

## VERDICTS &amp; SETTLEMENTS

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## Calling balls and strikes

Laurence D. Kay is known for his straight-talking demeanor and ability to convince parties to bury their differences.

By Rachel Swan  
Daily Journal Staff Writer

When Laurence D. Kay moved from San Francisco Superior Court to the 1st District Court of Appeal in 2000, he felt the world come to a virtual standstill. Kay found a rather peculiar, if instructive analogy to describe the difference.

“One is like playing football,” he said of his work as a Superior Court judge. “The other is like writing papers.”

Kay’s current job as an arbitrator and mediator falls somewhere in between.

“I mean if you’re mediating, you’re trying to get two parties who are deeply immersed in throwing rockets at each other to bury their differences and agree,” he said. “Mediation is the art of trying to make people see the light.”

In the seven years since he left the bench, Kay has established a busy career, parlaying his judicial skills to help resolve lending and real estate disputes, as well as probate cases and high-profile litigation between large companies. He admits that people often approach him when there’s a lot of money on the line.

A dispute he just mediated between multiple insurance companies for dry cleaning establishments was complicated because such companies have multiple policies with different insurers, and the terms are not identical. Dry cleaners frequently pollute the sites on which they locate their establishments, since the chemicals they use tend to seep into the soil or ground water. In this case, the insurance carriers couldn’t agree on the level of responsibility each one held for their clients’ pollutants.

“This is an example of companies that choose to mediate their differences privately out of a concern that if they litigate it could result in a published opinion that would have universal consequences,” Kay explained.

“They’d rather resolve it themselves than gamble on an appellate decision that could affect them for hundreds of millions of dollars.”

Through mediation, he helped the carriers codify terms that would establish who was accountable for what.

It’s a variation of the same work he does as the appointed referee in family battles over wills and trusts.

Kay pointed to a recent probate feud he had to mediate that was smaller in scope but no less dramatic than the battle over insurance policy language.

A rich tycoon died and bequeathed a fortune to “my spouse,” without designating which spouse. It turned out he had drafted the will during one marriage and died in the middle of another — and both “spouses” were still alive.

It takes a certain temperament to handle such thorny situations, and Kay’s peers say he’s uniquely hard-wired to do it.

“Larry represents the best of neutrals, in that he only calls balls and strikes,” said Joseph W. Cotchett, a San Francisco-based partner at Cotchett Pitre & McCarthy LLP who has worked with Kay on several cases.

“He’ll always give you a straight answer.”

After launching his judicial career at San Francisco Municipal Court in 1981 mostly presiding over DUI cases or small civil trials with a \$25,000 cap on damages claims, he was appointed to the Superior Court by Gov. Jerry Brown.

He served as presiding judge of the criminal division from 1985 to 1987 but eventually moved on to probate and complex litigation. Gov. Gray Davis appointed him to the appeals court in 2000.

There, Kay learned to adapt his fast-paced, high-volume work ethic for an atmosphere that seemed more like a monastery.

“In the Superior Court, a lot of the decisions you make have to be made quickly,” Kay explained. “You have to move a calendar, you’re constantly putting out fires [and] dealing with what can be an overwhelming volume.”

The Court of Appeal moved at a comparably measured pace, he said. “You have oral argument twice a



### Laurence D. Kay

**Affiliation:** ADR Services Inc.

**Location:** San Francisco

**Area of specialty:** lending and real estate disputes, probate, business litigation

month, and all the other time you’re reading and writing and thinking about how to make it come out right.”

Yet experience in two contrasting environments, coupled with an “ancient” degree in economics from the University of California at Berkeley, prepared Kay to be a thinking-man’s arbitrator who could handle a demanding schedule.

“The two adjectives that seem to fit are ‘brilliant’ and ‘indefatigable,’” said retired Justice Arnold H. Gold, who served as a supervising probate judge in Los Angeles County Superior Court over the same period that Kay helmed the probate department in San Francisco.

Last January, Gold nominated Kay to serve on a three-judge panel in Miami for an arbitration between two large manufacturers of pacemakers. The judges were designated neutral, though Gold had been selected by one side, and a former Minneapolis judge, Robert H. Lynn, was appointed by the other. Lynn and Gold chose Kay to be chairman of the panel.

“He just worked our tails off,” Gold recalled. “It was 9 to 5 every day with only short breaks for lunch or the restroom.” He chuckled lightly. “He wasn’t tired. No comment on the other two of us.”

Despite the grueling schedule, both Lynn and Gold credit Kay’s managerial skills for teasing an agreement out of a long and complicated dispute. “I found Justice Kay to possess that rare combination of legal acumen, common sense, and wit,” Lynn said in an e-mail.

Gold agreed, even though he and Kay are competitors in the alternative dispute resolution industry, albeit in

separate markets — Kay works for ADR Services Inc. in San Francisco, Gold for Alternative Resolutions Centers in Los Angeles. “We got along well, and we eventually agreed on the award,” he said.

Kay currently charges \$550 an hour and enjoys a reputation for being one of the top neutrals in the state, largely because he has built trust through an extensive judicial history. He says years on the bench have taught him to be a good listener and to put his own interests aside, a critical skill.

He says his current work — which is split about evenly between arbitration and mediation — often requires him to broker a settlement on terms he might never have chosen had he crafted it from the beginning.

But he has acclimated. “I think you learn to be fair on the bench,” Kay said. “And if you have a long history on the bench, people think you have pretty good judgment.”

*Here are some attorneys who have used Kay’s services recently:*

Joseph Cotchett, Cotchett, Pitre & McCarthy LLP, Burlingame; Andrew Zabronsky, Evans Latham & Campisi, San Francisco; Jeremiah F. Hallisey, Hallisey & Johnson, San Francisco; William J. Baron, Duane Morris LLP, San Francisco; Mark C. Goodman, Hogan Lovells, San Francisco.