

Judicial Profile: Donald J. Proietti

By Joshua Sebold – Daily Journal

July 7, 2017

www.dailyjournal.com



Donald J. Proietti, Superior Court Presiding Judge, Merced County (Merced).

Career Highlights: Elected presiding judge, Merced County Superior Court, 2017; appointed to Merced County Superior Court by Gov. Arnold Schwarzenegger, 2009; attorney, Allen, Proietti & Fagalde LLP, 1979-2009. Law School: Thomas Jefferson School of Law, 1979

Donald J. Proietti says he's always had the mentality of a football player. He guided his children toward other sports, knowing more about the health risks than when he had played, but the workman's mentality of a guard fighting in the trenches has stuck with him.

"I'm sort of an offensive lineman by nature," he said. "Give me a task and I'll stick to it."

And a helpful nudge in the right direction from the women in his life certainly didn't hurt. When he was in high school, his mother suggested he should consider becoming a lawyer. The more he studied the history of the law, the more he agreed. From that point forward, law school became Plan B.

Plan A was a career in the NFL.

Proietti went to The University of Arizona on a scholarship. He and his teammates won the Western Athletic Conference championship in 1973 but an injury during his senior year derailed his NFL dreams. Being an athlete didn't slow down his academic progress, and he graduated in four years.

During law school, he took a job as a clerk at a firm that would eventually bear his name: Allen, Proietti & Fagalde LLP. He stayed there for 30 years, grinding away, handling every type of case he could imagine.

The firm was successful and produced an inordinately large number of judges.

"They handled just about anything that came through the door," he said. "They were great role models, great mentors."

As his partners moved on, Proietti saw each departure as an opportunity to move up in the firm and take more responsibility. But eventually, as their children grew up and moved to other states, his wife suggested that his wide variety of legal experiences would be very useful on the bench.

In 2009, Gov. Arnold Schwarzenegger appointed him to the Merced County Superior Court and he started grinding away. Now he's worked his way up to presiding judge, where he's been presented with a new challenge, handling juvenile dependency cases, one of the few areas of law in which he hadn't practiced.

The subject matter requires a patient and steady hand.

"It's a challenge. It's very interesting work," he said. "It's very gratifying work but also very frustrating."

Proietti said the number of cases involving immigration appears to be increasing over time, meaning more translation and more video conferencing with parents who are no longer in the country.

The judge is also working on a pilot project to make translation available in all courts, including traffic court, family court and small claims, in his role as chair of the Judicial Council of California's subcommittee on small claims courts.

The program, which launches in August, will use video teleconferencing equipment to make translators available to rural courts.

Proietti got a published opinion early in his career, representing a mother who was piloting a boat when the steering on it malfunctioned, rendering the vessel impossible to control. The boat ran over her daughter's best friend and killed her.

Previously, it had been established that parents could sue a company for emotional duress caused by a malfunctioning product harming their child, but Proietti convinced a state appellate court before trial that the death of a non-family member can also cause emotional damage when the victim is someone with whom they have a strong personal connection.

The case proceeded to trial and settled two weeks into the proceeding.

As a judge, Proietti started out on the criminal calendar, handling a string of extremely violent gang murder cases, some of which were retaliation killings stemming from the prior attacks. Some of the cases involved minors.

"It even got to the point where graves were being desecrated during the trial and the security was pretty intense because the emotions in the courtroom were so high," he said.

A former prosecutor told him the crime photos were the most grisly he had ever seen.

Later he moved on to overseeing civil trials, including a complicated case concerning historic water rights. A cattle company got in a dispute with its local water district over the right to use drainage water.

"In normal times, nobody would care about the drainage water," he said. "In a drought, they care."

Thomas M. Berliner, a partner at Duane Morris LLP who worked on that case, said Proietti did a remarkable job of coming to grips with arcane water laws on short notice.

"California judges largely do not have a clue what water law is about," he said. "A judge really has to reorient themselves to understand that in this arena, the rules are very different than they are in the world of contracts or torts."

Berliner said the judge also had to juggle a particularly difficult jury.

"One lady raised her hand one day and said, 'Gee judge, I have a doctor appointment tomorrow morning, I won't be here,'" he said. "Another literally slept every day in the jury box. Another person sang in the jury box all day long."

The trial dragged on for a month and eventually settled.

"It was a case that was going to go up on appeal for years had they not reached a settlement and they realized that," Proietti said.

He also handled a partnership dispute between a prominent Los Angeles attorney and a farmer who joined forces on a sweet potato business. The farmer successfully argued that his partner defrauded him, secretly withdrew funds, and misrepresented the successfulness of the business.

Anthony L. Vignolo, a partner at Downey Brand LLP who represented the farmer, said he was impressed with the judge's thoroughness and patience in handling a grueling month-long trial.

"It was clear that he read our briefs thoroughly. At times it was clear he did his own research," he said. "In my experience, that's rather unique."

It's the only time Vignolo has appeared before Proietti, but the judge left an impression.

"I've appeared before over 75 judges in my career," he said. "In all aspects, I would put him within the top three."

With football in his rearview mirror, the judge stays in shape by taking long distance bike rides, some of which can span several days. He and his wife spend much of their time traveling around visiting their seven grandchildren.

Proietti said he never tried to steer his children toward law school but two of them ended up following his path.

"I didn't push them, encourage or anything, they sort of did it on their own," he said. "I was very proud of them."

Here are some of Judge Proietti's recent cases and the attorneys involved:

*Gallo Cattle Co. v. Merced Irrigation District et. al., CV001051 water rights

For the plaintiff: Marshall C. Whitney, McCormick Barstow LLP, Fresno

For the defense: David E. Harris, Miller Starr Regalia, Walnut Creek; Thomas M. Berliner, Duane Morris LLP, San Francisco

*Angelakis v. Hennigan, CV0002289 partnership dispute

For the plaintiff: Kevin M. Seibert (now a Tuolumne County Superior Court judge); Anthony L. Vignolo, Downey Brand LLP, Sacramento

For the defense: William H. Parish, Parish Guy Castillo, Stockton.

*Kaweah Construction v. Fox Hills, CU149690 breach of contract

For the plaintiff: Steven D. McGee, Dowling Aaron, Fresno

For the defense: Robert J. Hanna, Best Best & Krieger LLP, San Diego; William L. Robinson, Nixon Peabody LLP Los Angeles

*People v. Bridgeford, CRM00746A murder

For the prosecution: David Elgin (now Merced County public defender); Misty Compton, deputy district attorney

For the defense: Christopher J. Caine, The Caine Law Firm, Fresno

*Save Mart Supermarkets v. Valley Pallet Trucking Inc., CV000956 negligence

For the plaintiff: Gregory J. Goodwin, Arata, Swingle, Van Egmond & Goodwin, Modesto

For the defense: Stephen Fredkin, The Fredkin Law Firm; Lendon Webb, Webb Law Group APC, Fresno