

# VERDICTS & SETTLEMENTS

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## Making the Process Work

*Roderick Thompson believes mediators must be more proactive in moving cases forward.*

By Shane Nelson

Special to the Daily Journal

JAMS neutral Roderick M. Thompson has seen the world of alternative dispute resolution evolve a fair bit since he conducted his first mediations in the late 1980s.

"Back then, it was almost like staying out of the way - just making sure the process worked - and you often ended up with a resolution," Thompson said of his first mediations more than four decades ago.

"Today, parties expect a mediator to be more proactive in pushing things along and taking a more active role," he added. "And it's more difficult to reach a resolution quickly - not always - but most often. Then it often requires follow-up and maybe even a second mediation session."

A 1980 graduate of what is now UC Law San Francisco, Thompson worked for 19 years at Pillsbury Madison & Sutro LLP, handling antitrust, competition and intellectual property matters. In 1999, Thompson moved to Farella Braun + Martel LLP, where he added a complex civil litigation focus to his existing practice.

But throughout his career as a practicing attorney, Thompson also tackled disputes as a mediator and arbitrator, working routinely on cases involving antitrust, competition and intellectual property issues.

"I like to be a fair and informed decision-maker," Thompson said of his work as an arbitrator. "I hope people end up with the feeling that I've listened, I understand and I've done my best to come up with a fair and right answer."

Thompson said he arbitrated his first case in the early 1990s and



Jana Ašenbrennerová /Special to the Daily Journal

handled roughly 50 arbitrations - eight that went to hearing - before he retired from his legal practice and joined JAMS as a fulltime private neutral in September of 2020.

"Since I joined JAMS, it's been a little bit more heavy on arbitration than mediation," Thompson explained. "And I've had a couple of very significant, large matters."

As a private neutral, Thompson said he's been working regularly these days on commercial, employment, healthcare, antitrust and intellectual property disputes. Before his mediations, Thompson likes to speak over the phone with counsel and receive briefs from all parties. He also encourages parties to exchange their briefs before the day of mediation.

"There's no better source than the horse's mouth - getting it directly from the other side," Thompson said. "But then I also encourage separate briefs just to me - confidential briefs that stay with me."

Thompson noted that on the day of mediation he is a fan of joint sessions and suggests the approach in cases where he feels that strategy will be useful. But he was quick to note that he defers to counsel's preference on joint sessions and tries to apply a flexible approach to all of his mediation work.

"Flexibility is really what I like to focus on," Thompson explained. "You can have any resolution you want - even if it has nothing to do with the underlying dispute. ... The only limit is your imagination."

### Roderick M. Thompson

JAMS  
San Francisco

#### Areas of Practice:

Antitrust  
Intellectual Property  
Employment  
Business  
Healthcare

Thompson's approach to mediation also relies heavily on listening carefully to the parties and attorneys, but he will move into a discussion of the case's merits when appropriate.

"When you get into a confidential caucus, I think that's the place to essentially play devil's advocate," Thompson explained, "and to give them some unvarnished truth about, 'I've heard your case, I've read your briefs, I have these reactions, and you have a problem here,' or 'you don't have a problem here.'"

Culver City plaintiffs' attorney Eric D. Chan used Thompson recently to resolve a healthcare payment dispute, and he said the JAMS neutral did a great job of navigating the practice area's complexities.

"Healthcare is so hard that if you come in not knowing anything, you can't be of much use to the parties," Chan said. "The caselaw in the area is evolving, so there's a lot of changes, there's a lot of disputes. And if you look at what the plaintiff says about the law and

what the defendant says, it's like night and day. So, I thought he bridged that gap really well and was able to add value."

Chan described Thompson as even keeled and fair, and he said the mediator did a great deal more than just familiarize himself with the merits of the case.

"Anyone can take the time to understand the law," Chan said. "But what you need to do is understand it as it applies to the parties, their business positions and how it really matters and plays out in the real world. And he did that, and I really appreciated that."

San Francisco litigator Anthony J. Dutra recently used Thompson as a mediator on a difficult partnership dispute, and he said the JAMS neutral worked well with clients.

"He was able to bridge a lot of the parties' differences," Dutra said. "Any time you have an inter-partnership dispute, there's a lot of emotion there, and I thought he did a good job trying to navigate the parties' relationships and try-

ing to find some mutuality and build trust between the parties."

Dutra said Thompson worked hard to reconnect the feuding principles in the case.

"Part of that was just a lack of communication," Dutra explained. "And he worked to try to get the parties to more directly communicate and just worked with the parties to find what their real concerns were and helped them to try and find a resolution that would address those concerns."

Los Angeles litigator Devin M. Senelick used Thompson recently to resolve another complex partnership dispute, and he said the mediator's "unwillingness to give up or get discouraged" really set him apart.

"It was very contentious," Senelick said. "This is one of those cases where both sides thought they should get a check, which obviously can't work. ... But Rod still felt that a settlement was achievable and put his money where his mouth was and doggedly followed

up with both sides to further explore the possibility of settlement - even when on the day of I thought there was no chance this case would settle."

Senelick also agreed that Thompson is terrific with clients.

"His approach was to remind my side of the downsides to litigation and the upsides of settlement," Senelick said. "He wasn't aggressive or nasty - as some mediators can be, regularly suggesting the client is making a bad decision. ... He was really open to hearing from the parties and trying to help the parties reach a good business decision without beating up on them."

*Here are some attorneys who have used Thompson's services:* Devin M. Senelick, Hooper Lundy & Bookman PC; Anthony J. Dutra, Hanson Bridgett LLP; Eric D. Chan, Athene Law LLP; Richard T. Mulloy, DLA Piper LLP; Cheryl L. O'Connor; Jones Day

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