

Using mind over matter

JAMS neutral Wayne Brazil, a former U.S. magistrate judge, taps his experience as a teacher and lawyer to resolve disputes.

By Jean Yung / Daily Journal Staff Writer

Some mediators like to use authority to pressure parties into settling. Wayne Brazil asks how he can be of service to the disputants.

"I really like using my mind to make a difference for real people," said the 67-year-old former U.S. magistrate judge turned JAMS mediator. "That's what animates me: to deliver real help to real people."

He's carried that philosophy with him into UC Berkeley School of Law, his alma mater, as its first official "professor from practice."

"The dean wanted to bring some of the real world into academic halls. It fit with what I was interested in doing," he said.

Teaching is a passion of Brazil's, and apart from his work at the university, he also helps put on customized programs for judges and lawyers from overseas, including recently a group of judges from Hunan, China with a totally different outlook on the judicial process.

As a U.S. magistrate judge from 1984 to 2009, Brazil had already had extensive experience with settlement conferences and had been considered by many to be a leading expert on alternative dispute resolution in federal court.

He joined Farella Braun & Martel after law school and was immediately turned off by the adversarial system. He sought refuge in the halls of academia, where he wrote about making pretrial and discovery processes less contentious. In the 1980s, he published "Effective Approaches to Settlement," a book about settlement conferences and ADR, and led an American Bar Association effort to poll lawyers around the country to learn about effective settlement and dispute resolution techniques.

Now free to devote almost all of his time to ADR, Brazil says he's finally able to work outside the limits on the time sitting judges have to devote to matters and the types of help they can offer.

There are other advantages, too. "In the private sector, there's no risk that the parties and lawyers are going to perceive you as having an ulterior motive to advance the interest of a public institution," Brazil said. "You can be more open, thorough and honest, and you can be more helpful."

Joshua Cohen of Wendel Rosen Black & Dean LLP worked on a difficult 10-hour mediation with Brazil involving a state agency. When one side's accountants failed to show up by 11 a.m., both sides were ready to give up, given the dispute hinged on how much money was at stake.

Brazil pressed on, getting the accountants on the phone.



Wayne Brazil

Affiliation: JAMS

Location: San Francisco

Specialties: business, employment, intellectual property

"He rolled up his sleeves and was very personable," Cohen said. "Some judges still have an autocratic attitude, and he did not have that at all."

Brazil gave a mediator's proposal that both sides found hard to swallow, though they eventually settled based on his proposal, Cohen said.

Other lawyers remarked on Brazil's gentleman-like demeanor.

"He's just a very kind and thoughtful person," said John Stigi of Sheppard, Mullin, Richter & Hampton LLP. "He really listens carefully to both sides, and he's just a pleasant person to spend potentially 15 to 18 hours with."

Attorneys say Brazil has a special knack for connecting with clients with sincerity and kindness while engaging in an intelligent and analytical joust with lawyers.

"He's a very compassionate and empathetic man, which helps him to have a good rapport with our clients," said Michael Haddad of Haddad & Sherwin. "And because of his very deep federal court experience, he's a very tough mediator and is able to tell hard truths to both sides."

Brazil assisted Haddad on two hard-fought civil rights cases that both resolved through mediation in seven-figure settlements.

The cases dealt with a death and emotional trauma, but Haddad's clients trusted Brazil enough to listen to his analysis on how a jury might react negatively to certain parts of the case. Conversely, Brazil was less tolerant of some of the defense's more cynical arguments.

"His strongest suit is that he's a man of high integrity," said Robert J. Romero, a partner at Hinshaw & Culbertson LLP. "I wanted lots of credibility for the

parties and the lawyers, and I find him to very effectively be able to bring parties together in complex disputes that don't lend themselves to settlement."

Brazil helped Romero resolve a personal injury matter. The plaintiff's extremely high expectations — demanding more than \$8 million from Romero's client — turned into a major hindrance in the talks.

However, Brazil was able to talk to the plaintiff and convince him and his lawyer that there were weaknesses in his case. "I'm very engaged in the process of helping parties avoid what I call false failure," defined as when negotiations fail when they don't need to, Brazil said. Many things can lead to false failure, such as excessive posturing or analytical shortcomings, and Brazil says he sees one of his main tasks as identifying and eliminating those sources of failure as much as possible.

He also presses the parties to focus very clearly and specifically on what will happen if they don't settle and comparing that systematically to what they can achieve by settlement, he said. Even off the bench, Brazil remains an outspoken advocate of court-provided ADR. He said it costs the parties substantially less than a trial and offers a chance to resolve a dispute much more quickly.

"There are large philosophical rewards to being a judge — a lot of satisfaction rooted in representing the system of justice that would encourage people to respect the rule of law and the integrity of judicial institutions," Brazil said. "But the difference you can contribute is pretty circumscribed. I'm glad to have the opportunity to use my mind to solve problems in the JAMS setting."

Here are some lawyers who've used Brazil's services:

James Li, LiLaw Inc., Los Altos; James Fitzgerald, McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP, Walnut Creek; Maureen Harrington, Trepel Greenfield Sullivan & Draa LLP, San Francisco; Fred Fields, Coblenz, Patch, Duffy & Bass LLP, San Francisco.