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Dissolving Tensions

Getting to know clients and helping them to relax are keys to success for JAMS neutral Joseph Brisco.

By Renee Flannery
Daily Journal Staff Writer

When Joseph R. Brisco knows he will mediate a case in Southern California, he schedules time to fly in from his new home in Montana.

He said when he retired from his 20-year career as a San Bernardino County Superior Court judge, he and his wife decided to move to a part of the country they have always liked. "We found a small cottage in Big Fork, Montana. ... I plan a trip back when I have a case or two or three and sometimes we get down here to get out of the snow," Brisco said.

A neutral at JAMS for the last year, he said his cases are split between arbitrations and mediations. The key for success in either scenario is to facilitate a rapport with the parties, he said.

"When I handle arbitration, I feel like I'm litigating cases from beginning to end," Brisco said, comparing his new position to his experience as a bench officer. "Mediation is completely different and is more like a settlement conference, not quite the same, but I always enjoyed settlement conferences."

He added that he is more relaxed in mediation, although a majority of his cases involve catastrophic injuries.

He starts each hearing by telling the parties about his background experience, explaining the process — he just talks. "I will probably spend the first half hour to 45 minutes just talking to people and not about the case. I try to put them at ease," he said.

He related a time when he mediated a case involving a woman who was run over by a truck in a stripmall parking lot. He said she was badly injured and required extensive care after the accident.

"I had worked with both of the attorneys in the past. They had both tried cases before me," Brisco said.

When attorneys trust the neutral overseeing their case, he said, this

Joseph R. Brisco

JAMS
Ontario

Areas of specialty: business/commercial, employment, health care, personal injury/torts, professional liability, real property

helps to settle some tension involved in hearings. "I spend a lot of time to try to get them to get along and relax," he explained. "We [came to an agreement] within a half a day. They knew me, I knew them and we knew the case."

Before each hearing, Brisco tries to have a pre-mediation meeting with attorneys, even if it is over the phone. He said he does not charge for that time because he believes this helps to build that bond between him and the parties. In either arbitration or mediation cases, he charges \$550 per hour, he said.

Brisco said that attorneys often start conversations with settlement numbers, but he stops them and asks questions about their day. "I always try to inject a lot of humor to alleviate," he said. "It depends on the case or the situation, but I have a list of jokes that work well in mediation."

When the time comes for parties to discuss and make decisions, Brisco said he ultimately feels successful if there is an agreement by the end of the day. What he enjoys most about his position as a neutral, however, is that he meets new attorneys, new parties and listens to new cases.

"I like the challenge of trying to bring people together," he said, "especially when they're at odds with each other."

David H. Ricks, who has a business litigation firm in Rancho Cucamonga, said he notices Brisco desperately wants to be successful in getting parties to resolve. "Even if we're unsuccessful in settling it, you want to make sure you feel productive in that process," Ricks said. "The



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time that we spent was time well spent even if we couldn't get the case resolved."

The most important of Brisco's talents is that he listens well, Ricks said. "He gives your clients an opportunity to explain him or herself," he said. "He makes them a part of the process."

To prepare himself, Brisco said he reviews mediation briefs no later than the morning before a hearing.

"I want to have a day or two at least to be able to read both briefs," Brisco said. "If attorneys don't give me their briefs early enough, then the morning of the mediation I spend an hour at least getting to know it."

Dennis G. Popka of Orrock, Popka, Fortino, Tucker & Dolen said he has been able to observe Brisco's analytical ability in mediation. Popka said he represents school districts in many of his cases, which can be difficult to understand because of rules specific to different districts.

"When you get unusual cases, there's a learning curve that goes on with the visiting attorneys and the neutrals," Popka said. "He knows all the bench officers and has a local knowledge. That's invaluable to the attorneys. What he brings to the table is current, local knowledge and evaluation of your jury pool out in the Inland Empire. That's his strength."

Fernando D. Vargas, who operates a personal injury firm in Rancho Cucamonga, knew Brisco as a bench officer and has also used his mediation services.

"I always found him to be fair, im-

partial and respectful to the parties," Vargas said. "I've always found him to seem compassionate about the claims and defenses, never taking sides but being careful to disseminate justice. ... I've always had the utmost respect for him because of it."

Vargas said Brisco was successful in helping settle his case.

"He is the type of mediator who roles up his sleeves and sinks his teeth into the case. ... He works hard with integrity to help the parties recognize the strengths and weaknesses of their case to help them resolve their matters," Vargas said.

Brisco said it amazes him that a case he expects to take all day reaches an agreement in two hours when another case he thinks will finish quickly takes more than one day. "People are always asking, 'Why are you always laughing?' or 'You're always smiling.' It's because to me it's fun," Brisco said.

Here are some attorneys who have used Brisco's services: Katherine E. Harvey-Lee, Baum, Hedlund, Aristei & Goldman PC; David H. Ricks, David H. Ricks & Associates; Douglas A. Scott, Law Office of Douglas A. Scott; Richard S. Stout, Law Offices of Richard S. Stout; Dennis G. Popka, Orrock, Popka, Fortino, Tucker & Dolen; Jay S. Korn, Bonnie R. Moss & Associates; Fernando D. Vargas, Law Offices of Fernando D. Vargas; Mark R. Devey, Bonnie R. Moss & Associates; Michael D. May, Claremont; Robert B. Gibson, Gibson & Hughes.