

FRIDAY, JULY 16, 2021

PERSPECTIVE

Icebreaker

Jamie Jacobs-May is creative in getting parties in the mood to settle.

By Shane Nelson

Special to the Daily Journal

Jamie A. Jacobs-May said she didn't spend a great deal of time debating about what she'd do after stepping down from the bench in 2011.

"When the time came for me to retire, I didn't want to just retire," she recalled. "I wanted to do what I love best, and that was going into private mediation."

She was not, however, interested in adhering to the measure of success many in the industry point to as the result of a well-managed mediation.

"For some people there is the common adage: A good settlement is when both parties leave unsatisfied and equally unhappy," she explained. "I think a good settlement is when both parties leave equally happy, but they're very satisfied. That's my experience, and that's what gave me pleasure."

The former presiding judge of the Santa Clara County Superior Court is now a Bay Area neutral with JAMS, handling business, real estate, employment, construction, personal injury and intellectual property disputes. She likes to receive briefs and speak over the phone with attorneys before the day of mediation, hoping to discuss specific questions.

"I have a series of things that I'm asking, like, 'Who's coming? What has been the history of the settlement negotiation? What are the dynamics between the parties?'" she explained. "What's the dynamic between the attorneys? Is there a lot of trust? Is there distrust? Have they worked well together? Are they fighting more than even their clients?"



Gary Wagner / Special to the Daily Journal

Jacobs-May likes to begin the day of mediation with a joint session, during which she explains her process and makes use of some strategic icebreakers to see if she can get parties talking.

"The two sides — they're obviously not getting along. They're in a conflict," she explained. "But occasionally, you get a little bit of a connection between sides. Sometimes it's something like, 'I coach football.' 'You coach football?' 'I love the Rams.' 'You love the Rams?'"

San Jose litigator Steven A. Ellenberg appeared before Jacobs-May while she was a judge and said he's since used her many times as a mediator, noting she is "very effective at setting the stage for a successful mediation."

"She's terrific at getting people in the right frame of mind to settle," Ellenberg said. "She tells some stories, she asks some very simple but effective icebreaker types of questions to get folks loosened up, and she's just very skilled at putting people in that frame of mind where they can settle, where they can take their helmet off, so to speak, and be prepared to make the compromises necessary to settle a case."

San Jose real estate attorney Anthony F. Ventura, who has used Jacobs-May as a mediator 20 times in the last decade, said she always shows up prepared and that helps her to start out strong with clients.

"When we start the mediation, she knows all the specifics and details, and that creates political capital and

good will with the clients," Ventura said. "A lot of times, the clients want to litigate the case and get into the details. So when the judge already knows that stuff, the clients feel like, 'OK, my voice is being heard here. I can talk about specific things that are important to me or upsetting to me, and the judge is answering my questions or addressing issues I'm raising.'"

Jacobs-May said she's also a proponent of bringing parties together I have the attorneys together only? Absolutely. Have I had clients alone together? Yes, I've even done that. It's an improvisation thing. We have a structure, but based upon what's happening, who the parties are, what their capacities are, what their interests are, you take the

lead from people. How open they are will help drive how we fill things in, what people we would put together.”

San Jose litigator Christine H. Long has used Jacobs-May as a mediator for a range of disputes over the years — including corporate, employment and real estate cases — and she said the retired judge is innovative.

“She’s put together some really creative solutions for my clients, and she does that from Day One even before we walk in with the clients,” Long explained. “Having a dialogue with people about creative alternatives allows her to get better information on the case and that helps lead to resolution.”

Ellenberg said Jacobs-May discusses a case’s weaknesses with litigants in an especially productive fashion.

“She’s very skilled at pointing out problems with a case without telling someone, ‘You’re going to lose,’” he said. “If you tell someone they’re going to lose, it’s hard to convince them to settle. ... She’s really skilled at pointing out the defects without turning a person or the entity off to what she’s saying.”

Now a veteran of Zoom mediations, Jacobs-May estimated she’s worked to resolve nearly 150 disputes using the online platform, which she described as “every bit as effective as in-person mediation.”

“My settlement rate with Zoom is very high,” she said. “They go very, very well.”

She does not, however, do many online or in-person arbitrations, which is a decision she said she made early on as a private neutral in order to be a more effective mediator within the community of Bay Area attorneys.

“I would do an arbitration if it were very far away from this area and with people I didn’t know,” she explained. “From the beginning I made a decision, ‘I can rule against you, but I don’t want to.’ I don’t want to spend time in a close relationship, which is what mediations are — they get close and they get intimate and there’s sharing, there’s trust built up — and then rule against you later in an arbitration. I don’t want to do it.”

Ellenberg, Ventura and Long said Jacobs-May has been especially tenacious in her pursuit of resolution as a mediator for their cases.

“She just keeps working and working and working where a lot of other mediators I think are sometimes more willing to say, ‘OK, it looks like there’s nothing we can do here,’” Ventura said. “Judge Jacobs-May keeps trying to come up with creative solutions, and she just doesn’t give up.”

The JAMS neutral certainly doesn’t have any trouble assessing the decision she made 10 years ago to focus full time on private mediation work.

“I pinch myself because I feel so grateful and so lucky to be able to be doing this,” Jacobs-May said. “Even if it was an easy settlement, I go to bed happy. I go to bed thinking, ‘That was a great day. It worked out really well.’ There is a joy that just emanates from me.” ■

Here are some attorneys who have used Jacobs-May’s services: Anthony Ventura, Ventura Hersey & Muller LLP; Steven A. Ellenberg, Hopkins Carley; Christine H. Long, Berliner Cohen LLP; J. Philip Martin, Kastner Kim LLP; Stephen N. Ilg, Ilg Legal Office PC



Jamie A. Jacobs-May

JAMS
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