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PERSPECTIVE

'The thrill of mediation'

An unsettled case 'sticks in his craw,' and David Karen of Judicate West won't give up.

Shane Nelson

Special to the Daily Journal

Judicate West neutral David M. Karen hasn't forgotten what it's like to be on the losing side of a big jury verdict.

"Your first plaintiff's verdict against you just pulls the rug out from under you, and it just lingers," said Karen, who worked for 35 years as a trial attorney. "Losing is just devastating."

Before joining Judicate West in the spring of 2020, Karen represented plaintiffs and defendants in civil litigation, handling serious injury and wrongful death cases, insurance claims, employment law, business and construction disputes. He took 28 jury trials to verdict.

In the late 1990s, however, Karen took part in a mediation training program offered by the Los Angeles County Superior Court and afterward began regularly mediating cases there as a volunteer panelist while still representing clients as a litigator. Starting in 2002, he also worked pro tem, handling mandatory settlement conferences for the Ventura County Superior Court. Karen went on to later launch his own mediation firms, working for some of that time in partnership with retired Ventura County Superior Court Judge David W. Long.

"My skill set really was resolving disputes," Karen said. "I was a good trial attorney and effective, but it was never anything I loved to do. ... There's a thrill of mediation because no two cases are alike even if it's the same subject matter. It's almost like a Rubik's Cube. You've got different personalities, different players, different expectations from all sides, and every day is different."



Nicole Tyau / Daily Journal

Karen said he's been handling mediation and arbitration almost entirely over Zoom since joining Judicate West, and he's worked primarily on civil litigation, including personal injury, products liability, business and employment disputes.

Before a mediation, Karen likes to receive briefs from both sides and speak over the phone with attorneys.

"I give everybody my cellphone number," he said. "I like to make sure we don't have any intangibles, or if we do, to understand what they are — whether they're personality or emotional issues."

Karen also encourages counsel to exchange briefs before the day of mediation.

"I think the more that parties are willing to share their briefs before mediation and try to educate the other side about their

view of the facts and the law, the better the probability that a positive result occurs," he explained.

Karen said under the right circumstances, he won't hesitate to make use of a mediator's proposal, but he's not a big fan of joint sessions during a mediation.

"Back in the '90s, that was the theme: joint session, let everybody vent," he recalled. "And I think everybody quickly realized that was two steps backwards and no steps forward."

Karen typically begins his mediations by spending about 45 minutes first with the plaintiffs and their attorneys, "managing expectations and trying to make sure we have the same goals, confirming they're here to settle."

Hoping to provide a sense of comfort and to build trust with litigants on both sides is another chief aim, he said, while laying



David M. Karen

Judicate West
Los Angeles

Areas of Specialty:

- Employment
- Personal Injury
- Business
- Product Liability
- Probate
- Professional Malpractice
- Real Estate

the groundwork for a resolution and reminding parties that, "I see today as the best day in the world for them to try and resolve."

"I literally say, 'Rule No. 1: Don't be offended,'" Karen explained. "This is a negotiation, just like you're buying a car. You're not offended when the car salesman asks for too much for the car even though it's cheaper someplace else. Don't be offended by this process, and what we're going through. It's all confidential. By not being offended, you let the process evolve."

Karen, meanwhile, described himself as the kind of neutral he'd want as an arbitrator, noting his background representing plaintiffs and defendants as a trial attorney has made him "a middle of the road guy."

"No plaintiffs' lawyer is going to wow me too much with their advocacy nor is any defense attorney going to wow me too much with their [independent medical exam] expert," Karen explained. "I'm going to be more swayed by the evidence than the advocacy, and I'm going to give fair results that aren't a plaintiffs' lawyer's

view or a defensive lawyer's view. They are really what I can sleep with at night and feel good about as an impartial jurist should, and that's what we all want from an arbitrator."

Ventura defense attorney Allen R. Ball opposed Karen in lion cases in the past and has since used the neutral as a mediator and an arbitrator for a number of personal injury disputes.

"David is extremely even-tempered, has a great deal of common sense, and he has quite a bit of jury experience, so he takes a practical approach," Ball said. "And because of his time on the defense side, he's got a very even keeled view on damages. ... He's one of the few mediators whose opinion about of value of a case I really value."

Ventura trial attorney Jill L. Friedman has used Karen as a mediator several times, and she said he doesn't waste time getting down to the heart of matters, and his background representing plaintiffs and defendants sets him apart.

"This is a person who's tried cases on both sides, so he understands what all the sensitivities

are, and he understands what the trigger points are," Friedman explained. "He understands evidentiary and trial issues. He understands the whole scope of it, and then with his training as a mediator, he just builds on those skills he has as a trial attorney, and he works his magic."

Westlake Village employment defense attorney Adam K. Treiger has used Karen twice as a mediator to successfully resolve challenging disputes, and noted the neutral places a great deal of emphasis on collegiality between counsel on either side.

"I worked directly with the plaintiffs' side lawyer and David way more than most mediations. Most mediations you never see the other side's lawyer," Treiger said. "But he was very keen on bringing me and the other lawyer into the same room and mediating a collegial, professional conversation between us, which really helped a lot. It really helped break the ice and get us to be a little bit more human and less robotic with each other and to try to push through some intractable problems our clients were creating."

Karen said his decision to focus on mediation and arbitration at Judicate West has been especially fulfilling.

"I feel like a kid in the candy store," he said. "My wife knows right away when I come home if I've settled one or not. There's a real difference in my persona. I just feel like I'm helping the world when one settles, and when one doesn't, it really sticks in my craw, and I don't let it go. I follow up until I can help these people. ... It's just that sense of doing the right thing that feels so good you want to keep chasing it." ■

Here are some attorneys who have used Karen's services: Jill L. Friedman, Myers, Widders, Gibson, Jones & Feingold LLP; Allen R. Ball, Law Office of Ball & Yorke; Adam K. Treiger, Stowell, Zeilenga, Ruth, Vaughn & Treiger LLP; Irwin Robert Miller, Law Offices of Irwin R. Miller; Stephen Charles Pasarow, Knapp Petersen & Clarke.
