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Laurence Kay

Matthew Hirsch

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AFFILIATION: ADR Services Inc.

BORN: Jan. 18, 1937

LAW SCHOOL: Boalt Hall School of Law, 1963

PREVIOUS JUDICIAL EXPERIENCE: First District Court of Appeal, 2000-2005; San Francisco Superior Court, 1983-2000; San Francisco Municipal Court, 1981-1983

Art Shartsis already knew about neutral Laurence Kay's work in the California courts when the two fell into conversation, not long ago, at a business trial lawyers' conference in Hawaii. But he didn't know about Kay's passion for state-of-the-art digital photography.

"Somehow," Shartsis said, "we got to talking about photographing lava flows [and] what, for everyone else, was a boring discussion of photographic techniques."

The encounter revealed to Shartsis that Kay, a former First District Court of Appeal justice, is a multi-dimensional person who brings a wealth of life experience to his work at ADR Services Inc. Shartsis said he picked Kay to mediate a case involving antiques-fraud claims in part because he thought Kay's family had an antiques collection of its own.

"We did know he was a person of sophisticated tastes. We just thought we needed a mediator who would comprehend at a lot of levels what was going on," said the Shartsis Friese partner.

Kay's practice includes large construction disputes, as well as toxic contamination and insurance coverage cases. About 25 percent of his practice is made up of probate, trust and conservatorship disputes, drawing on his experience as a San Francisco Superior Court probate judge in the late 1990s. Kay also consults with lawyers who are preparing for arguments in the California court of appeal.

Kay bills at \$475 per hour, what he estimated falls at about \$100 more than most neutrals at ADR Services.

Kay's father built one of the largest homebuilding businesses in the Bay Area — at one point Kay Homes was constructing 2,000 homes a year — before the company was sold to KB Homes. Kay served as executive vice president and general counsel for Kay Homes in the mid-1960s.

Kay says his contractor's license has long since expired, but his understanding of financial accounting continues to serve him in mediation.

In October, Kay helped broker an antitrust settlement in a case against U.S. Tobacco, a top seller of smokeless tobacco products.

San Francisco's Richard Saveri, a plaintiff attorney in the case, credited Kay for persuading the defense that it would have more trouble getting a coupon settlement approved in California than in states where it had handled prior litigation.

"I wish I could say it was because I was a great advocate," Saveri said.

But Kay said there was another reason why U.S. Tobacco agreed to pay cash. In mediation, he said, he noted that the company didn't carry its existing coupons as a liability in its quarterly financial statements, suggesting the debt might have been offset by an asset of equal value, such as a marketing component.

"They responded that they would pay cash," Kay said. Last fall, some of the lawyers brought a \$96 million settlement to San Francisco Superior Court for preliminary approval.

An attorney for U.S. Tobacco did not return a call for this story, but lawyers who have worked with Kay in other cases say that his business acumen is an asset in mediation.

"I think his level of understanding of sophisticated business, estate planning and taxes was a real attribute when he was sitting in [the San Francisco Superior Court's] probate [court], as a justice and now as a mediator," said Reed Smith partner Bette Epstein, who has worked with Kay at each stage of his judicial career.

When lawyers use Kay for mock appellate arguments, they know they are going to get an unvarnished assessment of their case, delivered in a way that won't belittle, said Skadden, Arps, Slate, Meagher & Flom partner Raoul Kennedy. "He's able to be critical without being offensive," Kennedy said.

Lawrence Cirelli, head of the litigation section at Hanson, Bridgett, Marcus, Vlahos & Rudy, recently used Kay for the first time to help resolve a contract dispute between food product businesses. After a one-day mediation, Cirelli said, the case did not settle right

away, but Kay was back on the phone with each of the parties within days.

"I think I may have even gotten phone calls over the weekend. He really went above and beyond," Cirelli said. "His diligence staying on top of [the dispute], staying involved, and keeping the parties talking was what got the deal done."

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