick, who represented a doctor in an employment retaliation case, said Cheng was able to relate to her client intellectually.

"Although she was kind of low key, she was able to put on the pressure that was necessary for us to understand the best course of action was a resolution," said Glick. "She was firm

### Phyllis W. Cheng

ADR Services, Inc.  
Los Angeles

**Areas of specialty:**  
employment, wage and hour,  
class actions, civil rights,  
government entities, disability  
access

and convincing, yet she didn't talk down to anyone."

Cheng starts with a pre-mediation conference call, asking counsel to break down the plaintiff's demand to understand how it is structured.

"I always ask counsel to bring or even exchange in advance any templates they usually use for settlement agreements. These positive actions can encourage settlement," said Cheng.

She tries to minimize using paper and asks counsel to email their mediation statements of no more than 10 pages plus any number of attachments. She opens with a brief joint session or goes right into caucuses.

Cheng uses brackets to move parties closer in discussion and explores non-monetary solutions when she can.

"When the general terms of a settlement are reached, I sometimes convene a counsel-only meeting to hammer out the language for a settlement agreement," Cheng said.

When there seems to be no consensus in sight, Cheng will draft a mediator's proposal and leave it to the parties to consider for a few days.

“With tenacious follow-up and cooperation to find common ground, the matter can and does eventually resolve,” said Cheng.

She does not charge for follow ups. Her rates are \$6,500 for a full day, \$3,750 for a half day, and \$650 per hour.

Cheng does mostly mediations, handling employment, class actions and cases involving government agencies, housing and disability access.

Her background is a mix of large law firms and government administration.

“She is one of the most scholarly members in our legal community in labor and employment,” said Glick.

After her early litigation career as a plaintiffs’ attorney at Hadsell Stormer, Gov. Arnold Schwarzenegger appointed her as director of the Department of Fair Employment & Housing, the largest state civil rights agency in the country. She was kept on by Gov. Jerry

Brown. During her seven-year tenure, she oversaw 140,000 complaints regarding various laws, including the California Fair Employment and Housing Act of 1959.

“In California, it is a stronger law, and [the fair employment and housing department is] a busier agency than the federal counterparts with whom we had a work-share agreement,” said Cheng, referring to the U.S. Department of Housing and Urban Development.

While there, Cheng started a dispute resolution program that is ongoing to this day.

She also oversaw a major settlement regarding LSAT test takers who were flagged for being allowed more time to take exams due to a disability. A federal judge entered a permanent injunction against the practice and ordered \$8.73 million in monetary relief.

Cheng has been on the mediation panels of the 2nd District

Court of Appeal and in the Central District of California for over three years.

She had a long, unconventional trajectory to the law. She was born on the 4th of July, and came to America as a young child with her mother after President John F. Kennedy signed a law to allow more Chinese people into the country.

Growing up, Cheng immersed herself in schooling. She obtained a degree in painting and sculpture as well as her teaching credentials from UCLA. At USC, she received a doctorate in policy and planning. Then she decided to go to law school.

She was struck by the American style of teaching compared to the focus on memorization in China.

“Americans are very creative,” said Cheng.

Before becoming a lawyer and while working for the Los Angeles Unified School District, she helped draft California’s law

prohibiting sex discrimination in schools.

Cheng was a deputy state attorney general and a partner at DLA Piper.

Cheng speaks three dialects of Chinese: Cantonese, Shanghai and Mandarin.

In her spare time, she makes iridescent glass in her backyard. Creating physical objects is a good respite from the mental exercise she is often employing with the law.

“It’s easier than mediation,” she said.

*Here are some attorneys who have used Cheng’s services:*

Gail A. Glick, Alexander Krakow & Glick; Tomas A. Guterres, Collins Collins Muir & Stewart LLP; Arthur I. Willner, Leader Berkon Colao & Silverstein; Gilbert Nishimura, Seki Nishimura & Watase LLP; Shawn McMillan, Law Office of Shawn A. McMillan