

# Calming Voice

*Neutral David Fink is able to soothe people so they can listen to reason, attorneys say.*

By Don DeBenedictis

Special to the Daily Journal

David Fink had been practicing family law in the Bay Area for more than 15 years when he had an important insight into how disputes between spouses can best be resolved.

"I'd come to realize ... that people generally do a better job of solving their own problems than the legal system does if you can give them the help that they need and can use," he said.

That was in the mid 2000s when he was accepting as many cases as a mediator or private judge as he was as a litigator for individual clients. Soon, he began gradually moving into serving as a neutral full time.

Helping parties solve their own problems continues to be his guiding approach since joining ADR Services, Inc. this year.

"If you help people see what the possibilities are and what the options are, they not only do a better job of solving the problem, but they ... come up with creative solutions that they probably couldn't have gotten from a court because the court wouldn't have had jurisdiction to order it," he said.

Fink "understands the power and the value of helping parties make decisions," according to Stefan A. Spielman, a San Francisco sole practitioner.

Fink has expertise in family law and a thoughtful manner that is just right for mediation, Spielman added. "He's able to find conciliation points by not only being a good listener



Gary Wagner/ Special to the Daily Journal

and smart about matters." He also has a unique way of soothing people so that they "can be heard ... and are able to hear and listen to reason."

Fink is "really excellent at coming across as the calming voice in the room," said San Ramon sole practitioner Pamela L. Jones, for whom he helped settle two cases as a private judge. "He gets people to settle down."

Barbara W. Moser of Kaye Moser Hierbaum Ford LLP described Fink as smart, calm, reasonable and a very good listener. "He seems to be able to get people to settle their cases," she said.

One reason for his skill in working with parties may be that in many of the matters he has mediated over the last several years, parties are all there are. In a sizable portion of his caseload, there are no representing attorneys, he said, although some parties may consult with attorneys before and after.

Many of those matters come as referrals from attorneys; others are referred by people he helped previously. "I have the couple in the room with me, and that's how all the discussions happen," he said about his method.

**David A. Fink**

ADR Services, Inc.  
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**Areas of Specialty:**  
Family Law

When the parties do have attorneys, he does like to discuss the case with the lawyers ahead of time. But he usually does not ask them to file pre-mediation briefs. "I don't need a brief. I want to know what your settlement position is," he said.

And he gets that from the parties when he can. "I tend to ask open-ended questions like, 'So what do you think the problem is holding up settlement?'" he said.

He also asks them and their lawyers to think about the negotiation process. "What could you put in your settlement offer that would entice the other side to accept it?" he said he will ask. "Even if you hate what they're proposing, if you don't think about that and [don't] try to meet some of their needs, you're never going to get a yes."

Fink does describe his approach to mediation as interest based negotiation as opposed to the positional negotiation or marketplace bargaining others may use. The interest based approach was advanced by the book "Getting to Yes" by members of the Harvard Negotiation Project.

If a case seems to require it, he can adopt the role of an evaluative mediator to give parties his proposal for how a case should settle. But "I'm much more interested in

engaging the parties in solving their own problems," he said. "They're the decision makers; they're the stakeholders. They have to take responsibility for it. They shouldn't leave it to their lawyers or ... the mediator to tell them what to do."

Fink actually began serving as a neutral even before going to law school. He grew up in San Francisco, where his father was a doctor, and he earned his undergraduate degree from UC Berkeley. While in college, he worked as a gofer and file clerk for a successful family law boutique now known as Schapiro & Thorn Inc., eventually rising to be the office manager. He also volunteered sometimes to be the lay member, along with two lawyers, of the Bar Association of San Francisco panels that heard fee arbitration disputes.

He graduated from Golden Gate University School of Law in 1987 and worked for a year with a small litigation firm, helping to represent commercial landlords. "I did come to the conclusion in that job that what I wanted to do was to have people as clients, not corporations."

So he returned to work for his old boss on family law cases. He liked the many areas of law that could be part of divorce cases. But what really sold him on the prac-

tice area was the other lawyers in the field. "The people who do this are really good people," Fink said. "They really do care about the clients. ... They are, for the most part, really interested in reducing conflict for the benefit of the family."

He was with Schapiro & Thorn from 1989 through 1995, when he opened an informal partnership called Nachlis & Fink with another associate. They stayed together till 2019, when he went out on his own. Along the way, Fink became very involved in representing clients in collaborative divorce negotiations. But he also continued to litigate some cases.

In his last trial in 2015, he persuaded a judge to grant comity to a divorce obtained in Zimbabwe rather than order a new proceeding in California. "My witnesses were judges in the Zimbabwe courts and South African lawyers." The judge and opposing counsel would arrive at his office at 6 a.m. to hear the witnesses' testimony by telephone, he said.

Primarily, he was working as a mediator, private judge, parental coordinator or attorney advising a client during mediation but not court.

Moser recalls going against Fink in a case in the 1990s and then using him as a mediator often in later years.

"David is wonderful," she said. "He's one of the smartest family attorneys in the whole Bay Area."

Fink joined ADR Services, Inc. in part to hand off some of the administrative aspects of running a mediation practice. The company is integrating his pre-existing matters into its operation and finding new ones for him.

"We're still working through the transition," he said. "And there's new stuff coming in all the time."

*Here are some attorneys who have used Fink's services:* Robert S. Cashen, Morgan Tidalgo Sukhodrev & Azzolino LLP; Jennifer Crum, Hanson Crawford Crum Family Law Group LLP; Tammy-Lyn Gallerani, Law Office of Tammy-lyn Gallerani; Donna T. Gibbs, Blum, Gibbs, Davies, & Owen LLP; Pamela L. Jones; Deborah J. Marx; Barbara W. Moser, Kaye Moser Hierbaum Ford LLP; Jeffrey A. Riebel, DeLacey, Riebel & Shindell LLP; Marisa C. San Filippo, Flicker, Kerin, Kruger & Bissada LLP; Debra R. Schoenberg, Schoenberg Family Law Group, P.C.; Madeleine B. Simborg, Greene Taubman Dias Chernus Simborg & Dominguez LLP; Ariel R. Sosna, Van Voorhis & Sosna LLP; Stefan A. Spielman, Law Offices of Stefan A. Spielman.