

VERDICTS & SETTLEMENTS

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Judges' Judge

*Former Alameda County jurist Robert Freedman brings gravitas to ADR work.*By Malcolm Maclachlan
Daily Journal Staff Writer

Robert B. Freedman has a pithy answer for anyone who asks him to explain the difference between an arbitration and a mediation: "About five miles."

In his nearly two years as a neutral with JAMS, Freedman and his Apple Watch have logged a lot of miles. He handles a variety of civil matters in both formats, but more than three quarters of his cases have been mediations. Most of the time, these cases involve the parties sitting in different rooms while Freedman goes back and forth trying to get them to agree on a settlement.

"As a judicial officer, you're pretty sedentary," Freedman said. "If I don't clock five miles in a day-long mediation in the San Francisco office, I'm not doing my work."

Many of his clients have also appeared in his courtroom during his 21 years as an Alameda County Superior Court judge.

Kathryn A. Stebner, the principal with Stebner & Associates, a San Francisco-based firm specializing in elder abuse, said he "commands respect" and "is not touchy-feely."

"He brings the same judicial temperament into the mediation," Stebner said. "I would call Judge Freedman a judges' judge."

"Sometimes you don't want a friendly mediator, you want someone who has some gravitas," said Michael A. Laurenson, a partner with Gordon & Rees LLP in Oakland. "I would put Judge Freedman in that latter category."

It's a reputation Freedman has built without ever using his middle name: Brandeis. His parents both came from Ukrainian Jewish families who fled Europe. They met in Los Angeles, and he was born just a couple of years after the death of U.S. Supreme Court Justice Louis D. Brandeis. But Freedman said he had always considered the idea of using the name in a professional context as "unctuous," especially because they aren't related.

"My parents, because of our family background, were inspired by the first Jewish justice on the Supreme Court," Freeman said.

While there were people in their families who had college degrees, there was no one with a graduate degree — and cer-



Jana Ašenbrennerová / Special to the Daily Journal

tainly no lawyers. It was only while he was an undergraduate at UCLA that Freedman decided he wanted to be an attorney, after developing a fascination with classics like "To Kill a Mockingbird."

He spent 27 years as a partner in the small Oakland firm Wald & Freedman, later Wald Freedman Chapman & Bendes. Freedman joined the Alameda County Municipal Court in 1996 and became a superior court judge in 1998.

His most famous case was one that got reversed: his controversial 2006 decision siding with students who claimed the state's high school exit exam disadvantaged poor students and non-English speakers.

Freedman's courtroom could also be a kind of school. During breaks when attorneys left the room, he liked to break the "awkward silences" by asking the jury trivia questions on courts and the Constitution. Two of his favorites were the difference between TV judges and real judges (real judges almost never use their gavels) and which amendment gave women the right to vote (the 19th).

Freedman spent his last decade on the bench hearing a direct civil calendar and complex litigation cases. He also frequently served as a settlement judge.

He moved to JAMS in mid-2017 and set out to learn the trade by watching other neutrals in action. This gave him something he missed as a judge; he rarely got to learn by sitting in another judge's courtroom.

"It was enormously helpful to be able to see the very broad range of approaches,

even by the same neutrals in different cases," Freedman said.

He also sees one at home. Freedman said colleagues tease him that he's now in "a mixed marriage" because his long-time wife, veteran insurance and liability attorney Karren L. Freedman, joined ADR Services Inc. this year. Each brought kids into the marriage — her a daughter, him two sons — and now have three grandchildren as well.

One big adjustment, Freedman said, is lacking "the big hammer" of judicial authority. He can't order a party to jump on a plane and be in his courtroom on two days' notice. These days, he's more likely to settle for a telephone appearance.

Freedman said he's been hearing more workplace arbitrations lately, both individual and class actions, because companies have been taking advantage of employment laws that help keep them out of courtrooms.

But most of his work remains mediations across a wide variety of matters. He said he's learned to not give away too much of his own feelings on a case, because this can "throw cold water" on a potential settlement.

Robert C. Ward, who specializes in real estate and business disputes as a partner with Shartsis Friese LLP in San Francisco, said Freedman will tell parties "the weaknesses in their case." But he won't "throw out numbers."

"A lot of mediators are essentially used car salesmen. They don't really spend any time engaging in a principled negotiation," Ward said.

Robert B. FreedmanJAMS
San Francisco**Areas of Specialty:** business, employment, injury/insurance

Oakland sole practitioner Felicia C. Curran praised Freedman as a neutral who is scrupulous about maintaining parties' confidentiality and avoiding anything that could mislead counsel, such as downplaying the amount of money a defendant might have.

"He works at establishing rapport with your client," Curran said. "He's not judgmental and he's not there to critique your client."

Freedman said the best metaphor he's been able to come up with during a complex trial or mediation is one from his own life: that of a long ocean voyage.

"Long periods of tedium punctuated by moments of sheer terror," he joked.

Freedman first got interested in sailing at UCLA, becoming commodore of the sailing team at a time when it had to borrow boats from other teams. He still keeps a boat in the bay and has seen great white sharks near the Farallon Islands and enormous whales off of Half Moon Bay, near the Mavericks surf break.

Over a decade ago, he was part of a four-man crew that sailed an expensive boat from Hawaii to San Francisco Bay after a race. They were out of sight of land for two weeks, and caught a mahi-mahi so big they ate it for four days. At one point, they stopped and swam in the middle of the Pacific while just one person stayed aboard.

"It was as close to anything I would describe as a spiritual experience," Freedman said.

Here are some attorneys who have used Freedman's services: Robert S. Arns, Arns Law Firm; William S. Caspari, Alameda; Felicia C. Curran, Oakland; Gregory G. Iskander, Littler Mendelson PC; Michael A. Laurenson, Gordon & Rees Scully Mansukhani LLP; Laura K. Sitar, Pleiss Sitar McGrath Hunter & Hallack; Kathryn A. Stebner, Stebner & Associates; Mark L. Venardi, Venardi Zurada LLP; Robert C. Ward, Shartsis Friese LLP.