

Experienced Empathy

Neutral Richard Aronson is 'respectful but clear' about the strength of parties cases

By Shane Nelson

Special to the Daily Journal

Retired justice Richard M. Aronson thoroughly enjoyed his years on the 4th District Court of Appeal, but after two decades focused often on researching and writing on his own, he was ready to spend a little more time with people.

"I like lawyers. That might sound funny to some people," he said with a chuckle. "But I really enjoy interacting with lawyers. ... And the Court of Appeal is a little monastic; we're somewhat isolated. It's mostly reading and research, although we do have oral arguments, which was a lot of fun. But after 20 years in the Court of Appeal, I wanted to get back to interacting with everyone."

After retiring from the appellate bench in the summer of 2021, Aronson joined the JAMS roster of private neutrals later that fall, and he's since tackled a range of mediation, arbitration, discovery referee and appellate evaluation work. Aronson said many of the disputes he's helped to resolve have involved commercial litigation, real estate, employment, professional liability and personal injury matters.

"I had a certain template that I was in for 20 years or so, and this is new," he explained. "It's exciting, it's challenging, it's interesting. I'm meeting new people - attorneys, their clients. And I'm really enjoying it."

A 1975 graduate of the University of San Diego School of Law, Aronson worked as a San Bernardino County deputy district attorney, an Orange County deputy public defender and a Court of Ap-



Thomas Kurtz / Special to the Daily Journ

peal senior staff attorney before he took the bench - first as an Orange County Superior Court commissioner in 1989 and then as an appointed judge in 1996. Aronson was appointed to the appellate court in 2002.

When he's tackling a case these days as an arbitrator, he puts a great deal of emphasis on working closely with attorneys, he said.

"It's their arbitration. I want them to feel comfortable with the process, and of course, my goal is to make sure they've felt heard," he said. "But they should engage in educating me as much as possible. ... I do rely on the lawyers to be professional and prepared. But I really look at it as a collaborative effort to help me reach a fair outcome."

Before a mediation, meanwhile, Aronson said he likes to receive briefs and speak over the phone with attorneys. On the day of the mediation, he likes to start off with all the parties and attorneys together.

"I'll talk to everyone at the outset just to fill them in on what to expect and give them an introduction about what I plan to do and maybe a brief summary of some of the issues that I see," Aronson said. "But I'll avoid having the parties give statements. That's just a lot of chest thumping that is counterproductive."

From there, Aronson said he separates parties and spends time talking individually with both sides, doing his best to be supportive, to

Richard M. Aronson

JAMS
Irvine

Areas of Specialty:

Real Estate
Business
Employment
Insurance
Legal Malpractice
Personal Injury

actively listen, and, if needed, to allow everyone a chance to vent while he gathers as much information as possible about what caused the dispute. As an example, he pointed to the details in a commercial real estate case he settled recently.

“As I listened to both sides, I learned that the two major players in these two organizations had actually had a long friendship, so there was a sense of betrayal by the plaintiff, and that prompted the lawsuit,” Aronson recalled. “So the whole mediation was not about negotiating, ‘How much can you move off this number?’ and doing that kind of horse-trading. But it was about repairing that relationship. Once we focused on that, we ended up settling the case.”

Aronson noted that while he typically begins mediations with a supportive and facilitative approach, he also frequently employs a more evaluative strategy as the day wears on. But he generally doesn’t share his thoughts about a case’s strengths or weaknesses until he’s asked.

“And you have to be real sensitive

about how that’s done,” he said. “As a lawyer – and I’ve been in this boat – it’s human nature to focus on the strengths of your case. ... It’s difficult to focus on the weak points. It’s not pleasant, and everyone has an overconfidence bias. But if I can get the parties to focus on some drawbacks in their case without confronting them, without making them feel defensive, then that’s what I try to do. And if a party is resistant to my doing that, then I have to proceed gingerly.”

Defense attorney Joel S. Miliband used Aronson last year to settle a complex contract dispute involving many different parties, and he said the JAMS neutral was very open about his views on the case but was especially tactful in expressing those thoughts to the clients.

“He’s not of the style to strong-arm anybody, but he’s definitely very firm about what position you find yourself in,” Miliband said. “Without really pushing, he lets you know what you’re likely to face if you don’t come to some resolution, and he’s good about that with

the client in a way that doesn’t pressure ... He’s very respectful but just very clear about what challenges the client would face if there was no resolution.”

Defense attorney Vanessa H. Widener has used Aronson to settle two real property disputes, and said he employed an especially empathetic and patient approach in both cases.

“And it was very important for one of my clients to hear an appellate justice’s opinion of what the trial court would do,” Widener said. “We had a pending motion for summary judgment at the time of the mediation, so I think hearing his perspective and opinion as to how a trial court would view that pending motion for summary judgment – based on the particular facts of our situation and what the state of the law was – was very helpful. ... And Justice Aronson very quickly grasped and fully understood the legal concepts, which were somewhat complicated.”

Trial attorney Jennifer L. Keller used Aronson recently to assess

an important oral argument she was developing in a mock appellate exercise with three retired appellate justices.

“He was really the leader in coming up with helpful comments,” Keller said. “He has a very keen eye for the Achilles’ heel in an argument and exactly how the justices are likely to approach it and then knows how to offer advice on how to deal with it. ... It was a little humbling because I thought I had it down, but humbling in a good way because it really helped me go back and retool my argument. And when I did the actual argument in front of the 1st District, it just mirrored everything he had told me. He’s just fantastic, and it was really, really helpful.”

Here are some attorneys who have used Aronson’s services:

Joel S. Miliband, Brown Rudnick LLP; Vanessa H. Widener, Anderson, McPharlin & Connors LLP; Jennifer L. Keller, Keller/Anderle LLP; Stephen D’Amore, Winston & Strawn LLP; Arthur R. Petrie, Hatton Petrie & Stackler APC.