



Do you calendar California state court deadlines?

Miscalendaring jeopardizes your cases, clients and practice. Learn how to avoid these problems in this free special report.



Click for  
Free Report

Classifieds/Jobs/Office Space : Experts/Services : MCLE : Search : Logout

WEDNESDAY THURSDAY FRIDAY MONDAY **TODAY**

Questions and Comments

Previous

Next

Bookmark Reprints

NEWS

RULINGS

VERDICTS

Tuesday, August 27, 2013

### California Supreme Court Liu blasts court for pro-prosecution bias in death penalty cases

State's newest Supreme Court justice says decisions are lopsided, lax and speculative

### Labor/Employment Lawyers want truck driver pay issue decided by 9th Circuit

A group of truck drivers argued California minimum wage laws apply to their pay Monday as they asked the federal appeals court to review a decision holding that only federal wage standards apply.

### Mergers & Acquisitions Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

### Sullivan, Goodwin Procter handle Amgen's \$10.4 billion buy

Sullivan & Cromwell LLP represented Thousand Oaks-based biotechnology giant Amgen Inc. in its \$10.4 billion acquisition of Onyx Pharmaceuticals Inc. Onyx was advised by Goodwin Procter LLP in the deal, first announced Sunday.

### Law Practice Sedgwick practice head goes to Nixon Peabody

Nixon Peabody LLP recently poached the head of Sedgwick LLP's employee benefits practice to become a new partner in its San Francisco office.

### Litigation Crash victim's blood sugar levels were normal, Toyota jury told

The blood sugar level of a diabetic Upland woman who died after driving her Toyota into a tree was within a target range advised by her doctor to prevent disorientation, according to expert testimony Monday.

### Law Practice Gordon & Rees branches out to North Carolina

San Francisco-based Gordon & Rees LLP opened a new office in Raleigh, N.C., the firm announced Monday.

### Corporate

This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

## ADR providers get creative with juries and private trials

By Chase Scheinbaum

Last year, attorney Wayne Leech entered into mediation talks on behalf of a client, a man badly burned in a propane gas explosion in his home. Third-degree burns covered 85 percent of the plaintiff's body. He was lucky to survive. Leech pressed for significant damages from the defendants, but he said it quickly became clear that a resolution wasn't going to come easy. Each side presented five liability experts and Leech was tasked with proving the causes of the gas leak and explosion on a "convoluted set of facts."



Juliane Backmann / Special to the Daily Journal  
Retired judge Russell Bostrom, who has handled private trials with Judicate West.

After 10 hours of mediation with a Judicate West neutral, Leech said, "we got pretty much nowhere." The defendants contended they weren't liable for the incident and offered \$250,000, he said. With the outcome looking dismal, the neutral, William Sheffield, to questioned him further about his arguments. At the end of the meeting, the retired judge asked Leech whether he'd considered trying a new and experimental format of private dispute resolution - one blending elements of a trial with mediation or arbitration. Leech had never heard of such a thing.

"My initial impression was no way," he said. However, the parties ultimately decided to try it. Once the arguments had been made and the jury began deliberating, the lawyers - unlike an actual civil court trial - could hear their discussions. Leech said his client ended up with a \$17 million settlement.

As alternative dispute resolution becomes increasingly entrenched in California law practice, the multimillion dollar industry's major players are rolling out or ramping up new products. At least two companies are expanding their resolution services beyond traditional mediation and arbitration. The next frontier has actually been around for decades - private jury trials.

While most private dispute resolutions involve only attorneys, clients and a so-called neutral who is usually a retired judge or attorney, adding juries to the mix has long been an option. Companies dominating the market today, however, are tweaking existing methods into creative new formats, including elaborate mock courtrooms resembling movie sets with a consultant sourcing a panel of jurors from the district in which the case originated.

The increasing movement toward creative settlement tools comes as courts are enduring historic budget cuts. Parties are grappling with myriad changes in the process including court closures, distant trial dates and eliminations of court-hosted dispute resolution programs such as one at Los Angeles County Superior Court.

The development could also signal maturation of an industry effectively born just four decades ago. Rosemarie Chuisano-Drohan, executive vice president of business development for Judicate West, said the seed for her company's trial service was

planted years before budget cuts began to waylay the courts. "For the last 10 years, mediation has been the driving force for ADR. We knew a couple of years ago that that's not going to be forever," she says.

Jury mediation, a service offered by Judicate West "is the last opportunity for the lawyers to get a real sense of how a jury would react to their respective issues," said Russell Bostrom, a retired judge who has led at least one session for the company.

Lucie Barron, founder and president of ADR Services Inc., one of the largest industry players in Southern California, said her company is launching its own private jury trial product. The model was tested this spring with a case that began in federal court in the state's Central District. With parties anxious to resolve a business dispute, the trial was delayed three times, with the final postponement coming on the day of the trial, Barron says.

The parties wanted the benefit of a jury and the closure of binding arbitration. They agreed on an unusual set up: a binding arbitration with five jurors presided over by retired Northern District Judge Vaughn R. Walker. "This is something that had never been done before," Barron said.

