

Profile: Ted Pelletier

Appellate specialist helps keep plaintiffs' trial lawyers on their game

By Stephen Ellison

While plaintiffs' trial attorneys are busy looking after their clients and advocating for laws that hold wrongdoers accountable, they need someone to look after *them*, to help keep their pursuits on the best track to success. Enter Ted Pelletier.

For the past three decades, Pelletier has been working with California trial lawyers in appellate and trial courts as an adviser, strategist and general counsel, keeping those attorneys and their cases legally sound during trial and in the event they end up in higher courts.

"I knew in law school what I didn't want to do," said Pelletier, a sole practitioner based in Marin County. "I knew I didn't want to work for a big firm. I knew I didn't want to represent the powerful against the underdogs. I didn't want to represent corporations. I wanted to help people. So, I was aiming for that direction, and while trying to sort of find my way (after) law school and the bar exam, I was working for a lot of other lawyers … and doing work for them like writing projects – I really like to write – and appellate work. I was doing well enough that my name was being passed around.

"But what really led to me entering the appellate world was when I was introduced to an appellate lawyer named Daniel U. Smith," he continued. "Daniel was introduced to me at the time as the best plaintiff-side appellate lawyer in the state, and that proved to be true. He was a Marin County lawyer working with his own office and took me under his wing."

Pelletier worked with Smith for about seven years, and by that time, he had a solid slate of appellate experience to take out on his own. He did just that in 2003, bringing with him many potential clients to start his own "freelance" firm representing trial attorneys.



Pelletier

Since then, Pelletier has found success on many fronts but mostly in toxic torts involving firms that specialize in plaintiffs' side asbestos cases. He was introduced to such cases while still working under his mentor Smith and brought some of those clients with him when he went out on his own. In fact, Pelletier developed such an expertise in the asbestos arena that he was recruited by Oakland-based Kazan, McClain, Satterly & Greenwood to head up appellate-law and motions in its health department, overseeing several lawyers.

Pelletier's job indeed is a unique one in that his advocacy covers multiple levels in seeking justice for plaintiffs.

"I think it's fair to say I don't do traditional trial lawyer stuff," he explained. "I don't do depositions. I don't send out and receive discovery. I don't examine witnesses at trial. But I do sit in as part of a trial team at counsel table or in the gallery. I don't put witnesses in front of the jury, but I argue matters with the judge when the jury is not present. The reason it's so valuable to have somebody like me in a trial with you is that having so much experience doing appeals, I have an eye for creating and protecting and preserving the record for potential appeal later.

"I've made my living over almost 30 years now handling appeals that are often won or lost based on something that a trial attorney did or did not do at trial," Pelletier continued. "And often that's how the issues are resolved. There are various things that need to be done, but it's very difficult for trial attorneys who are totally immersed in their case and probably not getting a lot of sleep. … They may omit just simply making a record with the judge. Sometimes that can prove difficult or fatal on appeal. So, having somebody keep an eye on that part of the case for them is very valuable."

Second generation

Pelletier was raised in Southern California, where his mother worked with the Los Angeles County District Attorney's Office. Her persistence, resilience and hard work as a full-time mother of three and law student in the mid-1970s made a lasting impression on her young son. She met Pelletier's father – her husband – at UC Berkeley in the 1960s and dropped out of college when they started a family, he said. She was 21 at the time.

"She's amazing," Pelletier said. "She has three kids and says, 'I'm not satisfied,' goes back and finishes her BA, goes to UCLA law school in the mid-'70s. So, I grew up in a house with a full-time mom/law student, and I was just so impressed with that. Then she became a lawyer … and she ended up in the Sex Crimes Unit in Los Angeles County. She didn't give us graphic details, but she told us what she was doing, and I was just taken by the fact that she was helping people. So, I've always had this sort of bent to help people."

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Pelletier went to college at UC Santa Barbara, where he gravitated toward political science and related course work. He majored in what was then called Law in Society, he said, "sort of an adjunct of poli sci." He went on to law school at what was then UC Hastings College of the Law (now UC Law San Francisco) in the early 1990s.

Not long after he graduated, Pelletier made a name for himself working with Smith and then with Madelyn Chaber on a couple of the first successful cases brought in California against the tobacco industry.

