

VERDICTS & SETTLEMENTS

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Tactical and Talented

David Abbott is skilled at gathering information and writing detailed analysis, attorneys say.

By Shane Nelson

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Although David W. Abbott spent 18 years as a Sacramento County Superior Court judge, he's not in a big hurry to share his opinions about the disputes he works to resolve these days as a mediator.

"I think it's a mistake for me, as the neutral, to start telling people what I think right out of the shoot," Abbott explained. "I think it's better to ask a lot of questions, get a lot of answers, maybe interject a few comments here and there. But I want to get a sense of what the attorneys and what the parties feel is important because that helps me decide what course of action or direction to take in the ensuing negotiations."

The son of an attorney, Abbott attended UC Berkeley before graduating from McGeorge School of Law in 1973. He then spent four years on active duty in the Marine Corps, where he worked as a judge advocate prosecuting and defending criminal cases.

"When I left the Marine Corps, I had been exposed to enough of the criminal practice that I was pretty sure I didn't want to keep doing that," Abbott recalled. "But I was interested in being a trial attorney, so I gravitated toward firms that were engaged in mainly tort practices."

Abbott began his private practice at a firm in Sacramento, where he initially handled a fair bit of plaintiffs' medical and legal malpractice work. Later, he turned to products liability, personal injury and insurance bad faith cases. All told, Abbott spent nearly 30 years as a litigator and trial attorney before his appointment to the bench in 2002.

"I actually ended up trying more product liability cases," Abbott recalled. "But the last case I tried to verdict as a lawyer was a medical malpractice case. And I had pretty good exposure to all the types of tort cases over the years, so I feel pretty well grounded in that area of law."



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On the bench, Abbott handled civil and criminal trials and served for four years as the supervising judge at the Carol Miller Justice Center in Sacramento before retiring in April 2020.

Sacramento plaintiffs' attorney John N. Demas has used Abbott as a mediator on a few occasions, but he also tried a personal injury case before him.

"He was highly respected as a civil trial judge," Demas said. "And I would characterize him as a trial attorneys' judge — someone who is very cognizant of allowing attorneys to try to put on the best case possible."

Abbott joined Judicate West's roster of private neutrals in the spring of 2020, and he's since mediated and arbitrated personal injury, real estate, employment, medical malpractice, contract and fraud disputes.

David W. Abbott

Judicate West
Sacramento

Areas of Specialty:
Personal Injury
Medical Malpractice
Business
Real Estate
Employment

The retired judge noted that early on he was aware some neutrals are not interested in arbitrations because they're afraid of being type-cast as either plaintiff-oriented or defense-oriented, based on their decisions.

"But I came to the conclusion that I was not going to allow that to influence my thinking, and it wasn't going to discourage me from participating as an arbitrator," Abbott recalled. "I made up my mind that I was going to decide the cases as I saw them based upon the evidence and the law that was presented as part of the process. And if people didn't like the way I decided them, they probably wouldn't hire me again. But that's the way I see the arbitration process: The parties are submitting the matter to the arbitrator to decide. They want a decision, and so that's what I give them. I don't formulate that decision based upon any apprehension that somebody's going to brand me as having a certain bias or inclination, and I just let the chips fall where they may."

Sacramento plaintiffs' attorney Roger A. Dreyer has used Abbott half a dozen times as a mediator, but he also tried personal injury cases in front of him as a judge.

"Dave is a quintessential neutral," Dreyer said. "He really doesn't lean either way."

Before a mediation, Abbott said he likes to receive briefs from both sides, and he often speaks on the phone with attorneys beforehand to ask questions. He is not a fan of joint

sessions, however, and prefers to keep disputants separate during the mediation.

"I haven't used a joint session yet," Abbott said. "My impression has been that just raises the anxiety level, particularly of the parties, and it lends itself to a lot of posturing and things that I don't think are really conducive to reaching a compromise."

The Judicate West neutral will make use of mediator's proposals, but only if all the parties agree on that approach, and Abbott said he always submits those in writing with a detailed explanation of his thinking and how he arrived at his number.

Folsom plaintiffs' attorney Todd S. Bissell used Abbott to resolve four personal injury disputes in 2022, and he said the neutral's approach with mediator's proposals was especially effective.

"If I have a client who is a little overzealous about what their case value might be, seeing it in writing after hearing it from Judge Abbott for half a day or a day might get their feet on the ground," Bissell said. "And that can also be helpful for insurance adjusters, who might be holding on a little too tight. ... And he writes a very, very thorough analysis and then disseminates that, along with his number, to both sides."

Dreyer noted, meanwhile, that Abbott's patient demeanor and extensive experience as a trial attorney and trial judge distinguishes him.

"He was, in my opinion, a phenomenal trial

judge, and I think that helps him as a mediator," Dreyer explained. "He knows when to engage and when to let people do their thing. He's just a very, very talented guy. He's really smart, and he's tactical, and he sizes up the situation, and he doesn't tell people what to do but tries to facilitate getting parties together. He's firm but doesn't impose his will on people."

Demas agreed that Abbott's ability to meaningfully connect with parties combined with his wide-ranging and long-running legal career make him an especially effective neutral.

"He's got a great temperament, and he relates well to people and can really give them insight with his unique background," Demas said. "He's seen so much, and he's got such a wealth of knowledge and experience. And whether they're legal issues or medical issues, he zeros in on the issues quickly and understands those issues and how they'll play out at trial, which to me is critically important for a good mediator."

Here are some attorneys who have used Abbott's services: John N. Demas, Demas Law Group PC; Todd S. Bissell, Bissell Law Corp.; Matthew C. Jaime, Matheny Sears Linkert & Jaime LLP; Andrew T. Caulfield, Caulfield Law Firm; Roger A. Dreyer, Dreyer Babich Buccola Wood Campora LLP

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