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PERSPECTIVE

Focused on the Objective

Neutral John Sugiyama encourages parties to enter into a mediation with a clear understanding of what they want to achieve.

By Don DeBenedictis

Special to the Daily Journal

In his almost two years as a mediator and his 18 years as a judge, John H. Sugiyama came to realize that many lawyers and clients go into mediation or settlement talks without first figuring out what they want to accomplish. “People just assume that a beneficial result will come to them,” he said. “But the consequence of not thinking about it on the front end is that more often than not people engage in what Henry Kissinger called salami politics” or salami-slicing tactics. That’s when each side starts with an extreme position and then makes a series of little concessions—salamislices—until some sort of resolution is reached.

“The problem with that is you’re not quite sure at the end whether you’ve achieved what it is that your clients really want,” Sugiyama said.

He said he tries to avoid that haphazard approach in his mediations by calling the attorneys on each side of a case well before their session to ask them about the facts and issues, their positions and what they want to achieve.

“Sometimes I learn from them and sometimes ... they pick up from me that they need to formulate a set of objectives so that when they get close to them, they’ll know what they’re gaining and what they’re giving up.”

That happened to Perkins Coie LLP’s Jeffrey S. Tachiki. He said Sugiyama spent a productive half-hour on the phone with him “getting a sense of my understanding of the issues ... [and] what our



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goals were” before his mediation session.

Once a mediation is underway, Sugiyama said he tries “to keep the parties on track” with “comments here or there, without trying to give the appearance of pressuring them or taking sides.” That can include asking whether an idea a party has proposed truly fits the party’s larger objective.

Sugiyama is “always actively involved” in mediation, James P. Cilley of Temmerman, Cilley & Kohlmann LLP said. “He always demonstrates genuine concern and willingness to work with people.”

Matthew B. Talbot of Talbot Law Group said Sugiyama’s ap-

proach is “not just about the dollars and cents ... but what’s involved in the case, how did it get to this point [and] is there history that’s relevant.

“His focus is on not just coming up with a solution but seeing that the solution works best for everybody.”

Sugiyama asked probing questions of Tachiki’s client to find out who she was and how important the money at issue in the case was to her. “He really wants to understand not just the issues involved but the parties themselves and ... what makes them tick,” Tachiki said.

An extreme example was a recent case involving a bound-

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ary dispute between neighbors. Sugiyama took the unusual step of not talking about the case itself during the morning mediation session. Instead, he asked the parties what their lives and their relationships with their neighbors were like back before the problem arose. He even asked about their children's college plans.

"I felt in that situation it was more important to have the rancor brought down to a more acceptable level."

A boundary dispute was not the sort of matter Sugiyama usually mediates. But emotions are common in most of his cases. Sugiyama was the Contra Costa County Superior Court's probate judge for his last nine years on the bench, and those kinds of matters are what he prefers to mediate now.

Unlike injury cases, with probate, trust and conservatorship disputes, "you're not dealing with a single isolated event," he said. "You're dealing with the consequence of familial, interpersonal interactions over a number of years."

He manages those emotions by "just talking with the parties and their attorneys," and especially by encouraging them to stay focused on their real objectives for the mediation.

Sometimes he must remind — or even teach — the parties and attorneys to take positions or actions that will persuade the other side to settle on favorable terms. To do that, he might ask ques-

tions like, "Is that really helpful? Is that something you want me to tell the other side? Is that something you think will induce them to want to settle?"

"He doesn't talk about money," Moon Hwan Kim of San Jose's Hann Law Firm said about Sugiyama. "He talks about the emotional situation and how to heal people and then talks about money."

The son of a career Army officer, Sugiyama was born in Japan and lived in West Germany and several places along the U.S. East Coast. When his father was assigned to Vietnam, he and his mother moved to San Leandro, where he attended high school.

He got his undergraduate and law degrees from U.C. Berkeley and then joined the California attorney general's office in 1975 to practice appellate law. Not quite a year later, he argued his first case before the California Supreme Court. He lost badly. Two more senior colleagues who argued to the high court that day also did terribly. "We lost all three cases 0-21."

By 1986, Sugiyama had risen to be the senior assistant attorney general in the criminal division. In 1992, he moved over to the civil division.

Then, in 2000, Gov. Gray Davis's administration appointed him as the chief counsel of the state Department of Corrections. Less than two weeks later, there was a major riot at the maximum-security prison at Pelican Bay, throwing him

into dealing with legislative hearings and potential lawsuits.

Davis appointed him to the Contra Costa bench in 2002. He spent most of the next decade hearing criminal matters, with a short detour to civil in 2005-06. Then, in January 2011, he was assigned to the probate court, which no other judge wanted.

"To my great surprise, I found I liked the legal part of the work, and I liked the practitioners," he said.

He retired from the bench in early 2020 and started as a mediator with JAMS that April.

Sugiyama paraphrases a quotation from Bruce Lee (who in turn was quoting Sun Tsu quoting 17th century philosopher and sword master Miyamoto Musashi) to describe his approach to mediation. It is to be like water, which takes the shape of whatever vessel holds it.

"I like to think that I adjust and adapt my style to the attorneys, the parties and the issues. I don't follow a particular format; I don't follow a particular style," he said.

Attorneys who have worked with him describe him as "thoughtful, prepared and tenacious," in the words of Steven P. Braccini of Sheppard Mullin Richter & Hampton LLP. "He's committed to peeling the onion ... [and] diving into the details of the case to have a full understanding of it."

William Markus Egerman of Egerman Law Group LLP describes him as an "intellectual

thinker who raises issues one or both sides haven't thought of to reach a successful resolution."

Kim agreed that Sugiyama has a "unique ability to spot the issues." He is "super smart and super humble," and he doesn't always charge for the hours he spends studying a case prior to the mediation. "He wants to help the parties in a cost-effective way."

Sugiyama said he is enjoying being a mediator in part because he gets to work with some law firm senior partners who were junior lawyers when he started as a probate judge. "I could see their potential earlier. It's just very nice to see them now years later ... [and] how good a lot of these attorneys are," he said.

The other reason he enjoys his work now is that "it's just plain fun."

Here are some attorneys who have used Sugiyama's services: Steven P. Braccini, Sheppard Mullin Richter & Hampton LLP; James P. Cilley, Temmerman, Cilley & Kohlmann LLP; William "Mark" Markus Egerman, Egerman Law Group LLP; Moon Hwan Kim, Hann Law Firm; Joseph Morrill, Morrill Law Firm; Daniel B. Newbold, Donahue Fitzgerald LLP; Lawrence K. Rockwell, Donahue Fitzgerald LLP; Jeffrey S. Tachiki, Perkins Coie LLP; Matthew B. Talbot, Talbot Law Group PC; Andrew R. Verriere, Hartog Baer Hand APC; James M. Wood, Law Office of James M. Wood