



Hon. Kevin J. Murphy

Santa Clara County Superior Court (Ret.)



Following 28 years on the bench which led to the Santa Clara Trial Lawyers Association's Lifetime Achievement Award, Judge Murphy joined ADR Services, Inc. in June 2011. During the past 12 years, he has become one of the leading mediators, arbitrators, and discovery referees in the State of California.

Notably, while on the Superior Court, Judge Murphy held a number of key assignments including Discovery Judge, Case Manager for three years, where he conducted law and motion hearings and oversaw settlement conferences, and in 2008 was the Supervising Judge of the Civil Division of the Court.

Most importantly, as a trial judge, Judge Murphy presided over 1,000 court and jury trials involving a wide variety of topics including trade secrets, business contracts and dissolutions, employment discrimination, and real estate.

While serving as a Superior Court Judge, Judge Murphy also held the position of Adjunct Professor of Law at Santa Clara University School of Law teaching classes in Civil Remedies and Ethics.

MEDIATIONS

Given his extensive background as a judge and law school professor, Judge Murphy mediates a wide variety of cases with special emphasis on employment/labor, business, real estate, legal and medical malpractice, sexual assault torts, and complex litigation disputes including class actions. He has achieved a high settlement rate due in part to a willingness to discuss mediations with counsel prior to the mediation date and his relentless follow-up of any unsuccessful mediation done without cost to the parties.

Judge Murphy's philosophy about mediations includes his belief that, when possible, the parties are entitled to an honest evaluation of the lawsuit. Drawing upon 28 years of experience as a judge, and 12 years as an arbitrator and reference trial judge, he evaluates each case with an eye towards the probable trial result. In appropriate situations, he will offer opinions about potential trial outcomes.

ARBITRATIONS

During his time with ADR Services, Inc., Judge Murphy has been selected to serve as an arbitrator in over 200 cases. A number of those cases have proceeded to arbitration hearing including lawsuits addressing dissolution of corporations, legal and medical malpractice, residential and commercial real estate, business contract disputes and in one instance an action brought by approximately 100 customers against a nationwide food delivery technology company for discriminatory pricing.

Judge Murphy is known as an arbitrator that strictly applies the law and who refrains from making unsupportable compromise decisions for inappropriate reasons, such as a desire for return business. In a June 9, 2023, Daily Journal article about Judge Murphy, titled "Genuinely Honest," Judge Murphy was quoted as saying, "I'd rule against my own mother at an arbitration if the law and the facts supported such ruling."

DISCOVERY

As a result of having been appointed to serve as discovery referee by the Federal courts and California State Courts in eight counties, Judge Murphy has handled over 100 discovery cases. Those appointments oftentimes involved multiple parties and issues involving various privileges and rights of privacy. His approach to discovery is to strictly apply the appropriate discovery laws and, recognizing the need to promptly move cases to trial, to issue reasoned decisions within five days of submission.

REFERENCES

In addition to discovery reference assignments, Judge Murphy has, among other things, conducted reference trials, administered non-profit elections, decided attorney fee disputes, and apportioned damage awards.

EMPLOYEE DISCIPLINE HEARING OFFICER

Judge Murphy has been selected by government agencies and employees to conduct discipline hearings on a number of occasions including case involving a County action against a Deputy District Attorney for violating criminal discovery laws, a School District proceeding against an employee for stalking another employee, and a School District allegation against a teacher for sexual harassment.

ELECTION ADMINSTRATOR

As a result of court appointments, Judge Murphy has administered four elections for nonprofit organizations. Three of the elections involved contested board elections at religious organizations (Sikh and Muslim religious communities), and the fourth election was for the Board of Directors of a charity for the physically challenged.

JUDICIAL AND LEGAL BACKGROUND

1989-2011	Superior Court Judge, Santa Clara County
1995....	Supervising Superior Court Judge Criminal Division
2003....	Supervising Superior Court Judge Criminal Division
2006....	Superior Court Discovery Judge
2008....	Supervising Superior Court Judge Civil Division
1983-1989	Municipal Court Judge Santa Clara County
1973-1983	Deputy District Attorney Santa Clara County

TEACHING LAW AND LEGAL PRESENTATIONS

Judge Murphy was an Adjunct Professor of Law at Santa Clara University School of Law for nine years, teaching classes in Legal Ethics and Civil Remedies. He has also lectured extensively to law firms, bar associations, and through CLE presentations on the subjects of trial tactics, legal ethics, arbitrations, and judicial references.

REPRESENTATIVE CASES

EMPLOYMENT AND LABOR LAW

- Public employee discrimination lawsuit filed by an administrator against the Superior Court; settled at mediation.

- Retaliation action brought by employee against a chain of health clubs alleging that she was fired for reporting contaminated water in the swimming pool; arbitrated for five days.
- Class action mediation brought by employees against the owner of over 200 retirement communities, resolved at mediation. Primary issues were the failure to pay overtime and permit legally entitled meal and rest breaks.
- PAGA action filed against owners of three Bay Area hotels; resolved at mediation. Primary issues were uninterrupted breaks and failure to pay for all hours worked.
- Age and disability discrimination filed by professor against a medical school; settled at mediation.
- Retaliation claims filed by accountant against large corporation. Accountant claimed he was terminated for revealing that company was publishing false financial reports. Dispute resolved at mediation.

