

Scholarly Approach

David Garcia of JAMS is known for having an 'academic bent'

By **Hadley Robinson**
Daily Journal Staff Writer

While in the midst of mediation of a landlord-tenant case, San Francisco lawyer Steven A. MacDonald decided he wanted a second opinion. He hired retired San Francisco County Superior Court Judge David Garcia for an independent evaluation.

It helped him get more than \$1 million for his clients.

"I paid for Judge Garcia's time independently, which gave me a lot of confidence in terms of upping my demand," MacDonald said. "I go to him even though he's more expensive than other mediators when I really feel that some adversarial lawyer has to be told from a position of supreme confidence what the law is."

Garcia, a neutral at JAMS for 14 years, has always had a reputation as a scholar of the law. He became a professor at the University of San Francisco soon after he finished his master's degree in constitutional litigation, and went from there to the municipal and superior courts.

"I've always had an academic bent," Garcia said.

In his 21 years on the bench in San Francisco, many of which were spent as a law and motion judge, Garcia was known to spew detailed legal knowledge off the top of his head, and lawyers say he had a reputation as being intimidating.

But that has changed since he has become a mediator. Lawyers find him personable, and open to sharing information about himself to clients to build trust.

"As a judge, we found him somewhat intimidating but as a mediator he shed that skin and has grown as a problem solver," MacDonald said. "It's a wonderful combination when you know just how strong he is on the law and he develops that other side that mediators have to develop."

Robert Salinas, partner at Sundeen

Salinas & Pyle in Oakland, uses Garcia frequently, and notes the difference between his personalities as a decision maker compared to as a facilitator.

"I think a judge's life as a neutral versus when they were on the bench, it has to look different. He has made it look very different," Salinas said. "I think he has made a very adept adjustment to those circumstances. He's just a good listener, willing to try to understand the perspective of the parties because that's a time-consuming process."

Plaintiffs-side employment attorney Cary Kletter of the Kletter Law Firm LLP in San Mateo frequently calls on Garcia to resolve disputes and said he knows personal details about the judge, such as his participation in ballroom dancing, because Garcia makes connections with clients as part of the resolution process.

"I feel like I know a lot about him as a person because he very openly shares about himself," Kletter said. "He engenders trust not just with my client, but also with the attorneys."

Garcia himself recognizes the different functions of being a neutral and a judge, and enjoys it.

"What you're listening to and for as a mediator is different, it's broader," he said. "You're paying attention to the parties as human beings, not just litigants."

Garcia's specialty is real estate, particularly landlord-tenant law, and employment, though he works on all types of commercial disputes.

He started his legal career at a small litigation firm in San Francisco's Mission District with half of his work on landlord-tenant disputes. He later taught a class at USF on the subject, and co-authored a landlord-tenant guide.

"Landlord-tenant litigation has been a hobby of mine since the 1960s," Garcia said. "I find the issues fascinating."

His knowledge of the law, and San Francisco's unique ordinances, make him a go-to guy for litigators handling not just residential disputes, but also commercial real estate issues.

"His knowledge of the ordinance and the way he deals with the realities of the risk to the tenants, it's superior," said Salinas, who works on the plain-



Hadley Robinson / Daily Journal

David A. Garcia

JAMS
San Francisco

Specialties: real estate, employment, commercial litigation

tiff's side. "He's a centrist, to the right of center maybe, so I would believe that most defendants should assess him as objective."

Bradford K. Newman, defense attorney at Paul Hastings LLP in Palo Alto, has often used Garcia to help resolve disputes.

"I think he has a demeanor that allows him to deal with the most complex issues and the most challenging personalities and skillfully do what he needs to do to get it done," Newman said. "His ability to assess a case is second to none."

Winifred Kao, litigation director for Asian Americans Advancing Justice, has used Garcia twice in employment matters, one involving 250 restaurant employees, and the other involving immigrant nail salon workers.

"He's done legal services before," she said. "He's worked with immigrant communities before. He's uniquely situated to help resolve a lot of the kinds of disputes that we have."

Lawyers also go to Garcia for his flexible approach. He calls himself a merits-based mediator, and though he has certain tendencies, he changes the way he handles matters based on the situation.

For example, Garcia would like to start every mediation with a joint session, but said he probably hasn't actually had one in 10 years.

"It's not a function of what I want, it's a function of what circumstances require me to do," Garcia said. "I don't want my natural inclinations to superimpose themselves in the process."

Lawyers like that he is adept with many mediation tools.

"He's quick, he's flexible in the

tone he can take," Kao said. "I think he's not just a one-tone kind of mediator. He can adjust and respond to where the parties are at and what they may need to understand the value of settling."

Kletter is a plaintiffs' lawyer, and said Garcia does a good job at making his clients feel relaxed, even if they might be overwhelmed with the legal process and its formalities.

"I honestly believe the mediation process for non-lawyers and particularly for individuals — often tenants or employees who don't deal with the legal system very often and are not familiar with the process — to be very intimidated by being a party to a lawsuit and going to a mediation at JAMS," Kletter said. "Judge Garcia kind of puts these fears at ease with his manner."

Here is a list of attorneys who have used Garcia's services:

Martin R. Glick, Arnold & Porter LLP, San Francisco; Mark Hooshmand, Hooshmand Law Group, San Francisco; Winifred Kao, Asian Americans Advancing Justice - Asian Law Caucus, San Francisco; Cary Kletter, Kletter Law Firm, San Mateo; Steven A. MacDonald, Steven Adair MacDonald & Partners, San Francisco; Bradford K. Newman, Paul Hastings LLP, Palo Alto; Robert Salinas, Sundeen Salinas & Pyle, Oakland