

Comfort Zone

Retired judge Kevin McKenney, now a mediator, has a low-key style

By Fiona Smith

Daily Journal Staff Writer

SAN JOSE — In working to resolve disputes, neutral Kevin McKenney always tries to make a personal connection with people and his central concern is putting people at ease.

"I want the people to feel comfortable in talking with me," McKenney said. "They may not feel comfortable being here, they may not feel comfortable being in litigation, but at least they feel comfortable talking with me and I think that's very important."

McKenney, 72, has been at JAMS for a year now after working 20 years as a judge in both civil and criminal matters at the Santa Clara County Superior Court.

At JAMS, he divides his time about equally between meditations and arbitrations. His lengthy experience in civil matters — both as a lawyer and as a judge — means he has a deep familiarity in matters ranging from personal injury to real estate to contract disputes.

In the often contentious disputes he works on, he keeps a toned down style, he said.

"There's obviously a great deal of emotion involved," McKenney said. "I tend to be soft spoken. If someone needs to ventilate, I'll listen to them."

In fact, listening is his number one job, McKenney said.

"I do want to take the time and listen to what the parties have to say to get a feel for what's driving this situation — is it a simple money dispute or is there hurt feelings or a long term relationship?" he

said. "And once I've got that, I'll sometimes talk with the lawyers separately or together and say, 'Here's where I think we should be going.'"

McKenney, who charges \$400 per hour, describes his approach as adaptive to what each situation demands, including meeting with the parties separately or together depending on how people feel.

In certain matters, he has requested to meet with the parties without their lawyers present, after getting their attorneys' permission.

In two instances in which he did this, the parties knew each other and both cases settled very quickly after the meeting, he said. In one case involving a contract dispute, after meeting alone with the sparring parties, the case settled in 30 minutes, he said.

Once in the room, "I basically didn't say a word," McKenney said. "I sat there and let them talk."

McKenney is "efficient, effective and tenacious," said Maria A. Caruana, an attorney with the Law Offices of John A. Biard. "He hones in on the critical issues of the case and works both sides toward a resolution."

During a personal injury mediation with McKenney in which she participated, the parties were unable to reach a settlement, Caruana said. But McKenney didn't give up — he called both sides every few days for a couple of weeks, slowly inching them closer to a deal, which they eventually did reach, she said.

"His basic understanding of medical issues and how it relates



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Kevin E. McKenney

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Area of specialty: Business/commercial, construction, employment, personal injury, real property, family, professional liability, consumer matters, contract disputes, wage and hour

to personal injury is a real asset — he's not learning this stuff as he goes along," Caruana said.

McKenney is easy to work with, inquisitive and not shy about asking the attorneys to clarify points of law, said John F. Cavin, an attorney with Hoge Fenton Jones & Appel Inc. He's compassionate yet forceful when dealing with parties, he said.

He helps "clients move toward what is a good settlement when they can't see it because they're too emotionally attached to their position ... to their feeling that they're right," Cavin said.

Before taking the bench, McKenney worked for 20 years in private practice handling insurance defense and business litigation in San Jose. He grew up a bit farther north — he was born in Berkeley and grew up in El Cerrito and Oakland.

He left the San Francisco Bay Area after high school to join the U.S. Army, where he was stationed in Kentucky and trained as a paratrooper. After three years in the service, he returned to California, eventually graduating from California State University, Hayward. He went straight into law school at the University of San Francisco.

While in private practice, McKenney got his pilot's license

on the side and trained to use special planes designed for acrobatic maneuvers such as loops, flying on the side and even flying upside-down.

He hasn't flown for many years and gets his kicks riding motorcycles, including a recent solo trip he made from San Jose all the way to Prudhoe Bay in Alaska.

Here are some attorneys who have used McKenney's alternative dispute resolution services:

Michael K. Stevens, Law Offices of Michael Stevens; Kirkman J. Hoffman, Hoffman Law Group APC; Raymond E. A. Kong, Jr., Fisher & Kong LLP; Jay M. Ross, Hopkins & Carley; Steven A. Ellenberg, Law Offices of Steven A. Ellenberg; Trevor J. Zink, Omni Law Group LLP; Thomas Caudill, Law Offices of Thomas Caudhill; Albert K. Martin, Law Offices of Albert K. Martin; Enrique Martinez, Law Offices of John E. Hill.