

## VERDICTS &amp; SETTLEMENTS

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## Easy Transition

JAMS mediator Richard Kramer developed his style of conflict resolution as a trial attorney and judge

By Joshua Sebold / Daily Journal Staff Writer

SAN FRANCISCO — Richard Kramer is known throughout the country as one of the architects of complex litigation and made headlines in 2005, when, as a judge, he gave his blessing to San Francisco's legalization of gay marriages.

Now he does mediation, arbitration and provides strategic litigation advice for attorneys. Kramer joined JAMS in 2015, after 19 years on the bench.

But attorneys say Kramer hasn't forgotten where he came from and his ability to think like a fresh-eyed trial lawyer is valuable in helping resolve conflicts.

Kramer said he loved being a trial lawyer for 23 years at Steefel, Levitt & Weiss and also thoroughly enjoyed his time on the bench, but getting to play a little bit of both roles as a mediator, pointing out the strengths and weaknesses of each side's arguments, has its own appeal.

For him, the ultimate goal of mediation is to help litigants get to the core of the issues, to take away some of the legal gamesmanship and give both parties a clear concept of the economic decision they are making, so they can weigh the benefits of settling or moving forward with litigation.

"The standard isn't whether you've settled it. It's the parties' case; it's their money," he said. "The standard is whether you've gotten through all the hoop as best you can."

Kramer joined the bench in 1996, working on felony criminal cases, before transferring to San Francisco Superior Court's newly formed complex division in 2002, where he became the presiding judge.

Stuart M. Gordon, of Gordon Rees Scully Mansukhani LLP, said Kramer can handle a wide variety of practice areas and developed a reputation for complex litigation long ago, which extends far beyond the borders of California.

"Everyone from all over was more than eager to have their matters assigned to Judge Kramer," he said.

Long before he knew he would work in the alternate dispute resolution business, Kramer developed similar methods for negotiations between attorneys for his complex cases, with a pretrial discovery meeting that

he called a "cookie lunch." The idea was to hash out discovery as a group instead of having the two sides send passive-aggressive motions back and forth.

"Clearly one of the worst problems we have in our civil litigation world is the cost of civil discovery," he said. "It's staggering how much it costs."

That thought process was later reflected in the rise of alternate dispute resolution, the concept of saving money in a slightly less formal, less adversarial atmosphere compared to pretrial proceedings.

Another commonality between his former and current jobs was Kramer's decision to keep these pretrial meetings informal, to try to ease tension and break down some of the walls between judges and litigants.

"When you're the judge sitting above everybody in the room, wearing a robe, people are wary if not somewhat terrified," he said. "They don't believe you're a human either. They think you must have come from Mars."

Pamela M. Ferguson, a partner at Lewis Brisbois Bisgaard & Smith LLP in San Francisco, said it was apparent long ago that Kramer's style and unique ability to put litigants at ease in otherwise tense situations would make for an easy transition from the bench to alternate dispute resolution.

"I had him as a settlement judge when he was on the bench and I often used to tease that he would be a great asset to JAMS," she said.

Kramer spent decades working with judges on the Rutter Group's seminar series on civil procedure. He joined the group before he actually became a judge and his role grew along with his career.

All that knowledge of complex litigation and informal court proceedings is valuable, but attorneys are most interested in Kramer's litigation chops and his ability to analyze the strengths and weaknesses of cases.

"His style is kind of what you want it to be," said Andrew A. August, a partner at Browne George Ross LLP in San Francisco. "If the parties agree they need a very strong mediator to beat up on people, over the course of the mediation he will do that."

August said preparation is extremely important when working with



Joshua Sebold / Daily Journal

### Richard Kramer JAMS

San Francisco

**Area of specialty:** Business/commercial, class action/mass tort, construction defect, employment, environmental, financial markets, insurance, international, special master/discovery referee

Kramer. He said the former judge often has a deep understanding of the issues before the first in-person meeting is held.

August pointed to a case Kramer mediated: "He starts the mediation with a lawyers-only discussion about how the contracts don't say what one of the parties said they said. To get to that point he had to have read that contract incredibly carefully. It turned out to be a major issue in the case and he got it resolved."

Robert R. Moore, a partner at Allen Matkins Leck Gamble Mallory & Natsis LLP in San Francisco concurred, advising attorneys working with Kramer to "make sure they really know what they are talking about before they stand up and say something, because he will have read everything."

More than anything, attorneys agree that Kramer is in this for the love of the game, and his intellectual curiosity relating to the law knows no bounds.

"Nobody knows the law better than he does," Ferguson said. "He's demonstrated a unique ability to resolve issues very seasoned lawyers on very complicated cases had not thought of."

The former judge is regarded as a true legal wonk. One of the highlights of his career was being invited to the U.S. Supreme Court to hear oral arguments on the Proposition 8 gay marriage case, in recognition of his work presiding over a previous case regarding Gavin Newsom's legalization of gay marriage when he was mayor of San Francisco.

Kramer said watching the process work out in the highest court filled him with pride in the country's legal system, and the ultimate outcome made him happy as well.

"I still will walk through airports and see two guys with a baby car-

riage and I look at this and go, 'Well look, the world didn't come to an end.' It doesn't impact my life no matter what."

Kramer said he particularly enjoys strategizing with lawyers whose cases he isn't handling. He will get calls from attorneys who either want him to read or brief or even have him hear an oral argument and tell them how he thinks a specific judge would react to that line of reasoning.

The former judge said the biggest lesson he tries to pass on to other attorneys or judges who recently joined the bench is to remain humble. He said the two losses that stuck with him the most as a litigator were the ones where he had been confident for weeks that he would win, because he wasn't impressed with his opponent.

"They were long trials and I'm watching this unfold as the lawyer, thinking, 'This is cool. I'm going to win,' but I lost the jury trials."

*Here are some attorneys who have used Kramer's services:*

Stuart M. Gordon, Gordon Rees Scully Mansukhani LLP; Robert R. Moore, Allen Matkins Leck Gamble Mallory & Natsis LLP; Stacey E. James, Littler Mendelson PC; Tina Wolfson, Adhoot & Wolfson PC; Andrew A. August, Browne George Ross LLP; Noah Hagey, BraunHagey & Borden LLP; Pamela M. Ferguson, Lewis Brisbois Bisgaard & Smith LLP