

VERDICTS & SETTLEMENTS

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Multipronged Approach

JAMS neutral Richard Aldrich, a retired Court of Appeal justice, wrote a book on settlements.

By **Blaise Scemama**
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Retired state appellate justice Richard D. Aldrich wrote the book on settlement conferences.

As a Ventura County Superior Court judge in the 1990s, Aldrich authored a booklet called the “Ventura County Multi-Door Courthouse” that served as a guide for judges on how to run settlement conferences and resolve cases.

In 1986, with some courts facing a five-year backlog, the California Legislature enacted the Trial Court Delay Reduction Act, establishing a pilot program in certain counties requiring, among other things, that all cases be tried within two years.

“When I was appointed to the Ventura Superior Court, I inherited many hundreds of cases to manage,” Aldrich said in an interview. “Well, it’s almost impossible for a single judge to manage the number of cases I had, so I saw the great need to try to dispose many of these cases early rather than later.”

That’s when Aldrich read an article by Harvard Law School professor Frank Sanders about an idea called “the multi-door courthouse.”

“The courthouse was not only a venue to try cases but it

was a venue for early mediation or settlement conference of a case, attempting to save parties time and expense,” Aldrich explained. “You could meet with the parties and narrow the issues that had to be ultimately tried.”

Aldrich was instrumental in inaugurating Ventura County’s multi-door courthouse early dispute resolution program and was chair of the Alternative Dispute Resolution Committee for the county’s courts.

Only three years after Gov. George Deukmejian had appointed Aldrich to the Ventura County bench in 1990, Gov. Pete Wilson took notice and named him to Division 3 of the 2nd District Court of Appeal. Aldrich brought his penchant for settling cases with him. When he got to the largest appellate district in the state, Aldrich found there was no settlement conference program. He saw a way to settle appeals early.

“So when I got there, I floated the idea to the presiding justice of the 2nd District and he received it very favorably,” Aldrich said. “We set up a system that as soon as the brief was filed, or sometimes even as soon as the notice of appeal was filed, the attorneys would be contacted and asked if they would come to a mediation or settlement conference.”



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Then he recruited the best lawyers from the district to volunteer their time once a month to handle settlement conferences.

“That turned out to work exceptionally well,” Aldrich said. “At one point, we were settling well over 30% of the appeals, saving the expense of having to go through the process all the way up to the oral arguments.”

After helping to establish the Settlement Conference and Mediation Program, Aldrich went on to chair the Complex Litigation Task Force for the California Judicial Council, which published “Deskbook on the Management of Complex Civil Cases.”

The appellate panel Aldrich served on was known as “a

Richard D. Aldrich

JAMS
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Areas of specialty:
business, commercial,
class action, construction
defect, employment,
product liability,
professional liability

hot bench” because of how fast it would adjudicate cases, he said. His panel handled almost 100 cases a month, he said. “We were a wonderful division; we got a lot of cases out. Sometimes we fought like cats and dogs but always on a professional basis,” he recalled.

“In Division 3 we were known as a very hot bench because we read the briefs, we read the legal authorities before oral argument ever took place and we had bench memos as to questions we had for lawyers,” he recalled. “So when the lawyers got up to argue their case, they didn’t get very far into their prepared argument before one of us would start asking the first questions, taking their argument to an illogical conclusion to test their theories.”

Nowadays Aldrich applies the same sense of urgency he developed on the bench to his arbitrations. Upon receiving a case, Aldrich will first have a preliminary meeting with the attorneys involved. By the end of the conference, he will have prepared a preliminary conference order discussing the arbitration date, the number of interrogatories to be propounded, and the number of requests for admissions. The order will also include a reference to JAMS rule 17, which requires parties to voluntarily exchange all documents intended to be used in the arbitration.

“I have a very important caveat: failure to exchange these documents may, without good cause result in the exclusion

of the documents from the arbitration, so I encourage the parties to cooperate with one another and exchange all the documents,” Aldrich said. “Then if a request to produce documents is necessary, then I may sometimes draw the inference that they haven’t complied with rule 17 and I may entertain a motion for sanctions or monetary sanctions, so that’s all to encourage the parties to move things along.”

Since joining JAMS in 2017, Aldrich has spent most of his time as an arbitrator, but also meditates cases. He specializes in business and commercial, class action, construction and employment matters.

With the court closures delaying civil trials, litigants seeking adjudication could be waiting a very long time, making arbitration that much more appealing as an alternative, Aldrich said.

Even when trials do start up again, witnesses may be required to wear masks, making it difficult for juries and attorneys to read facial cues, he said. Aldrich and other JAMS neutrals have begun using Zoom video conferencing for remote mediations and arbitration, allowing parties to take off their masks, he said.

“It’s more personal and you

can get things done,” Aldrich said. “I’ve done mediations through Zoom. It is much better than the telephone. You really are looking somebody in the eye, even though it is a virtual eye. Even for arbitrations, I think lawyers are somewhat hesitant to do arbitrations via video conference or Zoom, but JAMS has done arbitrations on that platform and it has worked very well.”

Phillip A. Baker of Baker, Keener & Nahra, who has used Aldrich’s services in business disputes, personal injury and legal malpractice claims, said Aldrich is great in all areas of law. He does his homework on the case so far in advance that he needs little to no education in a given dispute, Baker explained.

“He’s a brilliant guy. He takes his time and learns the case and sets out his viewpoints on the merits and problems with your case in such a low-key but gentleman’s manner, that by the end of the session, you think ‘Gee, maybe my case isn’t that good,’” Baker said. “He treats everyone with respect, he works hard, understands the pros and cons of each side’s position and he works with you to get you in a position to settle the case. He’s great with clients and lawyers.”

Dustin E. Woods of Lewis, Brisbois, Bisgaard & Smith LLP, who recently used Aldrich’s services in a professional negligence case, said he was thorough.

“He was really well informed in the case and worked well with different personalities,” Woods said.

Kevin Hromas, principal of Kevin Hromas & Associates in Texas who was recently involved in an insurance claim dispute arbitrated by Aldrich, said, “He was very attentive during the testimony portion.”

Hromas added in an email. “He took copious notes, and listened to both viewpoints, applied the facts and evidence presented and reached the appropriate decision based on the applicable law.”

Here are some attorneys who have used Aldrich’s services: Phillip A. Baker, Baker, Keener & Nahra LLP, Los Angeles; Paul Impellezzeri, Barbanel & Treur PC, Los Angeles; Brett Nicole Taylor, Cozen & O’Connor, Los Angeles; Kevin Hromas, Kevin Hromas & Associates, Cypress, Texas; Dustin Woods, Lewis, Brisbois, Bisgaard & Smith LLP.

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