BUSINESS AND CONTRACT

- Breach of contract lawsuit pending for four years brought by owner of a San Francisco Club against landlord and co-tenant, a large restaurant chain, for damage caused by failure to maintain plumbing that resulted in flooding and major mold damage. Settled prior to jury selection through a mediator's proposal.
- Arbitration action brought by multiple parties against a nationwide food delivery technology company alleging discriminatory pricing.
- Dispute over proper membership of the Board of Directors of a nonprofit corporation and claims of legitimacy by two separate groups. Resolved through arbitration.
- Breach of contract dispute involving United States and Chinese companies over product distribution worth approximately \$20 million dollars.
- Lawsuit filed by two Fortune 500 technology companies against defendants alleging falsification of orders and invoices and use of fictitious business names to defraud plaintiffs into extending lower prices. Additionally, the defendants were charged with selling counterfeit products. Resolved at mediation.

PERSONAL INJURY INCLUDING SEXUAL ASSAULTS

- Lawsuit filed by guardian of wheelchair bound physically and mentally disabled adolescent against college for multiple sexual assaults perpetrated by employee. Assaults included a rape of the victim in the handicapped section of a public restroom. Case settled at mediation.
- Case involving injury caused by an improperly secured concrete item falling from a truck and striking the plaintiff, resulting in permanent paralysis. As a result of the injury, plaintiff was confined to a wheelchair and unable to work. Case resolved for a large 7-figure number at mediation.
- Negligence action against company that maintained aircraft that crashed and caused significant injuries to two occupants. Primary issue was whether crash was a maintenance failure or pilot error. Case resolved at mediation.
- Airplane crash leading to two deaths and the destruction of two homes. Primary issue at arbitration was the proper interpretation of insurance coverage.

- Lawsuit brought by several parents against School District for the sexual molestation of their elementary school children by a teacher. Case settled at mediation.
- Two mediations involving allegations of sexual molestation of children by representatives of two major religious organizations.

FINANCIAL ELDER ABUSE

- Action filed against one of the top three United States banks for financial abuse. The bank negligently allowed the plaintiff's bank account to be drained of over a million dollars by a scam artist. Primary issues were liability and causation. Case resolved at mediation.
- Lawsuit involving senior citizen facing foreclosure proceeding involving home and business resulting from reverse home mortgage. Primary issue was whether party had been defrauded when signing mortgage documents. Lawsuit resolved at mediation.
- Two 80-year-old plaintiffs faced foreclosure of their home because of a contract they allegedly signed in order to obtain a home improvement loan. The primary questions focused on whether the key document was in fact signed by the plaintiffs and, if signed, whether they were misled about the meaning of the contracts. Settled at mediation.

LEGAL MALPRACTICE

- Lawsuit filed against a large law firm for negligently handling three separate litigations. In connection with one case, the trial attorney failed to appear for trial and when an appearance was finally made, he was unprepared, leading to the plaintiff being found liable. Settled at mediation.
- Arbitration claim filed against law firm for the negligent preparation of trust documents and the failure to cure the negligence once it was discovered. The plaintiff alleged that as the result of the negligence, she became involved in two separate lawsuits resulting in damages in the form of attorney's fees and diminished property values which were tied up because of the two litigations. Case was arbitrated and the primary issues were causation and the proper calculation of damages.
- Two legal malpractice actions alleged against tax law firm; settled at mediation.
- Legal malpractice case alleged against employment attorney for giving incorrect advice regarding the question of whether employees were in fact employees or independent contractors. Settled at mediation.
- Legal malpractice action against family law attorney regarding whether proper custody advice was given. Case was arbitrated for three days.

MEDICAL MALPRACTICE

- Arbitration involving surgical procedure where the doctors, due to a failure to review all medical records, removed the wrong fallopian tube.
- Arbitration where plaintiff agreed to hysterectomy, but during the surgical procedure, the doctors removed claimant's appendix and excised an exterior mole. The primary issue was whether consent was properly given for the surgical procedures not specifically authorized.

- Lawsuit against hospital and individual doctor where the parents of a minor contended that there was a failure to properly diagnose child's mental condition leading to improper prescribing of medication. Settled through mediation.
- Wrongful death action against a hospital by parents for failing to send medical helicopter to accident scene in time to save their child's life. Resolved through mediation process.

REAL ESTATE

- Case filed by home purchaser against seller, real estate broker, and escrow company for damages resulting from, among other things, the failure to file the correct documentation, preparation of false documents, and failing to reveal known property damage. The case had been pending for three years and had been through a prior mediation. Case settled at mediation.
- Easement violation action alleged against a utilities provider involving claims of property damage and violations of injunctions; resolved at mediation.
- Neighbor dispute regarding location and scope of several easements impacting landscaping and access to one property settled at mediation.
- Real estate partnership dissolution action involving the proper valuation of both real and personal property settled through mediation.
- Sale of private school, including real property, that lead to claims of nondisclosure and improper representation of value. Settled at mediation.

PROBATE

- Five family member disagreement regarding the proper administration of trust and distribution of property. Assets valued at over \$10 million dollars. Case settled.
- Probate dispute over proper ownership of well-known bakery company that involved both family members and third parties; mediated.
- Four siblings disputed the proper distribution of parents' estate. The primary issue was whether the will was forged by one of the parties. Resolved at mediation.