

VERDICTS & SETTLEMENTS

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Setting Expectations

Mark LeHocky of ADR Services tries to understand each adversary's world view so he can more efficiently direct parties to a resolution

By Steven Crighton
Daily Journal Staff Writer

Mark LeHocky has a way of making his job look easy.

“People have said to me, ‘It must be nice that there’s no drama for you now that you’re in mediation.’ They need to follow me around sometime,” LeHocky said.

He’s seen companies go to war over trade secrets, families reach their breaking points after years of in-fighting, and partners in rags-to-riches partnerships turn bitter rivals in trade disputes. The kind of legal disputes that rage for years, only growing more acrimonious and personal as time goes on.

If dealing with situations like those seems effortless to the outside observer, it’s likely due to the enormous amount of prep work LeHocky puts into each of his cases. Once brought onto a case, he’ll ask parties to individually submit position statements, laying out their expectations for the mediation.

Once that’s done, he likes to talk to each side’s attorney on the phone, so he can get a better idea of what’s personally motivating the client and to address any issues with the case attorneys feel might have been left out of the position statements.

Mark LeHocky

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(Statewide)

Specialties: business and commercial, employment, insurance, intellectual property, torts, liability, real estate

“It’s important to set realistic expectations,” LeHocky said. “But I want to see why these parties see the world so differently. It saves time, it gets everyone in line, and it helps the lawyers.”

Using the prep stage of a mediation to realign expectations can make or break a mediation, or at the very least, make the first few hours of a session go a whole lot smoother. If a dispute has reached the point of litigation, LeHocky said, there’s a tendency to see things in black and white.

“The truth is in these disputes, there’s often a lot more grey,” he said.

Gina Nicholls, a partner at Nossaman LLP who has used LeHocky as a mediator, said the pre-mediation prep work helps make the process much simpler.

“His approach is sympathetic but clinical,” Nicholls said.

Daniel Walsh, an attorney at Freeman Mathis & Gary LLP,



Chase DiFelicianantonio / Daily Journal

said LeHocky “takes an interest on a personal level that really helps” bridge the gap when resolving cases.

“I’ve had him on various cases, and he seems to be able to connect each time, not only with the parties but with the individual attorneys. He gets them to see the other side and get to work towards finding a solution,” Walsh said.

Reed Smith LLP partner Terrence Hawley said while LeHocky “strongly encourages” pre-mediation exchanges and joint sessions at the outset of mediation, his mediation style isn’t static.

“Mark is flexible in his approach and not dogmatic,” Hawley said. “He will make his best effort to guide parties in what he views as the proper direction, but he will adapt to the circumstances as needed, as opposed to insisting on a rigid framework.”

Hawley said LeHocky urges

parties to execute a term sheet or other writing at mediation, “which may include the negotiation of complex business provisions,” and is willing to put the work in to aid parties along in the process.

“Accordingly, parties using Mark’s services should be prepared to address all aspects of settlement, including associated business issues, at the mediation,” Hawley said.

Long before he became a mediator, LeHocky advocated a mediator’s approach. Working at Freeland, Cooper, LeHocky & Hamburg in the late 1990s as outside counsel to Apple Inc., LeHocky advocated for peace when others preferred a more warlike approach.

Steve Jobs, the recently reinstated CEO who had returned after a long exile, was among those who preferred the aggressive route.

“Why would we settle?” LeHocky recalled Jobs asking.

If Apple was looking to enforce its rights, LeHocky agreed the company had solid legal claims that would likely earn them a favorable result. But the time, effort, and money needed to achieve that result wasn't worth it, particularly at such a precarious time in the company's history.

"They'd also be able to get their resolution sooner, rather than later," LeHocky said.

A preference for the peaceful path stuck with LeHocky when he moved in-house as a general counsel — first for Dreyer's Grand Ice Cream Inc. and later for Ross Stores Inc.

"They didn't have a prior model established when I came to Dreyers, so they let me set one up of my own. And the model that was established was somewhat reminiscent of a

proactive mediator's approach," LeHocky said.

Even in situations where he agreed the companies should feel as if they'd done nothing wrong, LeHocky tended to advocate for a quick, private resolution.

"I'd see where companies would drop the ball — not purposely or knowingly — but it happens. And it's something that needs to be addressed," LeHocky said. "A company might not be aware of a hiring discrepancy, for example, but it needs to understand why it's a problem, and why it needs to be addressed."

Bottom line from the company perspective, LeHocky said, is that mediators save money.

"It always pays dividends."

Mediation also offered avenues for resolution the courts

couldn't, LeHocky said. He grew familiar with the limitations of a court resolution during his time as a general counsel, and it's a lesson that stuck with him in his neutral work.

"Courts are limited to the law. There's lots of different arms and legs in a litigation that can be frustrating to have to deal with, and they cost a lot of time and money."

There's also a tendency in court to demonize the other side. That can be an effective strategy when trying to convince a jury, LeHocky said, but it's an approach that can destroy any hope of private resolution.

"In mediation, the goal is to make the other side more sympathetic," LeHocky said.

To that end, he asks that attorneys pull their punches in the early bouts of mediation.

"Don't be simplistic, don't be pejorative. No slights. This isn't a trial," LeHocky said. "If you're making arguments that are specious or frivolous, you're not focusing on fixing the actual problem."

Perhaps unsurprisingly for a former general counsel who used to have full access to an ice cream bar at his workplace, LeHocky said he's always tried to keep to an active lifestyle. He loves tennis, and the longer the bike trip, the better.

The following attorneys have used LeHocky's mediation services: Terence Hawley, Reed Smith LLP, Alan Block, McKool Smith LLP; Daniel Walsh, Freeman Mathis & Gary; Eric Little, Little Reid & Karzai; Thomas Rector, Lewis Brisbois