

# VERDICTS & SETTLEMENTS

FRIDAY, SEPTEMBER 28, 2018

## Direct Approach

*James Warren is interested in pressure points that can help reach settlement.*

By Chase DiFelicantonio  
Daily Journal Staff Writer

**S**AN FRANCISCO — James Warren’s approach to mediation has evolved over his years as a neutral at JAMS.

The retired San Francisco County Superior Court judge described his approach as direct, making time for the human elements of negotiations but always with an eye toward a final settlement that both sides can live with, even if they don’t walk away smiling.

Where he used to favor joint sessions, he now rarely conducts them, citing the irreversible damage they can do to the negotiations.

He said he always conducts premediation calls if the lawyers agree but said he is less interested in the merits of a case early on than the pressure points he can use later to reach a settlement.

“In addition, every case has issues that take up a huge amount of air time but don’t really move the settlement ball forward at all,” Warren said. “Those are the emotional issues. Let me know what they are, I have to respect them in front of your clients, but we also want to move away from them fairly quickly.”

Warren said he also encourages lawyers to exchange briefs early on in the negotiation so he can speak frankly in each room about the cards the other side might be holding.

He said one of the most common trends he sees in negotiations is what he called “celestial bargaining,” when the parties toss out numbers at the beginning that are not close to the amount where the case will likely settle.

“The first numbers that go on the table in mediations have absolutely no dollar value at all,” Warren said. “They’re signals. They’re flags.”

Warren said he is a proponent of mediator’s proposals, noting even when cases do not settle with him as a mediator, they often settle months or years later for a number similar to the one he suggested.

After hours of listening, Warren said

### James Warren

JAMS / San Francisco

**Areas of Specialty:** Complex litigation, labor and employment, commercial, intellectual property

he often comes up with a number and delivers it to both sides of a negotiation, then waits. “I reiterate when I give [the proposal] to them, ‘You’re not going to like it,’” he said, noting he is unfazed by attorneys who claim they won’t pay a penny over a certain number.

“It happens all the time,” Warren said. “Their expectation is they want \$150,000, but they’ll pay \$180,000 because the other side wants \$6 million.”

When sitting as an arbitrator, Warren said he always conducts a preliminary conference call and sets out a motion schedule. He said he has never granted summary adjudication of an entire case in arbitration but had also never been asked to do so. He has, however, dismissed some claims.

“You have to be careful because arbitration awards are very difficult to break, and one of the ways they can be broken is if the arbitrator refuses to hear relevant evidence,” Warren said. “By granting summary judgment, you’re saying, ‘I won’t hear any of it.’”

He said he favors speeding the arbitration process by strongly discouraging discovery disputes so it does not become a protracted battle similar to one in a courtroom.

“In order to get the process going, on Monday you will send me a five-page letter,” Warren said of how he handles most discovery in arbitration.

“Two days later, on Wednesday, the other side will say, ‘No you don’t and here’s why you don’t,’” he added, noting he does not usually allow more reply briefs. “We’ll have a hearing on Friday, and you will have a decision and I’ll write it down and you’ll have a decision on Monday morning.”

Warren said many lawyers are initially against his expedited schedule



Chase DiFelicantonio / Daily Journal

but quickly see the logic in it.

“Lawyers are just terrified,” he said. “They say, ‘We can’t possibly brief 20 or 30 pages.’ I say, ‘Yes you can, and you will.’” He added: “It makes things go so fast, and it’s cheaper.”

Warren said he is willing to disclose any connections he has had with law firms and lawyers in the past and does so as part of the standard process at JAMS, something he said is particularly important for him to do in arbitrations where he is the final decision-maker.

As a judge, Warren was no stranger to high-stakes litigation that received national media attention. After less than a year on the bench, he was assigned the consolidated civil cases that resulted from the 101 California Street mass shooting.

He later handled the San Francisco dog mauling case that left a woman dead and was widely reported on.

Warren’s grandfather was U.S. Supreme Court Chief Justice Earl Warren, a figure whose reputation for fairness and justice he said in an email he sought to emulate.

Attorneys who have used Warren as a mediator and arbitrator praised his ability to handle complex cases and thorny personalities.

“The most complicated mediation I did with him involved a health care plan ... and the rollout of Obamacare,” said Robert Arns of The Arns Law Firm in San Francisco.

Arns said Warren was not afraid to push each side on their position and deftly handled the details of a tangled case.

“It was not a touchy-feely mediation. It was a very powerful mediation,” Arns said, noting Warren’s uplifting and positive personality. “He could get away with really controlling the attorneys.”

Don Carlson of Carlson Calladine & Peterson LLP described Warren as a quick study and a mediator who reliably reached settlements. “There have been times when I’ve been disappointed with his evaluation or he goes to a mediator’s number, but it has more often than not resulted in resolution,” he said.

“One of the things I found refreshing about using him as an arbitrator is there’s a perception that lots of arbitrators feel the pressure to split the baby so that nobody goes home terribly upset and everybody is willing to call the arbitrator back later,” said William Webb of the Webb Legal Group in San Francisco. Warren, he added, did not seem driven by that pressure.

Said Lisa Cappelluti of Lorber Greenfield & Polito LLP: “I think he’s just very good at listening to and acknowledging the key points and perspectives of the various parties while balancing the ability to highlight counterarguments and opposing views without increasing the gap.”

*Here are some attorneys who have used Warren’s services:* Robert Bodzin, Burnham Brown; Dylan Schaffer, Kerley Schaffer LLP; Sloan Simmons, Lozano Smith; Craig de Recat, Manatt, Phelps & Phillips LLP; Lisa Cappelluti, Lorber Greenfield & Polito LLP.