With the help of a jury consultant, they located jurors for the three-week trial, and built a mock "turnkey" courtroom, like a film set, Barron said, complete with raised bench, jury box, spectators section, war rooms for plaintiffs and defendants, judge's chambers, spots for the clerk and court reporter, and of course Old Glory. "It was conducted in exactly the same way that a jury trial would have been conducted in federal court," Walker said.

Barron will soon offer similar trials to clients who can opt for binding or nonbinding resolutions and to have rights of appeal. ADR Services plans to build a permanent mock courtroom if the new product takes off.

Other ADR providers say they have recently received more requests than usual for various kinds of private trials. Gina Miller, regional president of JAMS, said her company has recently felt a modest uptick in requests for private bench trials. "A lot of the increases I believe are due to budget constraints in the courts and the backlog," Miller said. "I think clients are looking to get their cases resolved quickly and they're looking for good case managers."

Likewise, IVAMS Arbitration & Mediation Services, a midsize San Bernardino County-based dispute resolution company, has seen a small increase, according to Peter Eggertsen, the company's president. He has seen attorneys become quicker to opt for private trials within the past six months, and attributes the trend to clients losing patience for sluggish courts. "If companies are seeing an uptick in private trials, it's directly related the courts' ability to service the public."

Judicate West developed its product partly to stanch the loss of clients who do not settle in mediation to the public courts. "People go to mediation all the time - they book a day, it doesn't settle. And where do they go after that? Trial," said Chuisano-Drohan.

ADR providers, neutrals and lawyers say the appeal of private trials is much the same as longstanding tenets of ADR - confidentiality, the ability to select a neutral, swift and firm trial dates and the options of binding or nonbinding resolutions.

Walker, for one, does not think he'll have a full schedule of private trials like his federal case any time soon. But for certain cases, he feels there is no substitute for common sense deliberations made by laypeople. Lawyers who are looking for resolutions with that kind of lens will continue to seek juries in the private sector.

Leech was satisfied with his \$17 million settlement, but believes that few cases are candidates for juried mediation. With high damages and the right mediator, though, it can be the right choice. "It's a big risk, and I'm not sure it's a risk that every case warrants taking," Leech said.

Chuisano-Drohan pointed out that each of the half-dozen juried mediations Judicate West has arranged in the past year-and-a-half have settled.

Plaintiff's attorney Browne Greene, who has conducted such a mediation with Judicate West and tried various uncommon forms of dispute resolution, sees good reason for lawyers to embrace them. Following a failed settlement in public court, Greene recently had two mock trials and obtained settlements in both.

## **Union Bank names senior JP Morgan attorney as new GC**

San Francisco-based financial holding company UnionBanCal Corp., whose primary subsidiary is Union Bank N.A., has named Michael F. Coyne to lead its legal department, the company announced Monday.

## **Intellectual Property**

### **Federal Circuit affirms Histogen defense win in patent case**

San Diego-based Histogen Inc. has notched another court win in a biotechnology patent infringement battle with Carlsbad-based dermatology rival SkinMedica Inc.

## **Litigation**

### **Judge approves Facebook settlement, trims plaintiffs' attorney fees**

Plaintiff attorneys' will receive a little less than \$5 million on the \$20 million class settlement stemming from Facebook's use of names and likeness in advertisements.

## **Obituaries**

### **Entertainment lawyer who represented Eisner dies**

Famed entertainment attorney Irwin E. Russell, who represented clients from former The Walt Disney Company CEO Michael Eisner to actress Carol Burnett, died Friday of complications from leukemia. He was 87.

## **Public Interest**

### **Supreme Court names two to State Bar board**

Hernan Vera and Mariam Krinsky are known as advocates for the disadvantaged

## **Health Care & Hospital Law**

### **Who is in charge of our hospitals?**

A pending case before the state high court concerns a physician's right to sue a hospital for retaliatory peer review without first exhausting other remedies. By **Barry S. Landsberg and Joanna S. McCallum**

## **Government**

### **FDA still working on 'breakthroughs'**

Without a direct window into FDA's decision-making process, it is difficult to say with any certainty the reasons driving FDA's approvals of breakthrough therapy designations. By **Robert F. Church and Bert Lao**

## **Insurance**

### **Overlooked implications of same-sex marriage decision**

There are at least two tax implications relating to real estate that have been little noted. By **Bruce Givner and Owen Kaye**

## **Letter to the Editor**

### **Client data and the NSA**

"I don't know why lawyers don't try it more," he said, "except they're basically conservative and scared of their own shadow."

chase\_scheinbaum@dailyjournal.com

[Previous](#)   [Next](#)

Re: "Client Data: Secure as the Weakest Link,"  
Aug. 23. By **Lawrence R. Jensen**

**Judicial Profile**

**Anthony J. Mohr**

Superior Court Judge

Los Angeles (Central Civil West Courthouse)

**Alternative Dispute Resolution**

**ADR providers get creative with juries and private trials**

Hoping to capitalize on crippled courts and broaden product lines, companies are beginning to expand private resolution services beyond traditional mediation and arbitration.

[HOME](#) : [MOBILE SITE](#) : [CLASSIFIEDS](#) : [EXPERTS/SERVICES](#) : [MCLE](#) : [DIRECTORIES](#) : [SEARCH](#) : [PRIVACY](#) : [LOGOUT](#)