

# VERDICTS & SETTLEMENTS

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## Practical and Prepared *Neutral with 35 years as real estate litigator plays to his strengths*

By Shane Nelson

Special to the Daily Journal

JAMS neutral James L. Stoelker isn't a big fan of surprises. "I'm not someone who likes to wing it. I never have been," Stoelker said. "I'm horribly uncomfortable if I have to go into someplace and work on something unprepared."

After 10 years as a Santa Clara County Superior Court judge, Stoelker stepped down from the bench in the spring of 2021, and has been focused on mediating, arbitrating and acting as a discovery referee. Many of the cases he's worked on over the past two years are disputes involving real estate — the area in which he practiced as a litigator for nearly 35 years.

Stoelker's distaste for the unexpected continues to show up in his regular routine before a mediation or arbitration.

"I suppose, if anything, I overprepare," he said with a chuckle, before reconsidering. "Well, actually, I don't think you can ever be over prepared. So I prepare as much as I possibly can before a mediation and/or arbitration."

For example, Stoelker likes to receive briefs ahead of time for a mediation, and prefers speaking one-on-one over the phone beforehand with each of the lawyers involved.

"I've never done a mediation without having a pre-mediation telephone call privately with each of the attorneys," he explained. "So, I know as much as I can possibly know — or as much as they are willing to tell me — prior to beginning the actual mediation process."



Gary Wagner / Special to the Daily Journal

### Hon. James L. Stoelker (Ret.)

is a full-time mediator and arbitrator with JAMS. For a decade, Judge Stoelker presided in the Santa Clara County Superior Court, where he handled a wide variety of assignments, such as serving as an all-purpose judge for family law. Judge Stoelker handled multiple civil jury and bench trials, which included commercial/business and real property cases. As a lawyer, Judge Stoelker handled civil litigation, with an emphasis on title insurance and real property litigation. He handled a variety of cases in both state and federal courts throughout California. His experience included transactional negotiation and documentation of commercial real property purchases, financing, and leasing.

JAMS  
Silicon Valley

San Jose trial attorney Liam J. O'Connor used Stoelker to settle a thorny real property dispute last year, and said the thoroughness of those pre-mediation phone calls distinguished the JAMS neutral.

"Unlike other mediators I've dealt with, Judge Stoelker took quite a bit of time prior to the actual mediation to have discussions with counsel for both parties to really get a handle on the parties' posi-

tions and to talk about practical aspects of potential resolution instead of merely relying on the mediation briefs," O'Connor said. "And I was able to talk with him about who my client was and his personality, and I think that helped him to interact with my client a lot more productively. I think it just really helped him interact with counsel and the parties in a way that was the most productive on

the day of the mediation, and that ultimately went a long way toward getting the case resolved."

Stoelker noted that he's only conducted mediations over Zoom since he joined JAMS in April 2021, and while he does like to start with an approximately 10-minute introduction, where all the parties and attorneys are together, that's typically the last time everyone will see each other.

“I don’t think there’s any advantage to having the parties rattle their sabers to each other ahead of time,” Stoelker explained. “I think there’s some general feeling by the attorneys that they have to impress their own clients in a joint session by telling the other side how weak their case is and how strong their own case is. And I don’t find that’s beneficial. I think, at best, it is a waste of time, and at worst, it just creates animosity and that’s the opposite direction of where we want to go.”

Stoelker’s preference is to spend a fair bit of time early on listening to the parties, doing his best to really hear them and appreciate their view on the dispute while also building as much trust as possible. He noted, however, that early on in his work as a mediator, he may have overemphasized his role as a listener, but as more and more attorneys reached out to him to settle real estate disputes, his approach changed.

“I stumbled on the simple fact that if they retained me to be the mediator because I knew some-

thing about real estate, then they’re expecting me to express something about real estate,” Stoelker said, referencing his more than three decades as a real estate litigator. “If they didn’t care anything about my emphasis, they would’ve picked someone else. So at some point, I started being much more outspoken about what I thought the merits of their case might be, and that seems to have a better result.”

O’Connor said Stoelker’s evaluative assistance was a pivotal component of the ultimate settlement in his case last year.

“I think his assessment of the strengths and weaknesses of the real property related claims in the case were accurate,” O’Connor recalled. “And with his years of experience in those types of cases, I think those opinions did make the parties more willing to compromise on a resolution.”

San Francisco real estate attorney Sarah E. Shapero has used Stoelker twice to resolve cases she initially figured had no chance at settlement, noting that the JAMS

neutral recognized early on in one of those mediations that the parties didn’t have all of the information required to reach a resolution.

“It was his decision to adjourn the mediation early, set deadlines for us to exchange documents and then come back,” Shapero explained. “I’ve been with a lot of mediators who wouldn’t have that foresight and would just say, ‘We can’t resolve this. We’re done.’ So, I feel like he put in the extra work to make sure the case settled. The information was exchanged, we came back and we were ultimately able to strike a deal.”

Shapero added that Stoelker’s dedicated effort to build trust by really listening to the parties sets him apart.

“A lot of mediators, in my experience, don’t really take the time to understand the parties and understand the issues,” Shapero said. “A lot of them will just go straight to damages and not really hear the parties’ grievances, and he was not like that.”

Redwood City defense attorney Stephen A. Scott used Stoelker recently to resolve a breach of con-

tract case, and he said the retired judge’s calm demeanor is a terrific asset.

“He’s not a table pounder,” Scott explained. “And he doesn’t come across as somebody who thinks he knows everything. Some mediators try to impress you with how much they know. He really gets into the issues, asks good questions and will push back when necessary. But he has the kind of personality I would describe as he can disagree agreeably, which in mediation is tremendously important because you don’t want one side or the other to shut down. You want to keep people talking.”

*Here are some attorneys who have used Stoelker’s services:* Liam J. O’Connor, Hopkins & Carley; Stephen A. Scott, Hayes Scott Bonino Ellingson Guslani Simonson & Clause LLP, Sarah E. Shapero, Shapero Law Firm; Richard B. Gullen, Rossi, Hamerslough, Reischl & Chuck; Thomas V. Christopher, Law Offices of Thomas V. Christopher.

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