

VERDICTS & SETTLEMENTS

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Facilitative Strategist

Neutral David Brown offers litigants more than just opinions on settlement numbers.

By Shane Nelson

Special to the Daily Journal

Retired Judge David I. Brown spent more than a decade running a law and motion calendar for the Sacramento County Superior Court, where he said he handled roughly 5,000 to 6,000 motions a year.

"I was there almost 11 years, so it must have been 50,000, to 60,000 motions," Brown said. "So I felt fairly comfortable with a lot of different stuff."

Brown joined the JAMS collection of fulltime private neutrals in June of 2021 after stepping down from the superior court earlier that year, and the retired judge said he's working frequently now as a mediator, arbitrator and discovery referee.

Brown noted that the terrific variety of legal matters he covered over his time running a law and motion courtroom certainly helped him to transition into mediating and arbitrating disputes from a diverse collection of practice areas.

"The stuff I'm doing now involves pretty much the panoply of legal issues that arise across the board," Brown said. "I do a lot of labor issues, PAGA issues, employment wage-and-hour cases, personal injury cases, uninsured and underinsured motorist cases. ... There's also been product liability, and I have cases against public entities right now, as well."

Plaintiffs' attorney Ognian A. Gavrilov appeared a number of times before Brown when he was on the bench and has since used the retired judge to successfully mediate complex business and personal injury cases.

"He's very, very versatile," Gavrilov said. "And he's one of the most intelligent humans I've ever met. He



Malcolm Maclachlan / Daily Journal

can grasp even the most complex business litigation, or whatever issue may exist, and just dissect it and understand it with a very surprising ease."

Gavrilov said Brown is also one of the best-prepared mediators he's ever worked with.

"He sees and understands each of the parties' positions, and he sees the solutions, and he can bridge the differences by having more information than your average mediator," Gavrilov explained. "He just gathers more information about the case before than most mediators would, and that's why he's so effective – because he knows the case maybe even better than the lawyers."

Brown said the preparation he puts into each case – which also

typically involves a thorough pre-mediation phone call with attorneys – is something he thoroughly enjoys. And he noted that he continues to maintain a four- to five-million-page database made up of the different topic matters from all of his cases during his 13-year run on the bench.

"I love the researching, and that's what I loved about law and motion," Brown said. "You have to be consummately prepared from the get-go. ... But I don't charge often for researching law. Parties hire judges like me – ex, retired judges – to know the law. So I really don't feel it's always appropriate for me to charge to do my own independent legal research."

A 1974 graduate from UC Davis School of Law, Brown spent much

Hon. David I. Brown (Ret.)

JAMS

Areas of Specialty:

Employment
Personal Injury
Product Liability
Real Estate
Construction
Business

of his more than three decades as a litigator and trial attorney representing defendants in personal injury, employment, real estate and medical malpractice cases. While Brown said he works hard to apply facilitative strategies in his mediation work today, he has no problem letting parties know what he thinks about their cases based on his many years of experience.

"I don't like the concept of a numbers-carrying neutral," Brown explained. "If that's all you do, I don't think the parties are getting their money's worth. You want to assist them in understanding the case. And at the end of the day, sometimes you have to be a little more evaluative and say, 'I think those numbers are either too high' or 'too low' or both, and tell them what your experience has been."

Plaintiffs' attorney Jill P. Telfer

tried a case in front of Brown when he was a judge and has since used him to successfully mediate a contentious wrongful termination employment lawsuit. Telfer said the JAMS neutral is extraordinarily easy to work with.

"He's got that judicial background, but he doesn't have a judicial ego," Telfer explained. "And he really helped me to understand some of the warts in the case I had. ... I find him to be extremely objective, so I really respect when he says something, and he does it in a way that doesn't put you off. He does it in a way that's not upsetting."

Defense attorney Richard S. Linkert also appeared many times before Brown on the bench.

"I didn't always win, but I always felt I got a fair shake," Linkert said. Like Telfer and Gavrilov, Linkert said Brown's way of sharing his

thoughts about a case is an especially productive tool for mediation.

"What I particularly like about him is that he's not afraid to call balls and strikes," said Linkert, who has used Brown to resolve product liability cases. "He can say, for example, 'I don't find that argument compelling at all,' and that opinion of a former sitting judge tends to carry a lot of weight with the parties. ... I really appreciate a judge who's willing to tell it like it is – even if it hurts on my end."

Telfer added that many of her employment cases feature intense emotions, and Brown navigated that hurdle with a great deal of patience, making sure the parties all felt heard and had a chance to thoroughly explain their side of the story. Telfer also described Brown as a creative mediator, pointing to an out-of-the-box approach the

JAMS neutral applied in her recent wrongful termination dispute.

"We were stuck on the monetary amount, and Judge Brown said, 'What about your company truck? You said you loved that truck. Maybe we can try to get resolution that way?'" Telfer recalled. "I never thought the other side was going to agree to that, but my guy really wanted that truck. ... Ultimately, that case settled for a nice sum of money, but the truck was really what made the deal take place."

Here are some attorneys who have used Brown's services: Ognian A. Gavrilov, Gavrilov & Brooks; Jill P. Telfer, Telfer Law; Daniel G. O'Donnell, Doyle and O'Donnell; Richard S. Linkert, Matheny Sears Linkert & Jaime LLP; John D. Fairbrook, Trainor Fairbrook

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