

# Daily Journal

## VERDICTS & SETTLEMENTS

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# Lets lawyers lawyer

## *Stephen McAvoy allows attorneys to mini-direct to make their case in mediations*

By Shane Nelson

Special to the Daily Journal

**A**DR Services Inc. neutral Stephen H. McAvoy wrote out his first novel, a 347-page murder mystery entitled “Dead Lawyers,” entirely by hand.

“I didn’t know how to type back then,” McAvoy explained with a laugh. “I typed with two fingers.”

A lifelong fan of mystery books and movies, McAvoy said it took him about three years to write the novel and then another two to revise it, but if he could go back and do things again, he might reconsider the release date.

“It was released in March of 2020. You want to talk about ‘dead on arrival?’” McAvoy said, mentioning plans he’d made to hold signing events at The Last Bookstore in downtown Los Angeles and the Mysterious Galaxy Bookstore in San Diego.

“The pandemic shot all that to hell,” he said.

Even so, the longtime trial attorney hasn’t let that experience discourage him. He’s in the middle of writing a second novel – this time entitled “Dead Husbands.”

“I’m typing that one,” he said. “Right now, I’m on Chapter 11.”

McAvoy spent 28 years representing consumers, businesses and insurance companies in employment, construction defect and personal injury cases. He said he was on the plaintiffs’ side for about half his career as a trial attorney and spent the other half representing defendants.

In 2008, McAvoy said, he decided to redirect his focus toward mediating and arbitrating full time largely because he found



Thomas Kurtz / Special to the Daily Journal

the work more fulfilling.

“Doing mediation is just a lot more fun,” he explained. “It’s just a lot more rewarding to help people get cases resolved than it is to sit behind a desk preparing discovery or taking depositions or arguing motions.”

A majority of the disputes he’s worked to resolve have involved employment law, but McAvoy said he also regularly tackles personal injury, construction, business and real estate cases. And his time spent representing clients on both sides of the aisle as a trial attorney provides critical insight.

“That gave me a flavor for how each side perceives a case,” McAvoy explained. “In a media-

tion today, 80% of the time when I go into the defense room I’m talking to an insurance adjuster. And as a practicing attorney, I spent years dealing with insurance adjusters and understanding their perspectives on things because they’re the one holding that checkbook.”

Talking with plaintiffs is another area of expertise for McAvoy, who said he typically works hard at the beginning of each mediation to develop trust with parties, including occasionally sharing stories with claimants about his own difficult recoveries after multiple surgeries.

“I used to be an athlete two lifetimes ago. I’ve got one fake

### Stephen H. McAvoy

ADR Services Inc.  
San Diego

#### Areas of Specialty:

Employment  
Personal Injury  
Business  
Construction  
Real Estate

hip, I'm two months away from another fake hip, and I've got a foot of metal in my back because I got my lower back fused," he explained. "Sometimes, I'll show them photographs of the X-ray of the 10 screws I have from L1 to L5."

McAvoy said he likes to receive briefs ahead of a mediation, and he frequently speaks with attorneys beforehand. He typically begins with a more facilitative approach, and routinely starts by letting the defense know he'll be working a great deal with the plaintiffs at the outset.

"A lot of times – especially in cases that are personal, and employment cases are often very personal – I need to spend some time with the claimant to allow them to tell me their story," McAvoy explained. "They have to be able to vent. They need to be able to process what they believe is wrong, and that often takes time."

As the day progresses, McAvoy

said he shifts into a more evaluative approach, making use of his extensive experience as a trial attorney to inform both sides about what he sees as pros and cons of their positions. Mediator's proposals are a tool McAvoy said he also uses often but not without agreement from both sides.

Employment defense attorney Paul F. Sorrentino has used McAvoy many times to settle cases, and he said the neutral is highly respected by both the plaintiffs' and defense bar.

"In the past, he's certainly made mediator's proposals that were not favorable for the defense – my clients," Sorrentino said. "And yet because of the way he's gone about the process – reading the briefs, understanding the facts and the law, asking the pertinent questions – my clients have said, 'I don't like it, but I understand it, and we're going to pay it.' And I'm sure the plaintiffs' attorneys' clients have felt the same way."

Plaintiffs' attorney Joshua D.

Gruenberg has used McAvoy to successfully mediate a number of employment cases, and he said the neutral is well liked by claimants.

"Steve relates really well to people who are suffering," Gruenberg explained. "He has a demeanor that puts them at ease. He's very kind and empathetic and understanding and makes our clients feel like they're being heard and understood, and that's always very helpful."

Personal injury attorney Aaron B. Salomon said McAvoy has resolved all the cases he's used the mediator on, and he's a big fan of a joint session approach the neutral will occasionally employ if both sides agree.

"Pretty much at the beginning, Steve will bring the lawyers into a room with the adjusters, and he'll let you present witness testimony from your client, and he'll let you put on some type of opening statement," Salomon said. "He really lets you lawyer when

you're in mediation. Whereas a lot of mediators just want the facts, and they just want to have separate caucuses and go back and forth and back and forth."

Salomon said McAvoy's joint session approach has made a big difference in personal injury matters that he's used the neutral to mediate.

"Oftentimes, we have adjusters who may have never met our client other than reading deposition transcripts," Salomon explained. "So that opportunity to present your client and do a little mini direct right there in the mediation and show the opposing side why the case is worth what we're asking for is really helpful."

*Here are some attorneys who have used McAvoy's services:* Joshua D. Gruenberg, Gruenberg Law; Paul F. Sorrentino, Jackson Lewis PC; Alisa A. Martin, AMartin Law PC; Aaron B. Salomon, Pines Salomon Injury Lawyers APC; Rodrigo E. Guevara, Abogato LLP.