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PERSPECTIVE

One Size Doesn't Fit All

John Drath doesn't approach dispute resolution with cookie cutter solutions.

By Shane Nelson

Daily Journal Staff Writer

Longtime trial attorney John M. Drath wanted to be a physician and he was premed for a time during his undergraduate work at the University of Washington, but one especially challenging subject let him know he'd started down the wrong career path.

"Organic chemistry told me I was never going to be a doctor," Drath recalled with a laugh. "And I've talked to a lot of lawyers who've had the exact same experience. They were going to be doctors, and then organic chemistry was their downfall. It really separates the wheat from the chaff."

Drath graduated from the University of San Francisco School of Law in 1969 and passed the bar in 1970. He spent the next 44 years representing clients, often on the defense side and regularly tried cases before juries.

A substantial chunk of Drath's more than four decades as a litigator was dedicated to representing attorneys embroiled in malpractice disputes, an area of legal focus he said has helped him a great deal in his work today as a private neutral.

"They always insisted they'd never done anything wrong," Drath said with a chuckle. "And when you represent a lawyer, you are in many ways negotiating directly with your client over the handling of the case. ... You need to discuss the pros and cons with the lawyer and get him or her to the point that they understand that it makes more sense to resolve the case than not."



Gary Wagner / Special to the Daily Journal

Drath has been working as a mediator and arbitrator for ADR Services, Inc. full time since 2014, and he said he's mediated many legal malpractice matters during that time as well as contract disputes, personal injury and landlord-tenant cases. Most of the arbitration Drath has done has, however, focused on medical malpractice although there have been some uninsured motorist and contractual disputes.

"Somebody once said, 'If you do arbitration, you'll have a friend for a day and an enemy for life,'" Drath said. "But I just decided that as long as my decisions were well-reasoned, somebody obviously

was going to be disappointed, but hopefully, they understood how I reached the decision and wouldn't hold that against me."

San Francisco plaintiffs' attorney Doris Cheng has used Drath as a mediator and an arbitrator, and said the fact that he's not a retired appellate justice or trial court judge certainly isn't a negative.

"John has a very good sense of fairness," Cheng said. "And he's a guy who actually used the law in real life when he was practicing, so having an arbitrator like him, there's not a whole lot that gets by him."

Cheng also noted that Drath handled evidentiary and discovery issues especially well.

John M. Drath

ADR Services, Inc.
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Career Highlights:
Highlights to go here

Areas Of Specialty:
Professional Malpractice
Personal Injury
Tenant-Landlord
Insurance
Elder Abuse

“And he’s very good at letting both sides speak their mind and make their case,” she continued. “And more importantly, he’s sharp about what matters and what doesn’t matter within the means of the applicable law.”

Before mediations, Drath said he likes to receive detailed briefs from both sides, and he will phone attorneys beforehand, hoping to prepare himself to hit the ground running. He’s not a fan of joint sessions and said they can often be counterproductive.

He will make use of mediator’s proposals but said he often sees them as a last resort. “My No. 1 goal is to get the parties to reach a number they mutually agree on,” Drath explained. “But my two rules for mediator proposals are: No. 1 I don’t do them unless both parties or all parties want me to, and No. 2, unless there’s a number that I think has a very good chance of resolving the case.”

Drath also said he often makes use of both a facilitative and evalu-

ative approach as a mediator.

“I can be either or both depending on the circumstances. Mediations are not cookie-cutter processes. Even very similar cases can be very different depending on the lawyers involved and the parties involved,” he explained. “I’m not wearing a black robe, and I tell the parties right up front, ‘I’m not here to make any decisions.’ I’m just there to help them get to a number where it makes more sense to resolve the case today than cast their fate to 12 total strangers in a jury box.”

Los Angeles defense attorney Paul A. Bigley has used Drath to mediate more than a dozen catastrophic injury and wrongful death matters, and he described him as a top-tier neutral.

“John Drath is in a league of his own,” Bigley said. “John will challenge you, and I like that about him. If he thinks we’re dead wrong in how we’ve evaluated the case ... he doesn’t mind sharing that to get movement.”

But Bigley noted that Drath doesn’t employ an abrasive approach. “He has a folksiness. He’s genuine. He’s honest. ... He’s extraordinarily likable. He’s just one of those guys that it’s in his DNA,” Bigley said. “He’s immediately engaging and disarming, which can be good and bad, because he’s a guy you want to talk to and you want to pour your heart out to. But you can most definitely trust him when it comes to mediation.”

Los Angeles plaintiffs’ attorney Grant K. Riley said Drath resolved an extremely hard-fought toxic lead case that two other mediators before him could not.

“He worked very quietly behind the scenes and was extremely effective at wrangling all the cats and getting all the various insurance companies and defendants on the same page,” Riley said, noting Drath spent two months working to settle the dispute.

“He’s very patient,” Riley added. “He kept the lawyers in check. He allowed the parties to express

themselves when they needed to vent and just stayed very focused on the goal. ... And he really, really stayed with it.”

Drath said resolving disputes is work he enjoys tremendously, and he sees bridging the gaps between parties as a way to free folks from extraordinary tension and stress.

“Cases are scary for people, and litigation is scary,” he said. “Often-times, I will tell litigants, ‘The only people who have fun in trials are the lawyers. It’s not a lot of fun for the parties. If we can get the case resolved this way, with you having a vote in the outcome as opposed to a trial, you’re going to be much better off for it.’”

Here are some attorneys who have used Drath’s services: Grant K. Riley, Riley Esroff LLP; Paul A. Bigley, Mathis & Gary; Doris Cheng, Walkup, Melodia, Kelly & Schoenberger; Steven J. Brady, Brady Law Group; Wakako Uritani, Lorber, Greenfield & Polito LLP.