

Daily Journal

VERDICTS & SETTLEMENTS

FRIDAY, DECEMBER 2, 2022

The human touch

Mediator-arbitrator James Emerson puts people at ease to quickly get to the crux of disputes.

By Shane Nelson

Special to the Daily Journal

After 12 years on the ADR Services, Inc. roster of neutrals, retired judge James C. Emerson said his view of the work he does as a mediator and arbitrator hasn't changed a whole lot.

"It was always an opportunity to try and resolve cases, and I still see it that way," Emerson said. "And it's particularly enjoyable when you're successful at it. ... If you succeed in a mediation, you have taken the burden away from these folks. If you have resolved their case, then they don't have to go home and think about it. They don't have to worry about depositions and so forth. Overall, it's a wonderful thing to resolve a case."

Emerson spent two decades on the bench in Santa Clara County, first handling criminal and then civil matters on the Municipal Court there in the early 1990s. After he was elevated to the Superior Court, he went back to a criminal calendar for a number of years before again taking on a wide variety of civil cases in the late 2000s.

Emerson joined ADR Services, Inc. in 2010 and has since been tackling a range of personal injury and real estate disputes as a mediator along with a substantial number of medical malpractice cases as an arbitrator.

"I make a real point of letting the parties know that arbitration is very, very much like a trial, and ... I try to be very, very thorough



Thomas Kurtz | Special to the Daily Journal

and very, very detail-oriented, and I try to write a good decision when the case is over," Emerson explained. "I like to have a good set of briefs. I like to listen carefully to the facts ... and I'm a stickler for not wasting everybody's time with closing arguments. I like to have written closing arguments that aren't excessively long — maybe in the 10-page range." San Ramon defense attorney Ann H. Larson used Emerson recently for a medical malpractice arbitration, and said his demeanor allowed the proceeding to move along in a professional and reasonable fashion.

"Neutral arbitrators are so different from a trial judge because the rules are more flexible," Larson said. "And it's just easier to try a case in front of people who are more reasonable addressing those. ... It's a stressful situation whenever you're trying a case — whether it's in arbitration or a jury trial. And I feel like he was trying to get the best out of both of us, so he was able to get the most information and then use his brain cells to come to a decision. And that's really all you can ask whether you win or lose."

Larson also described Emerson as a wonderful listener.

James C. Emerson

ADR Services, Inc.
San Diego

Areas of Specialty:

Real Estate
Personal Injury
Medical Malpractice
Business
Education Law
Government

“He also questioned the witnesses with his own things he felt maybe had not been resolved in the attorney questioning,” Larson explained. “Not all neutrals will do that, but I think that’s much appreciated. If there’s something that’s sticking in his craw and we haven’t addressed it, it’s great to be able to get that figured out, so he’s not left with insufficient information when it comes time to write up the award.”

San Jose trial attorney James L. Dawson appeared before Emerson when he was on the bench and has since used him as an arbitrator. Dawson said the retired judge has always been genuine and terrifically friendly with attorneys and clients.

“Obviously, in a binding arbitration, things are reasonably tense,” Dawson explained. “But his personality really puts everyone at ease, and I do think that helps him get to the bottom of things pretty quickly.”

Dawson said Emerson also

writes extremely thorough awards.

“You want a good, detailed decision, and you want the evidence to come out in a way that everybody feels they got a fair shot,” Dawson explained. “And he did write a very detailed decision after a proceeding that covered all the bases, so nobody felt as though they got the short end of the stick in terms of being heard.”

Before mediations, meanwhile, Emerson said he likes to receive briefs, but he typically doesn’t speak over the phone with attorneys beforehand. He generally doesn’t make use of joint sessions but turns frequently to mediator’s proposals when the timing is right.

“When you get to the point in your mediation where it’s just not going anywhere,” Emerson explained, “but you can see the writing on the wall, that’s when I like to use mediator’s proposals.”

Emerson described his approach to mediation as a combination of

facilitating and evaluating, but he was quick to emphasize his stance on listening.

“You have to give people the time to speak, and you have to listen to them carefully,” he said. “You have to absolutely give people their so-called day in court, and one of the benefits of mediation is to make sure that they don’t get shuffled off through the courthouse and they really have a chance to explain themselves.”

Mill Valley attorney Camilo Artiga-Purcell used Emerson as a mediator in a recent real estate dispute, and he said what distinguishes the neutral is his ability to genuinely connect with and understand clients.

“Judge Emerson does a deep dive into the legal issues, and he’s always beyond prepared,” Artiga-Purcell explained. “But to me what stood out was his ability to empathize with the parties and communicate in such a way to move the needle forward in very sensitive situations. ... Whether

they’re strong personalities or otherwise, that sort of human touch element he possesses, particularly when you’re dealing with very difficult issues, I just found to be very effective.”

Emerson noted he’ll be 75 next year, but has no plans to give up the work he’s doing to resolve disputes anytime soon.

“I keep thinking that at some point I should be retiring, but I enjoy it a lot,” he explained with a chuckle. “I really enjoy the interaction with the attorneys and the facts of the cases. It’s hard for me to say no, and I haven’t said no. ... The work just keeps bringing me back.”

Here are some attorneys who have used Emerson’s services: Ann H. Larson, Craddick, Candland & Conti; James L. Dawson, Gates Eisenhart Dawson; Camilo Artiga-Purcell, Artiga-Purcell Law Office; Michael A. Felsted, Muro & Lampe Inc; Craig S. Miller, Law Offices of Craig S. Miller PC.

Reprinted with permission from the *Daily Journal*. ©2022 Daily Journal Corporation. All rights reserved. Reprinted by ReprintPros 949-702-5390.



Your Partner in Resolution