

VERDICTS & SETTLEMENTS

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Risk Broker

Herbert Hoffman gives clients a clear picture of their chances at trial or settlement.

By Shane Nelson

Special to the Daily Journal

After 25 years working as a private neutral, retired judge Herbert B. Hoffman believes he's more effective at his job than ever before.

"There's nothing I haven't seen or heard," Hoffman said with a chuckle. "Although tomorrow, I'll probably adjust that."

A 1967 DePaul University School of Law graduate, Hoffman prosecuted more than 150 jury trials while working for a total of nine years at the U.S. attorney's offices in Washington, D.C. and San Diego. He also worked in private practice as a trial attorney and as a University of San Diego School of Law adjunct professor before his 1985 appointment to the San Diego County Superior Court. There he spent 13 years as a judge.

Hoffman said he settled 80 cases in his last year on the bench and had found that working on resolution in that way really appealed to him. So in 1998, he decided to embark on a new career, focusing full-time on private neutral work.

"I absolutely enjoy what I'm doing, and that's why I'm still doing it after 25 years," Hoffman explained. "I think of myself as a people person, and this is definitely a job for someone that's a people person."

Hoffman estimated he's handled up to 6,000 cases, and he still tackles a wide range of disputes as a Judicate West mediator and arbitrator. He focuses on business, personal injury, insurance, real estate, medical malpractice and professional liability matters.

Hoffman mentioned the frequently repeated axiom that in the process of ruling, arbitrators often



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acquire a temporary friend while making a permanent enemy.

"I've handled cases - names not to be disclosed - where I decided an arbitration against lawyers that I worked with for years, and not only will they not bring me a case again, they won't even talk to me," Hoffman said. "And that's, of course, the reason why many mediators don't want to do arbitrations. But it doesn't bother me because in every case I call it the way I see it."

When it comes to mediation, Hoffman said he likes to receive briefs from both sides beforehand

and speak over the phone ahead of time with attorneys whenever possible. On the day of mediation, Hoffman said patience is critical, and allowing parties a chance to explain their side of the case is a vital first step.

Developing trust is another area where Hoffman works hard early on, doing his best to establish a rapport with clients on both sides by demonstrating a genuine interest in who they are.

When the timing is right to share his thoughts about a case, however, Hoffman said he won't hesitate.

"I'm not shy about giving my op-

Herbert B. Hoffman

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inion, but I don't force it on people," he explained. "I like to think of myself as a risk broker – someone who can analyze the risks in a case, present those and then let the parties choose whether they want to take a settlement that they're not particularly happy with or run the risk of another result that they may not be happy with at all."

Long Beach defense attorney William C. Haggerty has used Hoffman more than half a dozen times as a mediator to resolve professional liability and personal injury disputes, and he described the retired judge as a no-nonsense mediator.

"There are a lot of very patient mediators out there that go back and forth and listen patiently to everybody, and Judge Hoffman does that, but he cuts to the chase so much better than most mediators," Haggerty said. "He gets right to ground zero, and he's not afraid to express an opinion, while many other mediators feel it's not their province to give an opinion. ... When push comes to shove, Judge

Hoffman will give you his opinion, and it's based upon on years and years of experience as a trial judge and as a mediator."

Del Mar plaintiffs' attorney Ben J. Coughlan has used Hoffman a dozen times to resolve complicated catastrophic brain injury cases, and he agreed that the neutral's apt evaluations of case strengths and weaknesses are a distinguishing strong suit.

"He lets the lawyers know early on what the pressure points are," Coughlan said. "Rather than focus on a lot of less important facts in the case, he really focuses on those pressure points for both sides. And I've always found the most successful mediators have the ability to do that – home in on the really important facts, eliminate the minutiae. He certainly has that ability to really understand what the key turning points in the case would be for either party and then focus on those."

Coughlan also described Hoffman as incredibly intelligent, and said

that attribute influences the types of disputes and clients he'll bring to the neutral to mediate.

"With brain injury cases, we're working with some of the most complicated medicine there is, and so the cases are often very medically heavy," Coughlan explained. "He's very good at being able to distill that stuff down and remain focused, so I tend to take him higher-value cases. I tend to take him more educated, more astute clients that might need to have someone really smart to help guide them through the process."

Vista civil litigator Randall L. Winet appeared before Hoffman when he was a judge and has since used the neutral to resolve many personal injury and employment disputes. Winet agreed that Hoffman is a good fit for large, complex cases.

"I think he's particularly effective in bringing parties together – particularly in the difficult types of mediations," Winet said. "I've seen him resolve much larger cases over the years – many seven-or

eight-figure types of cases. And they're cases that a lot of people would say, 'This thing's going to have to be tried,' but he'll end up resolving it."

Winet added that another of Hoffman's strengths is neutrality.

"I think he's terrifically effective at speaking to both sides," Winet explained. "You certainly wouldn't call him plaintiff or defense oriented in any way. You'd just say, 'Here's a very experienced judge, who knows the ins and outs of how the law works and how cases are tried, and he'll use that knowledge to try to get the case to a resolution.'"

Here are some attorneys who have used Hoffman's services: Ben J. Coughlan, Coughlan & Vinel LLP; William C. Haggerty, Ford Walker Haggerty & Behar LLP; Randall L. Winet, Winet Patrick Gayer Creighton & Hanes; David S. Casey Jr., Casey Gerry Schenk Francavilla Blatt & Penfield LLP; Douglas D. Guy, Gates Gonter Guy Proudfoot & Muench LLP.

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