

VERDICTS & SETTLEMENTS

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The Professor

Richard Collier's teaching background plays a key role in his dispute resolution work.

By Shane Nelson

Special to the Daily Journal

Mediator Richard J. Collier completed a doctorate in English and worked as a professor for seven years in the English department at UC Berkeley before he enrolled in law school.

“At a certain level, being a trial lawyer involves understanding what you’ve been reading, and what you’ve been studying and learning, coming to an explanation for what you’ve been studying and then persuading somebody that your explanation makes some sense,” Collier explained. “And that’s what I did as an English professor.”

Collier said he became disillusioned with professional academia in the later years of his time teaching at UC Berkeley, and instead the importance of words, books and public speaking within the legal world grabbed his attention. Collier graduated from UC Berkeley School of Law in 1979 and then spent 40 years representing clients as a litigator, often handling trust and probate cases along with a wide range of commercial disputes.

“I really did think of my role as a trial lawyer as a teacher — not as a gladiator but as a teacher,” he said. “And being able to explain to a jury or to a judge or to an opposing counsel — or one of my clients for that matter — what the problems were, what was playing into the problems and how we might resolve the problems.”

Collier started working as a mediator in the early 1990s, and he maintained a mediation practice along with a busy caseload representing clients in trials for nearly 30 years before deciding to focus



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full time as a private neutral for ADR Services Inc. in 2019. Collier said about 70% of his mediation cases today involve trust and estate disputes, and the remainder typically involve commercial or insurance coverage.

“I tend to get cases with very high emotions,” he said. “In the trusts and estates field, a family is often shattering over inheritance disputes. Even insurance coverage disputes, you might not think of those as high emotions, but they are. Somebody’s been counting on something, and it isn’t there.”

Collier’s teaching background also plays a significant role in his approach to dispute resolution, and

he said much of that starts with working hard to understand.

“Understanding what people are saying, why they’re saying it, why they’re doing what they’re doing, why they’re making the moves they’re making. Understanding what’s going on and being able to explain what’s going on is what I rely on when I’m mediating,” he explained. “Those are pretty basic skills to a teacher. Understanding what you are talking about and talking about it in a way that’s persuasive and understandable. ... And that’s what happens in my mediations.”

Collier said preparation is paramount in his mediation work. He

Richard J. Collier

ADR Services Inc.
Oakland

Areas of Specialty:

Probate
Estates
Trusts
Commercial
Insurance

wants to receive briefs beforehand from all sides, and he tries hard to speak over the phone with attorneys to better understand details and ask questions ahead of time.

On the day of mediation, Collier is a fan of joint sessions, but he conceded that the approach isn't popular with most attorneys today, and he never insists on the tactic. He also noted he often applies what could be described as a more facilitative style as a mediator but was quick to add that he's not afraid to offer his opinion when he feels it may be constructive.

"Sometimes outcome predictions — evaluations in other words — are helpful in getting people to move when they might not be otherwise willing to move," he explained. "I'm not afraid of evaluation. But I think the terms [evaluative and facilitative] are misleading because mediation is such a fluid process that I never quite know whether I'm facilitating or evaluating. I'm just mediating."

Collier also said he doesn't care too much for mediator's proposals, but he will make them if both sides think the approach will prove fruitful.

"I don't settle cases. The parties and counsel settle cases — or they don't," he explained. "I won't let them miss an opportunity to settle, and I'll work hard with them to create opportunities to settle. But my feeling is that I don't settle cases, and that's an argument against mediator's proposals. I think they've become a lazy way of mediating."

Trust and probate attorney Timothy D. Barteau used Collier to resolve a trust and estate dispute, and he described the neutral as a terrific communicator.

"I really appreciated his efforts to listen to my clients and their concerns — even if their concerns weren't necessarily on legal points but were still valid concerns — and he acknowledged those while working to resolve the case," Barteau said. "I just thought he was very effective in understanding the parties' positions and using that understanding to facilitate bringing the parties together."

Litigator Daniel Berko used Collier to resolve a complicated trust dispute last May, and he too spoke highly of the mediator's communication skills. Berko also

said Collier clearly understood trust and probate law.

"It was very helpful that he was up to speed almost immediately; he clearly had a vast knowledge of the subject area," Berko said. "And he was just a very good listener. He really made both sides feel he was receptive to their positions and understood their positions. And I thought that played a big part in his ability to facilitate the settlement."

Plaintiffs' attorney Robert E. Cartwright Jr. opposed Collier when he was still working as a trial attorney and has used the neutral to resolve a few different personal injury matters. Cartwright described Collier as a consummate professional.

"I think he's just a very effective mediator just as he was a very effective trial lawyer," Cartwright said. "He brings a tremendous amount of experience to that role of being a mediator, and that combined with his personality and demeanor are just a good combination."

Cartwright said he also really appreciated Collier's respectful candor with his clients on both the strong and weak points of their case.

"Often for the plaintiff attorney, the difficulty is dealing with your own client, and you need a mediator that can sort of gently walk them through the risks, the downside aspects of what could happen in a trial because often plaintiffs come with unrealistic expectations," Cartwright explained. "Your client wants to see you as their advocate, as their warrior, as somebody ready to fight, ... and when you start to tell the client where the weak spots are, it often doesn't go well. They think you're not on their side, which is simply not true. ... But a good mediator like Richard can serve that position and do that effectively, so the plaintiffs' lawyer doesn't have to."

Here are some attorneys who have used Collier's services: Robert E. Cartwright, Jr., Cartwright Law Firm; Daniel Berko, Law Offices of Daniel Berko; Timothy D. Barteau, Raghianti Freitas LLP; Daniel I. Weinberg, Freitas & Weinberg LLP; Chad A. Westfall, Musick, Peeler & Garrett LLP.

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