The landmark case came when a medical expert found that during the 1950s, Kent cigarettes, made by Lorillard Inc., used what was known as a Micronite filter, which contained asbestos. Chaber sued Lorillard on behalf of a client diagnosed with mesothelioma who had smoked Kents during those years. At the time, Chaber said, tobacco companies were immune to lawsuits in California, so that prevented her from doing anything. But the Micronite filter case was different because they were suing the company for its harmful filter. The result was a modest $1.3 million verdict, eventually upheld with the help of Pelletier. It was the first time a cigarette company wrote a check in a legal matter.

"She was a Brooklyn spitfire. She was fantastic," Pelletier said of Chaber, who went on to bigger and broader cases against Big Tobacco, with Pelletier helping to uphold them on appeal. "It was very important to me to have that opportunity, and it was a nice springboard for me to be able to do what I was doing. For me, it was meaningful because I'd been handling a lot of cases that were important to the people involved in them, but (the tobacco-asbestos litigation) was part of an effort that was being made to bring justice to wider-scale disorders."

Return to solo

Fast forward to 2020 amidst the pandemic: After establishing himself as a freelance appellate court specialist and then for years overseeing the health department at a large firm, Pelletier was looking to get back to being his own boss. He said he wanted to broaden his horizons beyond asbestos and missed working on other subject matters. Plus, he wanted to spend more time with his family, which the pandemic had allowed when it forced him, like most, to work from home.

REDIRECT:

Getaway Spot: Anywhere up on Mt. Tamalpais
Go-To Music or Artist: Morning time: classic jazz. Night time: rock and roll. Concert time: jam.
Recommended Reading: More and more these days the New York Times crossword puzzle.
Dream Job: Somehow paid to travel with my wife.
Words to Live By: "Everyone you meet is fighting a battle you know nothing about."

Pelletier also wanted to devote more time to his role at UC Berkeley Law School as a coach for the moot court competition department and as an instructor in appellate competition, a stint he began around 2018.

The latest return to firm ownership was an easy transition, in part because he already had been working out of his home office but mostly because he had done it before. The first time, however, when he went from working for Smith to breaking out on his own as a freelancer was a fairly bold move for a lawyer early in his career.

"It was scary because of the unknown, but I was ready for it," Pelletier said. "And I mean that in the sense that Dan Smith really prepared me and entrusted me with a lot of responsibility. So, I had a lot of work under my belt at that stage, and I found that when I started contacting colleagues and telling them that I had an office and showing them what I'd done, they were kind of consistently surprised. It was daunting, but at the same time, it was exciting. And it just kind of took off."

Pelletier said because appeals can be fairly foreign to most trial lawyers and they often just have basic questions about deadlines or procedure, he's glad to offer up his time and advice on the house.

"I have a virtual Rolodex of a lot of clients, and I've tried to keep clients that may not need me at all for a long time," he explained. "But when they do need somebody like me, I always have told them I'll answer the phone on any matter about appellate work, large or small, and just talk to you on my dime about it. I'm happy to just be their one-stop, 'Hey, just give me a call.' And that just kind of keeps me in mind for them to be there in person when they actually need somebody to work on an appeal."

Staying in tune

When Pelletier has down time from his law practice, he continues to stay busy, enjoying his family – he's been married for 30 years and has two adult daughters – and getting outdoors for biking and hiking around Marin County. He also recently took up pickleball, he said.

Music, however, is a second passion for him, and he plays keyboards for a local group called Hall Pass, which he described as "sort of a band of professional dads who like to get together and play rock and roll." They perform at a circuit of North Bay bars and clubs, play some private events and are regulars at an annual summer outdoor live concert series. Pelletier said he's just happy to tell his friends that the band is good enough to play in public.

"I actually sort of learned to play while I was a kid; I took some piano lessons," Pelletier said. "So, I had a very rudimentary foundation for it. But when I was about 40, we brought a piano into the house, ostensibly for the kids. Working from home, I found myself sitting and playing – it's something to do during my breaks, and it's using a different part of (my) brain. So, it's very relaxing and just a change-up. Then suddenly I was getting OK at it, and it sort of went from there."

When it comes to career advice for the next generation of lawyers, Pelletier

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recalled that he often tells his students at UC Berkeley Law to find something they enjoy and be proactive about developing that aspect of skills.

"One thing I saw and learned when I went from my house back to an office job," he said, "was there's two kinds of young lawyers: some who show up and say, 'What do I do?' and others who show up and say, 'What *can* I do for *you*?' People ask me about how to get into appeals. I tell them don't necessarily get a job doing appeals initially, but wherever you are, find out who's doing them, go talk to them, go work with them. Find the people who are doing what you want to do and offer to help. Go make it happen."

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