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MEDIATOR MAKES SURE EVERYONE GETS SATISFACTION

By Craig Anderson
Daily Journal Staff Writer

SAN JOSE - Even after doing it for years, Darrel W. Lewis still gets a lot of satisfaction out of settling legal disputes, an interest he developed late in his two-decade career as a Sacramento County judge but one he has honed ever since as a mediator.

Attorneys who use Lewis' services say he is a remarkably patient mediator who does not subscribe to the notion that a successful mediation is one in which everyone leaves unhappy.

"That's just the opposite of how Judge Lewis handles it," said Kenneth B. Shepard, a partner at Shepard & Haven in Sacramento.

While some mediators try to push reluctant attorneys and their clients into a settlement, Lewis, 63, wants the parties to decide to accept the terms of a proposed settlement on their own. That sometimes takes a little longer, and some attorneys wish he would be more aggressive, but most say they are happy he is so patient and allows the parties to take the time they need to agree to a settlement.

"He lets people come to that conclusion themselves," Shepard said.

One of Lewis' own advertisements states that he prefers to "gently guide the parties to their own resolution" instead of trying to force them into it. There is no case, he says, that cannot be settled.

Lewis said recently that he is less interested in determining the facts than he is in the psychology of reaching a settlement that satisfies both sides. That's why he is so attracted to mediation, which he handles exclusively now, instead of doing work as an arbitrator, which he did 20 percent of the time shortly after his retirement as a judge.

Lewis even spent three days, under the tutelage of a psychologist, learning how to listen empathetically.

"I was just fascinated by the process of understanding human emotions and reactions," Lewis said. "To me, that's much more challenging and much more fascinating than simply making a decision in an arbitration."

"I just think the mediation process is better for everybody," he continued. "In arbitration, you're focused on finding the truth and figuring out what happened. It's highly

unlikely that a judge or arbitrator can figure out what the facts are."

In most disputes, Lewis believes his own evaluation of the facts and the law is often "not relevant" because the parties know more about their own cases. And they are the ones, he said, who must decide to settle it.

Attorneys who have used Lewis' services say his approach can be remarkably successful. Thomas F. Hozduk, a partner at Tharpe & Howell in Sherman Oaks, said Lewis was able to persuade clients in two insurance bad-faith cases to accept settlement agreements his own clients previously had rejected.

"He was able to persuade my clients to do what I couldn't persuade them to do," Hozduk said. "Sometimes, I think he's calling more on his skills as an [amateur] psychologist than as a judge."

Hozduk was relieved, he said, because he did not want to take either case to trial.

But Lewis' approach is not always gentle. While always polite, the former judge asks "very pointed questions" of the lawyers, Hozduk said, and told one of his clients that "you're playing with your company's money."

Lewis himself said he takes advantage of his "aura of a retired judge" to press reluctant parties to accept settlements.

"I have heard cases like this for 20 years" on the bench, the retired jurist said he has told individuals who balk at a deal. "You're going to lose this."

But Lewis said that is a last option. He would much prefer that people leave his office happy. And, he said, most do.

A native of Sebastopol, Lewis did not dream of being a lawyer as a child. His parents were factory workers, and he planned on a business career after getting his master's degree in business administration.

Lewis spent two years in the military, stateside, during the Vietnam War, handling personnel duties. After his discharge, he went to McGeorge School of Law and discovered - during the summer in the Sacramento County district attorney's office - that he "really enjoyed trial work."

So he changed plans and, after passing the bar in 1972, took a job as a Sacramento County deputy district attorney. He spent five years working his way up to a supervisory position in the office before deciding to run against a judge he did not believe was qualified.

At first, Lewis said he hoped his early candidacy announcement would prompt someone else to challenge Municipal Court Judge Thomas M. Wallner, because he had not planned to become a judge. But no one did, and Lewis ended up unseating Wallner himself.

As a former prosecutor, Lewis spent his early years on the bench handling criminal assignments. But he ran uncontested for a vacant Superior Court seat in 1984 and began seeking out civil assignments.

"I wanted to find out more about civil law," he said. "Once I started, I enjoyed it more than criminal law. It wasn't the same case over and over again."

During his last two years as a judge, between 1997 and 1999, Lewis handled all of the court's civil settlement conferences and became more interested in the alternative dispute resolution process.

Lewis is an independent mediator in Sacramento. He handles all civil disputes except

family law, including family and real estate trusts, employment law and attorney malpractice.

David G. Knitter, a partner with Knitter & Knitter in Vacaville who handles wills and trusts and elder-abuse litigation, said Lewis is adept at preventing lawyers and their clients from being distracted from the dispute that needs resolving.

"He is good at keeping everybody focused on solving the problem instead of allowing personalities to come into it," Knitter said.

Jerome N. Lerch, a partner at Lerch Sturmer in San Francisco, said Lewis managed to persuade plaintiffs and defendants in two cases to agree to settlements after other mediators were unable to do so.

Both cases were legal-malpractice disputes. In one, the initial mediation with another neutral ended with one side walking out. But Lewis, whom Lerch described as "a very nice guy who is quite bright," had more luck.

"He was able to forge a relationship of trust with the litigants, and he got them to become realistic and see the business side," Lerch said.

The attorney said Lewis does a good job developing a working relationship with the litigants by continuing to talk about the case.

"Somehow, the way he does it gets the parties to see the value of coming to a compromise," Lerch said.

Attorneys say many other mediators commonly take a more aggressive approach, telling attorneys and their clients what they believe a case is worth and pushing hard for a settlement. If none is reached, everyone works through lunch, Shepard said.

If a mediation is going to last longer than half a day, Shepard added, Lewis buys lunch for everyone. And when he's done, he asks attorneys whether they had any criticisms or suggestions for what he could have done differently.

"I don't know of anyone who has made such an effort to learn and educate himself as Judge Lewis," Shepard said.

Here are some of the lawyers who have used Judge Lewis' services: Steven Clair, Clair & Rossi, Stockton; Thomas F. Hozduk, Tharpe & Howell, Sherman Oaks; Louis J. Anapolsky, Knox, Lemmon & Anapolsky, Sacramento; Norman C. Hile, Orrick Herrington & Sutcliffe, Sacramento; Jerome N. Lerch, Lerch Sturmer, San Francisco; Michael J. Christian, Jackson Lewis, Sacramento; Richard H. Dalrymple, Chico; David G. Knitter, Knitter & Knitter, Vacaville; Kenneth B. Shepard, Shepard & Haven, Sacramento.

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