

# Listening Differently

*Stephen Sulmeyer's psychology background helps him hear what matters.*

By Shane Nelson

Special to the Daily Journal

Mediator Stephen H. Sulmeyer spent 12 years working as an intellectual property and business litigator, but toward the end of that run he decided something was missing.

"Litigation was simply not making the best use of my talent and certainly wasn't really satisfying my soul," Sulmeyer said. "I remember thinking, 'I don't want carved on my tombstone: 'He was a great intellectual property litigator.'"

Sulmeyer put his legal career on hold in the mid-1990s and enrolled in a psychology graduate program, completing his doctorate in 2001. Not long after, Sulmeyer also finished several mediation training programs, and he's been working as a private mediator and clinical psychologist for the past 20 years.

"One reason why I became a mediator was because there wasn't enough room for creativity in being a litigator," Sulmeyer said. "I was so constrained by the rules of evidence and procedure and so forth. In mediation, there is room for creativity. You can do things in mediation you can't do in court. There are other solutions you can arrive at. You can increase the value of the pie rather than just divide it."

Sulmeyer, who joined JAMS in 2019, specializes in complex disputes involving high levels of conflict and emotion, stemming often from intimate or professional relationships in areas such as family law, probate, trusts, elder law, employment and family businesses.

Sulmeyer said his training as a psychologist has helped him to



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navigate the often fraught emotional challenges he encounters in those areas of law, in part, because he listens differently.

"Listening like a psychologist is very different than listening like a lawyer," he explained. "When you listen like a lawyer, you're listening for facts. You're listening for evidence. ... That's obviously important, but it's also equally important to listen to what really matters to people. What are they really trying to achieve? What are their worries? How is the case affecting their lives? All this is very, very relevant in mediation. It's not just about evaluating the strengths and weaknesses of each side's legal case."

Sulmeyer was also quick to note that most of the mediations he handles involve two critical components: a legal case and an emotional case.

"Even in the most business like cases, where either we're arguing about money or breach of contract or even a patent infringement case, emotions are always involved," he said. "What I've found is that as a mediator, I ignore the emotional case to my peril. I've also found that in most cases, people really want to tell their story. They want to be heard. If I can attend to that, if I can find out what's happening on that emotional level and address it, the legal case usually falls like dominoes."

**Stephen H. Sulmeyer, J.D., Ph.D.**

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**Areas of Specialty:**

Intellectual Property, Family Law, Employment Business, Commercial Personal Injury, Probate, Trusts, Elder Law, Entertainment

Before the day of mediation, Sulmeyer said he wants to see all of the matter's necessary documents, including patents or technical drawings in copyright cases.

Speaking with lawyers at least once is another important component of preparation, according to Sulmeyer, who said gauging expectations and better understanding client dynamics is critical. Sulmeyer also said he does his best not to impose any particular style of mediating on disputes he handles, and he works closely with counsel ahead of time to understand their perspectives on what's best. But he is a proponent of joint sessions when they make sense.

"I'm a big believer in joint problem solving, and the best way to do that is to get together in a room," he said. "I always try, at a minimum, to begin the mediation in joint session, assuming the parties are willing to do that. ... I've had a number of instances where the parties and counsel have agreed to just have an initial

meet and greet joint session, and we end up settling the case in that initial joint session."

Trust attorney Robyn B. Christo, who worked recently with Sulmeyer to resolve a long-running, highly contentious probate case, said the mediator excels at resolving hotly contested family disputes.

"His background and training in psychology really helps him understand the personalities he's dealing with — not just the parties but also the lawyers," Christo said. "He's really good at helping people unpack or unpeel the layers of emotions that are sometimes decades old or lifetimes old. ... Those underlying interests and the emotions are sometimes a bigger part of the dispute, and if you can try to repair those, then the money part can get worked out."

Family law attorney Lawrence A. Moskowitz, who worked with Sulmeyer to resolve a complex divorce a few years ago, said the mediator really helped both parties to be better listeners.

"The couple in this case both needed to feel heard, and not just by Steve but by each other," Moskowitz explained. "What got the case to a point where both sides were ready to settle was that Steve kind of modeled and then enabled the idea of good listening, so that when each side had a better sense of what the other side needed, then the many pieces of the dispute sort of fell into place."

Defense attorney Dale J. Giali, who worked with Sulmeyer recently to resolve a consumer class action involving allegations of deceptive labeling, said the mediator wasn't afraid to "call it like he sees it."

"Mediations work for defendants when defendants feel they have a mediator who's going in there and fighting for them on appropriate points," Giali said. "Stephen did a great job of coming across as a mediator trying to bring parties together and coming up with a win-win. But at the same time, he wasn't afraid to make use of some tough love with the other side, saying, 'Here

is some weakness I see in your case, and you need to factor this in to the way you value the case.'"

Sulmeyer, who is also available for arbitrations at JAMS but hasn't yet conducted any, said he doesn't subscribe to the belief that a well-mediated settlement is one where both sides are equally miserable with the outcome.

"I know we can do better because I have," Sulmeyer said. "What I want people to know is I am eager to find that solution that feels like a win-win for both sides, where both sides may not get 100% of what they want, but they feel good about the process, and they feel good about the result." ■

*Here are some attorneys who have used Sulmeyer's services: Larry Moskowitz, Perry Johnson Anderson Miller & Moskowitz LLP; James Yoon, Wilson Sonsini Goodrich & Rosati; Dale Giali, Mayer Brown LLP; Robyn B. Christo, Epstein + Holtzapfel LLP; Aasheesh Shrivah, Tarter Krinsky & Drogin LLP.*