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PERSPECTIVE

# Soft Touch

*JAMS neutral Alan Perkins doesn't believe haranguing litigants helps to resolve disputes.*

By Shane Nelson

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Retired judge Alan G. Perkins has noted a slight change in the way attorneys treat him as a private neutral.

"They're not as quick to return phone calls," said the former Sacramento County Superior Court judge. "Sometimes they will and sometimes they won't. ... Usually, as a judge, people would call you back no matter what – even if you didn't really care if they called back that quickly. It's a little bit of an adjustment, but it's probably a healthy thing."

Perkins spent 15 years on the bench, handling civil trials for much of that run as well as criminal, probate and family law calendars. He was a trial attorney at Wilke Fleury LLP for 30 years before that, tackling construction cases at the start of his career and later frequently representing receivers and trustees in bankruptcy matters.

Perkins joined the JAMS roster of private neutrals late in the fall of 2020, and he's since been working on settlement employment, real estate and business disputes as a mediator as well as ruling on business and employment cases as an arbitrator.

"I try to treat it like a court trial," Perkins said of his arbitration hearings. "Certainly, the rules of evidence – unless the arbitration agreement is written otherwise – are looser than it would be in a court trial, but I try to listen to the objections and also follow the applicable laws as best as I can. I don't view arbitration as a license



Malcolm Maclachlan / Daily Journal

to part from what the law says."

Before a mediation, meanwhile, Perkins likes to receive briefs from both sides, and he is a big proponent of speaking beforehand over the phone.

"I'll usually arrange to have a short call with the attorneys. Not to argue about things but just to introduce myself, confirm the date," he said. "And I try to get a feel for what each side's position is and maybe what discussions have occurred, at least in general, before the mediation, so we can move a little quicker on the day of."

Perkins also encourages both sides to prepare their own draft

settlement agreement before the mediation begins.

"They don't have to share it with me or the other side," Perkins explained. "But I just want to make sure they have thought it through; so we're able to fully deal with the range of problems that are in dispute and not think we have an agreement and then have somebody say, 'Oh, I forgot about X.'"

Joint sessions aren't an approach Perkins likes to employ in mediation, and while he will make use of mediator's proposals, they are a strategy he prefers to wait on.

"I try not to jump in quickly with

## Alan G. Perkins

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the idea unless it's really something they want," Perkins said of mediator's proposals. "Because once you do it, it either works or it kills the discussions. I'm willing to entertain a suggestion – especially if both sides want it. But I'm reluctant to do it until we're at the point of it's either going to work or everybody's got to be prepared to go home."

Perkins described his mediation approach as often a mixture of facilitating negotiations while also providing his evaluations on the case where appropriate.

"I'm not a subscriber to the very aggressive haranguing of the parties," he said. "I want to make sure I understand what it is the parties are saying and what it is that they want. Also, I want to make sure they understand that I've taken the time to listen to what it is that they want. ... In a number of cases, the clients need to get what it is that's been bothering them and how they feel off their chest."

Perkins noted that his background as a judge is often a big

reason why attorneys hire him to mediate their cases.

"Ultimately, the bottom-line argument is going to be: 'What's a jury or a judge likely to do with this based on these facts?' he explained. "That's where I can help them a bit. .... And I try to give them the benefit of that analysis."

Fair Oaks trial attorney Peter F. Samuel used Perkins to resolve a recent employment dispute, and he said the private neutral's approach with both parties was first rate.

"He was very gracious, very kind and professional," Samuel explained. "And he didn't push like some mediators do. They'll sometimes tell you how things should go. But he pretty much let both sides talk to him and instruct him as to what was going on."

San Diego litigator James S. Brasher used Perkins to settle a recent real estate dispute, and said he appreciated the work the neutral did beforehand.

"It was a fairly lengthy pre-mediation call to find out everything about the parties and the legal po-

sitions," Brasher recalled. "And he really got into it, spending time on the legal positions before we even got into the mediation, and he was asking a lot of questions that really helped settle the case in the end."

Sacramento employment defense attorney Michael J. Nader has used Perkins to resolve wage-and-hour disputes, and he said the mediator's extensive background on the bench is a real strong suit.

"He's just very judicial," Nader said. "Very neutral, very impartial, always demanding both sides do their homework and present the facts and the merits of the case."

Brasher said Perkins' time as a judge was also especially helpful in resolving his case.

"The other side was throwing out various defenses about bankruptcy and corporate protections and all these other things," Brasher explained. "And he considered all the nonsense coming from the defense and then ultimately said, 'No, that's not the way it works in court,' letting them know those arguments weren't going to fly."

Nader also described Perkins as an incredibly hard worker, but noted the neutral doesn't necessarily need a long day to resolve matters.

"Some mediators – to their fault – force the mediation to be much longer than necessary, but not Judge Perkins," Nader said. "He will, however, definitely stick it out to the end and walk both sides through the memorandum of agreement if necessary. If disputes arise over last minute details, which can of course mean everything sometimes, he's available to iron those out and resolve those as well. He just works very hard and will stay as long as necessary."

*Here are some attorneys who have used Perkins' services:* Peter F. Samuel, Samuel & Samuel; Michael J. Nader, Ogletree Deakins; James S. Brasher, Rowe Mullen LLP; Guarev B. Kalra, Law Offices Gaurav Bobby Kalra; Robert M. Wilson, Law Office of Robert M. Wilson.