

Point Man

Neutral gets straight to the point. Judge Richard S. Flier (Ret.) blends varied background as prosecutor, judge in his work helping parties resolve differences outside court.

By Rachel Swan
Daily Journal Staff Writer

SAN FRANCISCO — Retired judge Richard S. Flier approached his former life as a Contra Costa County prosecutor with gusto, often clocking 16-hour days in court and once setting a record for the most felony trial days in a year.

Now Flier is happy to settle disputes outside of court. His post-bench career as a neutral with ADR Services Inc. has allowed him to find solutions that work for both sides, without the financial and emotional strain of a drawn-out court battle.

"I think the work I do is very satisfying," said Flier, who lives in Lafayette and works in San Francisco. "I've seen the other end of civil litigation, and at least 50 percent of people who go through it are disappointed with the end result, either because they lose or because the burden is so great that they wonder if the goal was worth the effort."

Indeed, Flier saw every kind of court battle under the sun over 12 years as a prosecutor and two decades as a Contra Costa County Superior Court judge.

On the bench, he presided over the 1989 Shell oil spill case and a dispute between Industrial Indemnity Company and Bank of the West over unfair advertising practices. Flier also did three stints as a civil fast-track judge, which required him to oversee roughly 25 percent of all litigation in Contra Costa County.

That helped Flier when he took his current post as a neutral in 2005. The new job combines a small number of arbitrations with scores of mediations, he said.

He has helped negotiate wage-

and-hour cases, commercial litigation, real estate developer deals, probate and trust disputes and the occasional wild card arbitration, such as one he settled between the buyer and seller of a home.

Flier also serves on a panel to decide cases at Kaiser Permanente that include everything from medical malpractice to contract disputes.

Lawyers who have held mediations with Flier say he knows a wide range of case law by rote, which helps him resolve thorny disputes without getting lost in the details.

"He mediated a very difficult, contentious case for us involving multiple parties," said Delia A. Isvoranu, a partner at Brown Eassa & McLeod LLP who recently worked with Flier on a commercial and employment dispute involving two individuals and two corporations.

Though the parties are still finalizing their agreement, she said Flier did an excellent job bringing all of the parties to an agreement after three sessions.

Having experience on the civil bench helps Flier solve the intricate dollars-and-cents arguments that constitute much of his workload, but a background in criminal law never hurts, either.

Hayward attorney Leonard S. Becker said Flier drew on his inner trial lawyer to settle a dispute over damage awards in a reckless driving case.

Becker, who represented the injured plaintiff, said the case was difficult partly because lawyers on both sides had to persuade the district attorney's office to downgrade the original felony charge, since no insurance company would cover criminal negligence.

"It was a case where the defen-



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Richard S. Flier

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Area of specialty: trusts, probate, business disputes, real estate

dant and plaintiff probably wouldn't be the best witnesses in the world," Becker said, adding that Flier helped point out deficiencies in the defense's position. Ultimately, the parties settled on a restitution award that also absolved the defendant of a more serious crime.

While many mediations require Flier to sift through corporate laws or call balls and strikes between commercial litigants, he also spends a fair amount of time resolving fights between family members.

The retired judge says many of the probate and trust cases he adjudicates appear to be about money but are actually driven by sibling rivalries.

"Money isn't as important as the siblings' perceptions that they're being treated unfairly or that [someone] got together with mom and inappropriately influenced her, and that's why she set up the trust this way," he said. "They're what you might call touchy-feely issues, but they're genuine."

Soft-spoken in person, Flier has the temperament to deal with familial squabbles, though lawyers say he's not reluctant to express an opinion.

"He's not at all hesitant about expressing his view," said Gregory L. McCoy, a Danville-based partner at Gagen, McCoy, McMahon, Koss, Markowitz & Raines who has worked with Flier in roughly half a dozen mediations, along with one in which the retired judge served as a discovery referee.

Two of Flier's best characteristics, according to McCoy, are speed and candor. He gets straight to the point and doesn't mince words.

Such qualities become a person who has to resolve up to four disputes a week. Flier says mediation is not as taxing as being a fast-track judge in Contra Costa. But it's more gratifying.

Here are some attorneys who have used Flier's services recently:

Leonard S. Becker, Hayward; Henry J. Bongiovi, Santa Barbara; Richard T. Bowles and David W. Trotter, Bowles & Verna LLP, Walnut Creek; John F. Cavin, Bardellini, Straw, Cavin & Bupp LLP, San Ramon; Peter Fidopiastis, Glens Falls, N.Y.; William Frimel, Hefernan Seubert & French, Menlo Park; David E. Harris, Miller Starr Regalia, Walnut Creek; Delia Isvoranu, Brown Eassa & McLeod LLP, Oakland; Anastasios G. Konstantin, Oakland; Gregory L. McCoy, Gagen, McCoy, McMahon, Koss, Markowitz & Raines, Danville; Jeanne N. Mirante, Watson, Hoffe & Hass, Richmond; Barbara E. Scramstad, Martinez; Victor F. Stefan III, The Boccardo Law Firm, Inc., San Jose.