

Daily Journal

VERDICTS & SETTLEMENTS

FRIDAY, SEPTEMBER 9, 2022

Win-Win Solution

Neutral Michael Cooper tends to offer his own opinions, not 'just hold hands' of the parties.

By Shane Nelson

Special to the Daily Journal

ADR Services Inc. mediator Michael D. Cooper spent 50 years as a bankruptcy attorney before he decided to focus full time on private neutral work in 2019.

"I felt like I was getting something accomplished," Cooper said of the work he often did representing consumer debtors. "I was helping these people resolve their debt issues, and they really appreciated it. ... They were desperate sometimes, and the outcome, for the most part, gave them a fresh start."

Cooper noted that he also handled a great many commercial law matters over his five decades as an attorney.

"You can't get through a bankruptcy case without a commercial issue of some kind," he explained. "People don't file bankruptcy because they're paying their bills. And what are those bills about? Those bills are about commercial disputes typically."

Cooper grew up in the Bay Area, and as a teenager, he worked as a vendor for the San Francisco Giants, selling hot dogs and beer to baseball fans in the late 1950s and early 1960s. When the Giants played the New York Yankees in the 1962 World Series, Cooper said he worked all the games at Candlestick Park.

"The Giants were the home team, and the series went to seven games, so I worked four games," Cooper recalled. "I was 18 years old, and I made \$100

a game, so \$400 for the World Series, which was terrific. It was just a great job."

Cooper went on to complete his undergraduate work at San Francisco State University, and he graduated from the University of San Francisco School of Law in 1968. In the late 1990s, Cooper said he joined a newly launched mediation program at the Northern District Bankruptcy Court, allowing federal judges there to appoint mediators. Cooper found he liked working to resolve disputes, and he continued to conduct mediations from time to time over the last 20 years of his law practice.



Gary Wagner / Special to the Daily Journal

"I liked working on the puzzle of bringing parties together," he said of mediations. "My nature as a lawyer was to try to resolve my cases rather than to have to litigate them or spend the client's money. ... And I guess I felt I had a good sense of what can be done to resolve disputes and how to bring parties together."

As he was winding down his legal practice, Cooper said he started thinking he wasn't ready yet to quit completely.

"I guess, like Serena Williams, I hate the word 'retirement,'" he explained with a chuckle.

Over the past three years as an ADR Services neutral, Cooper

Michael D. Cooper

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Areas of Specialty:

Bankruptcy
Commercial
Real Estate

said he has mediated a wide range of bankruptcy disputes as well as many commercial and real estate cases. Before a mediation, Cooper likes to speak with attorneys over the phone and receive briefs. On the day of mediation, he doesn't typically make use of joint sessions, and he often employs both facilitative and evaluative techniques.

"I typically try not to throw in an opinion too soon because it tends to make one side or the other — based on my questions and thoughts — think maybe I'm biased," Cooper said. "The last thing I want is any party to think I have some stake in the game. ... I want them to understand it's their mediation, not mine."

Cooper noted that he will also make use of mediator's proposals but not until later in the day, and he often employs a bracketing approach. He is, however, likely to begin sharing more of his opinions about the details of the dispute as a session moves along.

"I don't just hold hands," Cooper clarified. "I don't just pass offers back and forth. When I think some-

body is not attuned to reality, I voice my opinion. But I try not to do so too harshly."

San Mateo bankruptcy attorney Lawrence A. Jacobson opposed Cooper when he was representing clients and has since used the ADR Services neutral to successfully mediate bankruptcy and commercial cases. Jacobson said Cooper's approach with the parties is a distinguishing strong suit.

"He has a very matter-of-fact style that's not threatening," Jacobson said. "It's blunt, but it's not threatening, and I think that's a virtue. ... And while he certainly listens to all of the mediation catharsis that has to occur, he really is able to move past that pretty quickly to the basic issues and on toward resolution."

San Francisco commercial and real estate litigator Jeffrey H. Lowenthal has used Cooper to successfully mediate a couple of cases, including a matter tied to the recent PG&E bankruptcy.

"He has a terrific personality and disposition, and he just gets along with everybody, which is probably one of the best attributes you can have as a medi-

ator," Lowenthal said. "Look, if the guy can speak to PGE, he can speak to anybody because they're impossible. I had no luck. I can promise you that."

Lowenthal added that Cooper's expertise extends far beyond bankruptcy.

"He definitely knows the law and the lingo for real estate and commercial litigation, and he has respect in that community," Lowenthal said. "If you're looking for somebody who is a businessman and a lawyer who understands parties and people and can communicate and can put things together, he's just great."

Nevada City bankruptcy attorney G. Larry Engel also opposed Cooper when he was representing clients and has since used him to mediate several cases. Engel said Cooper is a neutral who tries to avoid resolutions where both parties walk away unhappy.

"Michael takes a better approach in my view, which is he figures out what the two sides really need," Engel explained. "And he figures out a way where they can get reconciled by more of a win-win situation. ... He gets

into the details that matter to either side and as a result really understands what matters most to them. Then he tries to figure out a way to reconcile those two different stances."

Engel said Cooper also works hard to help parties craft solid resolution agreements.

"He finds a way to structure an agreement out of the settlement that gets the win-win accomplished in a way where each side is getting what they want most at the table," Engel explained. "But then they can also walk away from the table with confidence that the deal will stick, and the other side won't be looking for loopholes and other ways to get out of the deal later."

Here are some attorneys who have used Cooper's services: Lawrence A. Jacobson, Cohen & Jacobson LLP; G. Larry Engel, Engel Law PC; Jeffrey H. Lowenthal, Steyer Lowenthal LLP; Ruth Auerbach, Law Offices of Ruth Elin Auerbach; Seth W. Weiner, Law Offices of Seth W. Weiner.