

THE 2019 CLAY AWARDS

The 23rd Annual California Lawyer Attorneys of the Year

INTERNATIONAL ARBITRATION

California welcomes international commercial arbitrations with attorneys' work on Senate Bill No. 766



DANIEL M. KOLKEY Gibson, Dunn & Crutcher LLP CEDRIC C. CHAO DLA Piper

International arbitrations in California

How to nudge California onto the international commercial arbitration stage was a question that had vexed Daniel M. Kolkey and Cedric C. Chao for years. The state was losing business to New York, Miami, Singapore, London and Paris due to a legal climate that discouraged foreign and out-of-state attorneys from acting for clients here.

Kolkey is chair of Gibson, Dunn & Crutcher LLP's California Appellate Law Practice Group and a former state appellate justice. Chao is the U.S. head of DLA Piper's international arbitration practice and an authority on cross-border contracts.

By chance, both men had offices in the same San Francisco building and, working long hours, would often see each other late at night in the parking garage. "We knew each other's cars,"

Chao said. They agreed to act.

At a reception in 2016, Kolkey spotted Chief Justice Tani G. Cantil-Sakauye and pitched the idea of a new effort to bring California into the international commercial arbitration mainstream by making the venue friendly to foreign and out-of-state lawyers. She not only agreed, she put him in charge, urged him to speed the process along and appointed her then-principal attorney, Carin T. Fujisaki, as the high court's liaison to the working group Kolkey was assembling.

Earlier, Chao and friendly competitor Steven L. Smith, a prominent Jones Day international arbitration expert, penned an influential 2013 op-ed for *The Daily Journal*, "Achieving California's Potential as an International Arbitration Center," calling for a legislative fix to professional rules and raising awareness of the issue among state

lawyers.

Chao brought the head of the International Chamber of Commerce, who was based in Paris and whose group runs the International Court of Arbitration, to California to introduce him to the West Coast arbitration bar. "We did presentations in Palo Alto and San Diego," he said. "People here hardly knew what the ICC was."

Chao and Smith joined the Kolkey group, along with others possessing deep knowledge of the field: Robert E. Lutz of Southwestern School of Law, Fred G. Bennett of Quinn Emanuel Urquhart & Sullivan LLP, Jeffrey H. Dasteel of UCLA School of Law, Maria Chedid of Arnold & Porter Kaye Scholer LLP, sole practitioner Sally A. Harpole, Abraham D. Sofaer of the Hoover Institution and Saul D. Bercovitch as State Bar liaison.

"The chief justice wanted us to move carefully but quickly," Kolkey said. "I drafted what became SB 766, and the court endorsed it, and I was told to navigate it through the Legislature." Kolkey, a former counsel to the governor, knew his way around Sacramento.

The group had carefully balanced the draft legislation to avoid triggering opposition from California trial attorneys who oppose arbitration of employment, health care and consumer cases by stressing that only international commercial disputes would be covered, Kolkey said. They used an American Bar Association model rule for the temporary practice of foreign attorneys in U.S. states. They wrote in oversight by the State Bar, which will refer disciplinary violations to authorities in the foreign attorney's jurisdiction.

SB 766, which amends the Code of Civil Procedure to eliminate any local protectionist bias that could subject foreign lawyers to accusations of the unauthorized practice of law, was sponsored by the state Senate majority leader, William W. Monning, an attorney from Monterey who has worked as a mediator. It was passed unanimously by both houses of the Legislature in July 2018 and signed that month by Gov. Jerry Brown. It took effect Jan. 1.

International arbitrations won't spring up here overnight, Kolkey cautioned. "There's going to be a lag between the drafting of contracts and disputes arising," he said. "But it felt good to get this done."

— John Roemer