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PERSPECTIVE

Familiar Territory

JAMS neutral Robert Dondero puts his bench experience to good use.

By Don DeBenedictis

Special to the Daily Journal

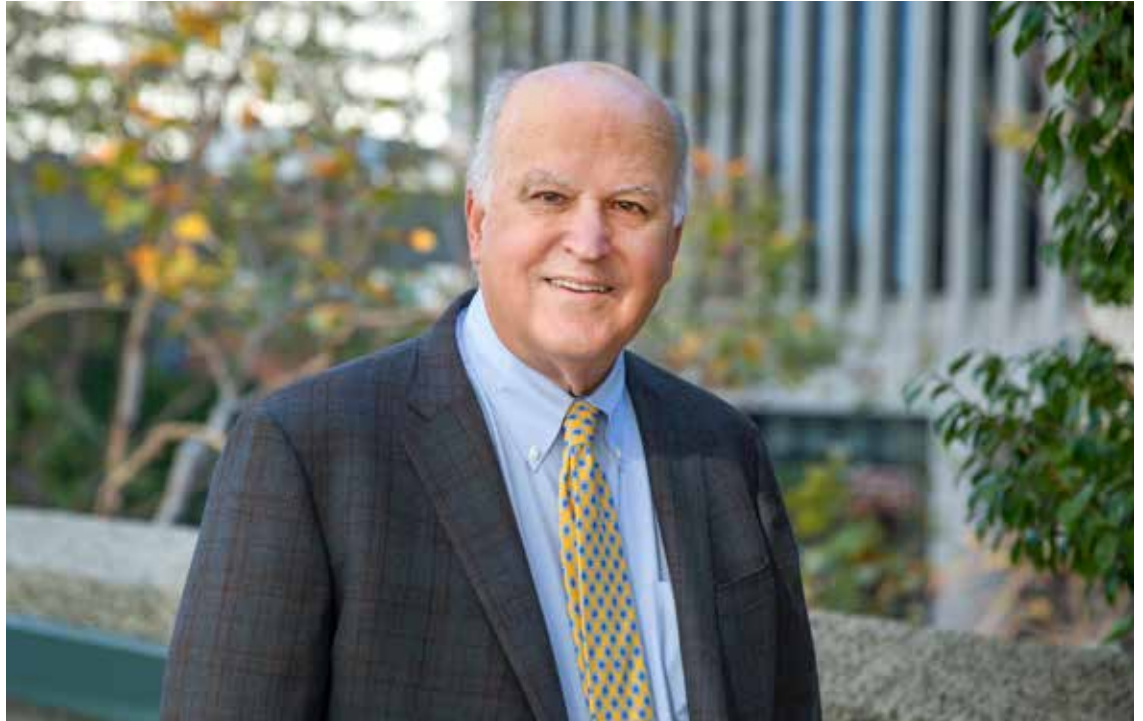
The mediations and arbitrations Robert L. Dondero hears these days are much like the settlement conferences and bench trials he supervised during his 17 years as a San Francisco County judge.

Recently, however, he has begun to hear a different type of proceeding. Those are like the oral arguments he heard during his 10 years as 1st District Court of Appeal justice. They are called “neutral evaluations” and are somewhat similar to moot court hearings. Often, they are sort of practice sessions for attorneys getting ready to argue an appeal or important motion.

For one such case Dondero heard recently, he and another retired appellate justice read and discussed the briefs. Then, they met with the attorneys who requested the session to hear their arguments and discuss the case in detail. The neutral evaluations are different from traditional moot courts in that only one party in the case participates.

“One side retains you and as a consequence you get to be very candid” about that side’s arguments. “It’s a free-for-all discussing what are the pluses and minuses of the case,” Dondero said. “Counsel ... presents his argument, we interrupt him, and ask him questions as an appellate judge would do.”

So far, Dondero has participated in about a half-dozen neutral evaluations, including an employment matter, a product liability case and a case being readied for oral argument at the 9th U.S. Circuit Court



Jana Ašenbrennerová / Special to the Daily Journal

of Appeals, he said. Most of the matters he has handled in his two years as a JAMS neutral have been arbitrations, and most of those he conducted as a lone arbitrator rather than as part of a panel.

Dondero digs into those cases as soon as they are assigned to him. “It’s just like running a pretrial calendar,” he said.

Dondero holds status conferences and hearings on any dispositive motions the attorneys may file. He sets a briefing schedule, goes over the briefs and exhibits, holds the arbitration hearing and gives his ruling. During the hearing, he takes a relaxed approach to evidence objections.

