

VERDICTS & SETTLEMENTS

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Straight Shooter

Leslie Nichols likes to begin mediations in joint session so neither party suspects he's 'whispering ... to the other side.' It helps parties to know his experience, mediator says

By Don DeBenedictis

Special to the Daily Journal

Unlike many neutrals, Leslie C. Nichols likes to open his mediation sessions by speaking with all parties and counsel together. His goal is not to ask them about their case nor tell them what he thinks of it. Rather, he tells them about himself and his wide experience as an attorney and a judge.

"I think the joint session is an important part of the process," Nichols said. "I feel it's important to introduce myself in advance to the parties ... to tell them what I've done in order to prepare to assist them in coming to the best possible resolution."

The session also allows him to reaffirm to the litigants "what the lawyers may or may not have affirmed, and that is the benefits of an informed settlement," he said.

He could introduce himself to each side separately, of course, and he does if the attorneys object to a joint session. But Nichols believes there are benefits to greeting all the parties together and telling them what he has done to prepare for the mediation.

"It makes sure that the parties realize that I'm a straight shooter dealing with all of them on a level playing field," he said. "I'm not whispering one thing to the other side."

The mediation that Ilya Filmus of Infinity Law Group had with Nichols began with the retired judge sharing relevant aspects of his background in a joint session. He also wove bits of that background throughout the mediation, Filmus said.



Gary Wagner / Special to the Daily Journal

Nichols also gave some information about himself at the start of a six-day arbitration, according to Steven J. Kahn of Hoge Fenton Jones & Appel. "It carried a lot of weight," Kahn said, because it validated that being a judge "was a passion of his, not just a job. That was helpful with both clients."

Nichols' background in law is unusually broad. Born in Illinois, Nichols grew up in the Bay Area where his father headed quality control for United Airlines at the start of World War II. He attended high school in Burlingame, except for one year as a foreign exchange

student "300 miles north of the Arctic Circle" on a farm in Finland.

After going to Stanford University and UC Hastings College of the Law, he began his law practice with the Legal Aid Society of San Mateo County, where he had volunteered while awaiting bar results. "It was a wonderful experience with wonderful lawyers," he said. "I got into court all the time."

Two years later, he opened a solo practice in the area. "I wanted to be my own boss," he said. Over the next 15 years, Nichols had what he called a "people practice." He built it initially by signing on

Leslie C. Nichols

ADR Services Inc.
San Jose

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to represent indigent criminal defendants with every court he could. He also took on family law, personal injury, real estate and business matters, as well as some appeals, including a death penalty appeal.

One case he argued and won before the state Supreme Court made law about criminal defendants' attorney-client privilege. *People v. Canfield*, 12 Cal. 3d 700 (Cal., Nov. 1, 1974).

In 1977, he was appointed to fill a vacancy on the Mountain View City Council. He was elected to the same post the following year and served as mayor in 1979 and 1980.

Nichols remained on the council until Gov. George Deukmejian named him to the Santa Clara County Superior Court in 1984. "It was a whole new life," he said. Over the next quarter-century, he handled "pretty much everything that could come to a superior court judge."

For his first three years on the bench, he heard family law matters. From there, he moved to attempting early resolution of felony cases. Then came stints in civil law and motion, family law again, juvenile and dependency cases and then felonies.

He was elected presiding judge in 1997. Also that year, he began hearing all the cases brought under the California Environmental Quality Act. For about the next 13 years, he handled some of the most complex and long-running litigation in Santa Clara County.

Among them was a 10-year-plus battle between Lockheed Martin Corp and several insurance companies about paying hundreds of millions of dollars to remove tox-

ic chemicals from landfill sites. "Ultimately, I rode that pony to the ground and was affirmed," he said. *Lockheed Martin Corp. v. Continental Insurance Co.*, 134 Cal. App. 4th 187 (Cal. App. 6th Dist., Nov. 22, 2005).

Nichols retired in 2009. But instead of signing on with an alternative dispute resolution company, he joined California's Temporary Assigned Judges Program, through which he was sent to assist courts all over the state.

"I did that for 10 years and presided over cases in 33 of our 58 counties," he said. "I'd get a call from [the chief justice's] office: 'Judge, could you take that case in Plumas County?' 'Judge, could you take that high-speed rail case down in Kings County?'"

His first assignment was to Riverside County for a catastrophic injury lawsuit. His last was an asbestos mesothelioma case in San Francisco, which lasted several months. In between, he presided over cases big and small. He heard three strikes cases and Indian Child Welfare Act cases.

In one significant matter, he imposed millions of dollars in sanctions against the state forestry department for mishandling the Moonlight Wildfire in Plumas County. *Department of Forestry and Fire Protection v. Howell*, 18 Cal. App. 5th 154 (Cal. App. 3rd Dist., Dec. 6, 2017).

Overall, "it was a wonderful experience," Nichols said.

When the assigned judges program was modified in 2019, he joined ADR Services Inc. as a mediator and arbitrator. That work now accounts for about 60% of his

professional activity, although it is growing.

When Nichols receives an assignment for a mediation or arbitration, the first thing he does is write or phone the attorneys to ask how he can help them. "Are there special factors?" he asks. "For example, is there a cultural connection. ... Is there anything I should know?"

He encourages counsel to tell him everything they can about their cases in their pre-mediation written statements. "Full disclosure is helpful because last-minute surprises at mediation ordinarily do not provoke a good response."

During a mediation, Nichols resists providing an evaluation of the case unless the attorneys clearly want it. "I don't think that my function as a mediator is to try to push people around or tell them what surely is going to happen," he said. "I've had the advantage of being a trial judge for 35 years, and things that are surely going to happen don't always happen."

He also doesn't try to hurry a case along. If, early in a session, one side says something like, "I'm going to give you my last, best final offer," Nichols' response is, "Let's hold off on that. ... I'm willing to hang with you. Perhaps we can see where this goes a little more."

In addition to his mediations and arbitrations with ADR Services, he spends a good deal of time doing similar work pro bono by hearing settlement conferences and the like for several of the local superior courts and for the U.S. District Court. He provides some early neutral evaluations for the federal court.

That commitment means a lot to landlord attorney Jethro S. Busch of Steven Adair MacDonald & Partners PC in San Francisco. "I really get the sense that Judge Nichols does this as ongoing public service," he said. "He charges less per hour than a lot of mediators of his experience."

He said Nichols is well prepared and very fair as a mediator. He is "very practical about trying to resolve the dispute and exploring different ways to do that."

He and many other attorneys particularly commented on Nichols' demeanor. "He's extremely polite, I would say courteously," Busch said.

When he was on the bench, he was "one of the most patient and gentlemanly judges I've ever been in the room with," according to Busch's partner, Steven A. MacDonald. "He had tremendous self-control and respect for people in chambers."

Filmus said Nichols "knows the law, knows people and understands people," which gives him "an innate ability to build trust ... with clients."

Here are some attorneys who have used Nichols' services: Stephen P. Ellingson, Hayes Scott Bonino Ellingson Guslani Simonson & Clause LLP; Omair M. Farooqui, Palo Alto Legal Group PC; Richard B. Gullen, Rossi, Hammerslough, Reisch & Chuck PLC; John D. Hourihan, Stratman, Schwartz & Williams-Abrego; Christopher J. Petersen, Blank Rome LLP; Leila N. Sockolov, Berliner Cohen LLP; Dennis S. Zell, Hoge Fenton Jones & Appel.