Spinning Others’ Tales

Coleman A. Swart has found if parties tell him their stories, he can seek explanations and common ground.

By Susan McRae
Daily Journal Staff Writer

LOS ANGELES — After 28 years as a judge, Coleman A. Swart knows a bit about settling cases. He also knows something about probate work.

During five years as supervising judge of Los Angeles County Superior Court’s Northeast District, he said he settled about 500 cases.

He also spent 15 years as the district’s only probate judge. And while he didn’t do a lot of settlements in that position, he said he tried every contested probate case, gaining insight and knowledge in that area of law and into the personal emotions driving many of those disputes.

The combined experience has served him well as a neutral at JAMS. Since joining the ADR provider 8 months ago, he said mediating probate disputes has become one of his specialties.

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Probate attorney Eric R. Yamamoto can attest to that. He said he brought in a client for a probate mediation at 10 a.m. on a recent day and that the matter was “signed and sealed” before lunchtime.

“I think it had a lot to do with his having been an experienced probate judge,” Yamamoto said. “It gave him credibility when he told [the parties] what would happen. He spoke to both sides candidly, told them what he thought and was able to persuade them to settle.”

Swart said one of the important things he’s learned over his years as a settlement judge and as a neutral is to look for hidden agendas. He said they’re not confined to probate matters; many cases have them, particularly contract disputes.

“All of the people are cultural,” he said. “There [are] all kinds of things you have to consider before you delve into the mediation, and I’ve worked very hard at that.”

For example, he said he discovered in a recent case between warring siblings that problems went back to their childhoods when the older sibling would beat up the younger one.

“Now these people are in their 60s and 70s, and that hasn’t gone away,” he said. “So what I have to do as a mediator is get them to tell me their stories and see how I can weave them into coming up to some conclusion … to convince them that these things happened long ago and maybe it’s time to move on.”

Swart said he doesn’t shy from speaking his mind. He said he’s been known to tell parties that what they’re asking isn’t fair and to explain his reasoning, sometimes to the lawyers’ surprise.

“They don’t necessarily go away happy, but they go away feeling resolved,” he said. “That’s the key.”

Litigator Charles M. Clark, of Irvine’s Jackson, DeMarco, Tidus, Pecknough said he used Swart six months ago in a daylong mediation involving a business and corporate dispute among family members holding a family trust.

“He was very upfront and good at telling both parties the strengths and weaknesses of the case,” Clark said. “I enjoyed his bluntness. He managed to take two parties very far apart and end up settling the case by that evening by convincing them their claim didn’t have as much value as they thought it did.”

Swart said he always starts out meeting separately with each side’s lawyers and clients unless someone has a strong reason for a joint session. He said that helps him get to know lawyers and clients and ferret out their real agendas without posturing that can occur when all are together.

“Sometimes lawyers get on crusades,” he said. “I understand what they’re doing. Sometimes lawyers should pay more attention to their clients’ agenda than their own.” And though as a mediator he can’t interfere, he said sometimes he can subtly raise issues that he perceives might stand in the way of a resolution.

Swart spends about half his time mediating, the other half presiding over arbitrations. He credits his long tenure as a neutral, “and that’s good. I like to feel good about what I’m doing and like to be working as much as I can.”

Here are some lawyers who’ve appeared before Swart in mediations and private trials: Charles M. Clark, Jackson, DeMarco, Tidus, Pecknough; Irvine; Peter E. Glick, Sacramento; Gregory J. Lederman, Woodland Hills; Stewart J. Levin, Beverly Hills; N. Melody Khoshnoud, International Law Offices, Los Angeles; Mark D. Poniatowski, Castro Valley; Allison E. Burns, Stradling Yocca Carlson & Routh PC, Newport Beach; Glenn H. Johnson, Pasadena; Susan Jablowski, Hinjojosa & Wallet LLP, Los Angeles; Eric R. Yamamoto, Los Angeles.