“I think lawyers understand that the case will go faster with less stress if we can just let the questions be

asked, let the answers come in and we can resolve things,” he said.

He tries to deliver decisions that are as thorough and analytical as possible so that the attorneys feel they received fair hearings.

“It’s hard to say to one lawyer, ‘You didn’t prove it,’” Dondero said. “But my job is to explain to the lawyer why he or she did not prove it.”

Two lawyers who had somewhat unusual arbitrations before Dondero said he handled them well. In one, the retired judge took over a real estate fraud case at the last minute. But he was able to keep to the original hearing date, according to Andrew A. Wood of Allen Matkins Leck Gamble Malloy & Natsis LLP.

“It became clear that he had very thoroughly grasped the issues [and]

Robert L. Dondero

JAMS
San Francisco

General Litigation
Neutral Evaluation
Employment
Health Care

all the facts and the law,” Wood said, adding that he gave “a very thorough ruling.”

Dondero also was courteous, direct and “has a very good poker face,” Wood said.

An employment case Dondero

arbitrated turned on out-of-state law “that was not very well developed,” said Nancy L. Abell of Paul Hastings LLP.

“It was apparent that he had put considerable thought into that law and appeared to clearly understand what had and had not been decided by that state’s appellate courts,” she said.

Further, his written award was precise and thorough and set out his analysis well, Abell added.

“We got the best of an outstanding trial judge and an outstanding appellate justice, and the case needed both,” Abell explained.

Dondero has heard fewer mediations, but those he has handled include insurance, employment and several sensitive tort cases. He said he enjoys them and is eager to hear more.

In mediations, Dondero believes he must find out what the case is really about. That means statements or briefs attorneys submit should clearly state their views. “They should be thorough in explaining what the case is about and what the good and bad features of the case really are,” he said. “It

really facilitates settlement.”

Dondero said he tries to ensure the parties understand the process and the possible outcomes. People who haven’t been involved in the justice system before “need to be able to understand what’s going to happen. It’s not television and it’s not a quick remedy process.”

His third key factor to settle cases is persistence. “You have to go to all four corners of the case to try to get a resolution,” he said. “You can’t just take the first answer. You have to stick with it.”

“He sees the project through. He’s very persistent,” Laurel L. Simes of Lavin Simes & Abrams said. She noted that Dondero has successfully mediated several serious tort cases for plaintiffs she represented.

“He listens to both sides equally,” Simes said. “He is personable with clients ... and speaks to them in a kind way.”

A lifelong San Franciscan, Dondero is the grandson of Italian immigrants. He earned his undergraduate degree from Santa Clara University and his law degree from U.C. Berkeley in 1970.

He joined the San Francisco district attorney’s office in 1971 and moved through several assignments.

Beginning in 1975, he helped try the “Zebra murders” case against four Black men who were believed to have shot and killed at least 15 white people apparently chosen at random. After a trial that lasted one year and 10 days, all four were convicted. Although Dondero was the junior attorney, he examined witnesses and gave the closing argument, he said.

In 1978, he became an assistant U.S. attorney. He prosecuted members of the Hells Angels biker gang for racketeering, a large-scale tax evasion case dealing with the interstate transportation of women for prostitution and many bank fraud cases.

He joined the Superior Court in 1992, and by 2005, he was the court’s presiding judge. In 2008, was named to the Court of Appeal. Over his 10 years on the appellate bench, he wrote several significant opinions, including *Duran v. U.S. Bank National Association*, 203 Cal. App. 4th 212 (Cal. App. 1st

Dist., May 16, 2012).

His opinion limited the use of statistical sampling to establish a class for class actions. It was affirmed by the state Supreme Court.

He also wrote an important decision on the issue of classification of employees as independent contractors and another involving intellectual property and parody about an ad in Rolling Stone magazine. But after 10 years on the appellate bench, Dondero began to notice “a certain commonality of cases that were popping up.”

“I was ready to leave,” he said. “I wanted something more interesting.” He moved to his current affiliation without really considering other ADR providers.

“I decided JAMS would be a good place to work,” he said. “I’ve been happy ever since here.”

Here are some attorneys who have used Dondero’s services: Nancy L. Abell, Paul Hastings LLP; Timothy E. Allen, Washington State Office of the Attorney General; Juan C. Araneda, Fisher & Phillips LLP; K. Erik Friess, Allen Matkins Leck Gamble Mallory & Natsis LLP; Sara Kelly-Kilgore, Greenberg Gross LLP.