

VERDICTS & SETTLEMENTS

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Staying in Motion

Retired LA County Judge Michael Johnson wins praise for resolving tough cases.

By Steven Crighton
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Mediations are like wheels, former Los Angeles County Superior Court Judge Michael Johnson said. If they're not kept in motion, they're going nowhere fast.

With two decades experience on the bench, and 21 years as a civil litigator prior to that, Johnson's no stranger to the hangups and roadblocks that can prevent parties from settling a case, and he knows how to get past them.

Having moved to ADR Services Inc. last year, Johnson said he's found the new job tends to call for a bit more interpersonal work and far more listening. That often means hearing parties sound off about grievances that might not be relevant to the case or have an adequate remedy under law.

Johnson said he's more than happy to hear them out and can even find it an integral step in the resolution process. But the parties didn't enlist him to try and listen to their personal beefs. They brought him on to resolve the case.

"I tend to be a fairly evaluative mediator, and while it's important to hear people out and to react, I'm looking for solutions that are more structural," Johnson said. "I figure they're coming to me because of my background, and I'm not a psychologist, or a therapist. I'm a judge, and a lawyer before that."

So Johnson will ask them, "Have you thought about how a judge will respond to this?" Or, "How are you going to prove that?" He feels his experience dealing with jury trials has given him pretty good insight into how a jury is going to react to something, which he can use to great effect in a mediation.

His case list is almost entirely comprised of employment and business litigation, and Johnson said most of the parties he's dealing with aren't doing so by choice. Most are already in litigation and seeking court-ordered settlement negotiations. Given that, Johnson feels the court's perspective is the most valuable thing he can provide.

"I'm going to give you my views of

Michael Johnson

ADR Services Inc.
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your strengths and weaknesses, and you've come to me because you're interested in that," Johnson said. "You don't have to accept it, but it could help you move towards a meeting point with the other side."

Frank W. Nemecek, a partner with Nemecek & Cole APC, said he argued two trials in front of Johnson during his time on the bench and has since used him as a mediator. While Johnson had a reputation as a solid jurist with "one of the sharpest minds on the bench," Nemecek said, "none of that means he'd be any good as a mediator."

But the swift resolution to Nemecek's case last year was proof enough to him that Johnson's transition to mediation has been a smooth one. Nemecek represented an attorney being sued by a former client who claimed the terms of her divorce settlement agreement amounted to legal malpractice.

He said Johnson was "in a nice but firm way able to get the [opposing counsel's] client's ear" and get her to understand the weaknesses of her case.

"That makes it really hard to settle a case. A lot of guys are arm twisters or table pounders, but he has a very gentle but firm demeanor," Nemecek said, adding he was happy with the settlement terms. "I think he sent the message to the other side in a very creative way that it would be best to get the case settled."

Difficult personalities might make settlement discussions a bit bumpier, but ultimately Johnson said they're not much harder to deal with. He hears them out, and then circles back.

"Whatever it is, you just have to keep circling back," Johnson said. "When you're in court, you're not going to have someone who's king, who will say, 'I like this business, I will just bend all the



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rules to help them out.' You're going to be dealing with what the courts have said on that.

Nixon Peabody LLP attorney Ryan Duckett said he had a business dispute so toxic most people likely wouldn't want anything to do with it. Representing one of two founding partners of a fledgling trucking company turned multimillion dollar business, Duckett said it was the most acrimonious business split he'd ever seen.

"Nobody wanted to touch this. I wouldn't know of an arbitrator or mediator who'd want to be anywhere near it," Duckett said. "The first one we had actually had to back out of the case."

But having seen Johnson unwind complex disputes during his time as a judge, Duckett said he knew Johnson could broker a settlement when no one else could.

"If he goes to court, he's going to know how it's going to play out. There's no 100% certainty in a jury trial, of course, but he's very convincing," Duckett said. "So when we'd thought we'd 'agreed to disagree,' he settled it. It's funny, because my client looked at me like I'm the hero."

Linda Miller Savitt, a partner at Ballard Rosenberg Golper & Savitt, said Johnson "uses reasoning and logic to get the result as opposed to just pounding the table." And he's not badgering parties into agreeing to an acceptable middle ground; he's genuinely working to bridge their two positions, Savitt said.

"He was effective at getting the legal points across in a very lowkey way,"

Savitt said. "He evaluates the positions, not the money. And after talking a really long time with us, ultimately, everybody agreed."

Savitt said she felt particularly comfortable taking disputes with a business component to Johnson, given his time on the bench and his time as a civil litigator. He's generally willing to facilitate requests if, for example, parties wanted a pre-mediation joint session or mediator's proposal.

"He understands what's possible and possible, but the big thing is he makes an effort to understand everybody's perspective," Savitt said.

Johnson said he's more than happy to pitch a mediator's proposal if asked, particularly when it's just a matter of closing a gap and neither side seems willing to budge.

Somewhat surprisingly, Johnson said he's found since leaving the bench, many parties ask for them. Given a fair share of his cases are arbitrations, it may have something to do with the fact that he's no stranger to making rulings.

The following is a list of attorneys who have used Johnson's mediation services: Ryan Duckett, Nixon Peabody LLP; Alan S. Gutman, Gutman Law; Genie E. Harrison, Genie Harrison Law Firm; Peter Healy, Law Offices of Peter Healy; Linda Miller Savitt, Ballard Rosenberg Golper & Savitt; Claudia L. Stone, Nemecek & Cole; Dean A. Rocco, Wilson Elser Moskowitz Edelman & Dicker; Steven Zelig, WLA Legal Services Inc.; Michael Zelman, Southern California Labor Law Group.