Slow and Steady
Neutral Richard Posell adjusts tactics in order to resolve entertainment cases.

By Matthew Blake
Daily Journal Staff Writer

LOS ANGELES — “I’m a slow mediator,” said Richard E. Posell, sitting in his JAMS Century City office. “I have closed this place down on numerous occasions.”

An entertainment lawyer for years, Posell mostly mediates and arbitrates entertainment, intellectual property and other complex business disputes.

The cases are sometimes entertainment company pitted against entertainment company, but, “often are individuals versus companies, in cases like copyright infringement or idea theft or rights of privacy,” Posell said.

The neutral gave the example of a mediation in which a famous actor sued for right of publicity after he appeared in advertisements for phony jewelry.

About 60 percent of Posell’s case load is mediation, and he said he can solve most disputes by getting each side together for just one day.

But that day can last into the evening, as Posell takes a multi-step approach to resolving disputes, sometimes changing his style on the fly.

“He used a variety of methods,” recalled Sarah G. Hartman, a partner at Frankfurt Klein & Selz PC. “He adjusted his tactics due to the reactions of the parties.”

Hartman appeared in front of Posell last July in a digital distribution dispute that “appeared to be dictated by emotion.”

“He was able to take a highly emotional situation and re-focus the clients’ attention to the matter at hand,” Hartman said.

Daniel M. Mayeda, a lawyer at Leopold Petrich & Smith PC who mediated a publicity rights dispute before Posell, said the mediator stood out for his creativity and deployment of different techniques.

“I thought he showed some creativity in terms of the mechanics of the mediation.”

Posell describes his mediation approach as evolving.

When he started in 2006, Posell shadowed mediators who deployed a facilitative approach, listening to the parties and entering the conversation by mirroring statements or asking inoffensive questions.

Posell still acts as a facilitator when a mediation session begins in the morning. But he has increasingly experimented with an evaluative approach. Usually after lunch he asks pointed questions and assesses how each side might fare were the case to go to trial.

“I have become more and more evaluative as I get older and my practice progresses,” Posell said. “Other clients like the more facilitative approach and they don’t hire me, probably.”

The neutral said he uses strategies not universally accepted among mediators including usually having the parties, and their lawyers, meet at a mediation’s start instead of first going to separate rooms.

“I believe in joint sessions even though they’re not popular,” Posell said. “I almost always start out with a joint session. I believe that we need to start out with a level playing field.”

Posell believes the joint session makes it easier for each side to refine what their positions are after listening to what the other side says the case is about.

Another technique is getting the attorneys in the same room together without their clients. “The common wisdom is that the client has to settle and you have to talk to the clients all the time,” Posell said.

But Posell said he can sometimes have a more frank discussion with lawyers, absent their client, about their sides’ weaknesses, in the process accelerating the mediation. “I’ve settled a lot of cases that way,” Posell said. “It prevents me from having to go in and beat up a client.”

Toward the end of an afternoon, Posell can find himself doing a dance between winding a case down while maintaining his respectability toward each side.

“I used to get the inquiry, ‘Are you the kind of guy who’s going to tell the other side how bad their case is?’” Posell said. “No, it’s not my job to embarrass anyone. At some point, I will be more vocal about what someone’s position is and I will begin to use a whiteboard.”

Posell describes himself as writing down, for example, the elements of fraud, and then evaluating what, if any, of the elements apply to the plaintiff’s case.

“He’s courteous and patient,” Mayeda said. During the latter stages of the mediation, “He wasn’t really opining on the substance of the positions, just probing the risks.”

Asked if his sometimes deliberate mediation style caused clients to shy away because it means paying him more as the hours go by, Posell said, “Never.”

“I’m not aware of it and I haven’t heard any feedback from my case manager about it,” he added. “I’m not particularly expensive and if I settle the case then everybody’s happy. The beauty of JAMS is that it takes the financial burden away from you. ... It frees us up to just do our job.”

He advises lawyers to be concise in their briefs and oral arguments. “Purple prose in a brief is not going to free us up to just do our job.”

He has a lot of credibility,” said Douglas Emhoff, a partner at Venable LLP who worked with and against Posell, when the neutral was a lawyer. “He’s very charming and he can lower the temperature in a way that the parties” can reach a settlement.

Here are some attorneys who have recently used Posell’s services: Charles Harder, Harder Mirell &Abrams LLP; Douglas Emhoff, Venable LLP; Dan Mayeda, Leopold Petrich & Smith PC; Sarah Hartman, Frankfurt Kurnit Klein & Selz, PC; Konrad Gaiten, Stubbs Alderton & Markiles LLP; John Lavelly, Lavelly & Singer PC; Martin Singer, Lavelly & Singer PC

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Richard E. Posell
JAMS
Los Angeles

Area of specialty: entertainment, intellectual property and business

for him to be an entertainment lawyer in the entertainment capital of the world. At 75, he has spent all but seven years of his life in Los Angeles. He went to UC Berkeley for university and law school.

Posell spent 25 years as an entertainment litigator at Shapiro Posell & Close PC before going to Greenberg Glusker Fields Claman & Machtinger LLP.

He began his mediation practice in part by getting clients whom he worked with and opposed from his Greenberg Glusker time.

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