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From Military to Mediation

Fred K. Morrison, a veteran of the Army and the California courts, brings his years of life experience and legal training to the table when hammering out settlements as a mediator.

By Ryne Hodkowski
Daily Journal Staff Writer

Whether he knew it or not, Fred K. Morrison had been training his entire life for his work as a JAMS mediator and arbitrator.

The son of a Navy man, Morrison was born in Hawaii months before the attack on Pearl Harbor and lived in California, Boston, Chicago and Norfolk, Va. before attending Purdue University. Like working in a mediation room, Morrison often had to acclimate to his surroundings.

"You have to learn to adapt to situations," Morrison said, reflecting on his youth. "You either learn that, or you're not very happy. I enjoyed going to new places all the time."

Morrison entered the U.S. Army upon graduation and returned from Vietnam in 1967. He then attended law school through the Army's excess leave program, which allows service personnel to take time from active duty to complete their studies.

After graduating from William & Mary Law School in Williamsburg, Va., Morrison served four years as a judge advocate general in the Army.

"I did a lot of trial work [as a JAG]," Morrison said. "Court-martial work is very similar to a civilian criminal trial."

Morrison later worked seven years as a full-time professor at the University of Pacific, McGeorge School of Law and served three years as an assistant U.S.

attorney in California's Eastern District.

In 1985, Morrison was appointed by Gov. George Deukmejian to the municipal court in Sacramento County. Four years later, Deukmejian elevated him to the county's Superior Court. All the while, Morrison, wanting to hold on to his military past, served part-time in the California National Guard as second lieutenant to brigadier general and National Guard special assistant to the judge advocate general of the Army.

In 1994, Gov. Pete Wilson elevated Morrison to the 3rd District Court of Appeal. There, he wrote more than 160 opinions over 14 years.

"I'm most proud of my time on the Court of Appeal," Morrison said. "It was a wonderful job, and I worked with tremendous colleagues."

Still, Morrison wanted a "post-retirement career," and decided to join JAMS in 2009. He works mainly as a mediator and arbitrator but also handles discovery issues and private trials. Regardless of the capacity in which he's serving, he brings a myriad of skills that he honed while on the bench.

"He's able to see the legal and public policy implications almost instantaneously," said Stephen L. Goff, a partner at DLA Piper who worked with Morrison on an arbitration. "He can really give people an insight quickly about where an argument is heading



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and whether or not it's going to be useful to him in deciding a case."

"He is extremely persuasive at identifying the pitfall or challenges your case may have," added Jill Telfer, a plaintiffs' employment litigator. "It's helpful, because he presents it in a non offending, gentle way and always has information that supports it."

Nancy J. Sheehan, a shareholder at Porter Scott APC, said Morrison is persuasive "in his ability to get the parties and their attorneys to look at the case through the eyes of the opposing party."

"That's important — to consider the other side's case," Sheehan said. "You start to think of it as if you were a neutral party, which the jury is."

Morrison said his experience in military and appellate court is "extremely useful" in "knowing expected outcomes in court."

"That's stuff clients haven't heard before, and they want to know about those things."

Beyond his ability to cut to the core of issues, many attorneys have marveled at Morrison's ability to build rapport with clients and let the mediation develop naturally, particularly given his time as a judge and the fact that he also holds arbitrations.

"Some judges are very good judges because they're accustomed to making a decision," said Thomas S. Knox, name partner at Knox Lemmon Anapolsky & Schrimp LLP. "He made you feel like he was on your side, and he

Ex-JAG lawyer, justice brings authority to mediation

was doing that in the other room. That isn't being two-faced; he's there to help you settle a case."

Sheehan added, "In my view, the most successful mediators are those willing to listen and who effectively and respectfully get both sides to look at the case through a different set of eyes. That's particularly true of my field" involving employment cases "because they have highly emotionally charged issues."

Bruce Kilday, name partner with Angelo Kilday & Kilduff, said that in a recent mediation in which both sides were "way apart," Morrison made the parties comfortable and kept them talking. Kilday said Morrison maintained an optimistic outlook while "recognizing we were very far apart."

"It wasn't just a simplistic, 'We'll get there.' He talked about the facts, and that gave us a realistic optimism."

"I believe my mediation was the first one [Morrison] took at JAMS," Knox added. "You would have never known [by] the way he handled it."

While Knox and others may think of Morrison as a natural, the retired justice admits that he needed to familiarize himself with the world of mediation.

"I needed to learn a great deal,"

Morrison said. "The biggest skill is the ability to listen. You have to establish rapport and build up a certain amount of trust."

Morrison said the biggest challenge comes in deciding when to be evaluative and when to inject thoughts and comments. He also said he felt that oftentimes a judge is seen as being an evaluative mediator, but if one gives his or her opinions too soon, the case could shut down. Therefore, a balancing act is needed.

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— Bruce Kilday

"That's the fun thing about mediations," Morrison said. "They are so varied. Everything is different every time. They're constantly fascinating."

Lawyers appreciate Morrison's deep knowledge of a range of issues.

"I work in a complex area — health care involving managed care contracting disputes," Goff of DLA Piper said. "Arbitrators have a difficult time understanding business and the policies involved."

But Morrison "had no problem understanding things," he added. "I was a little shocked by the end

of the closing argument that he understood the case better than I did, because I've been practicing 28 years. That doesn't happen very often."

Dale Campbell, a shareholder with Weintraub Tobin Chediak Coleman Grodin Law Corp., also gave Morrison high marks.

"We needed someone with appellate experience to look everyone in the eye and tell them the reality of what they have to look forward to," Campbell said. "If we had an experienced commercial litigator or a trial judge, I don't think we would have ever gotten close to settling."

Knox of Knox Lemmon Anapolsky & Schrimp and other lawyers also said Morrison's straightforward and frank personality helps mediations.

"At a point during the mediation, he'll begin introducing what the other side said and begin raising objections," Knox said. "He'll tell you what would happen if you were to go to trial and says it with conviction and empathy. It's helpful because sometimes lawyers can't tell their client anything is wrong with the case, and they rely on the mediator to do that."

"It helps me in future cases," Telfer, the plaintiffs' employment litigator, added. "I'm a sole practi-



Fred K. Morrison
JAMS

Specialties: Business/commercial, employment, personal injury/torts, real property

tioner, and while I have a network of other attorneys, it's helpful to get information like that — especially from the bench."

Morrison said he likes the fact his job gives him a chance to work more closely with lawyers and clients.

"The Court of Appeal is an insulated life," Morrison said. "You see lawyers in court for oral arguments, and that's about it. Now, I'm back down there with everybody, really mixing it up."