

VERDICTS & SETTLEMENTS

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Establishing Trust

Transparency is key to a successful mediation, says neutral David Phillips.

By Blaise Scemama
Daily Journal Staff Writer

LOS ANGELES — One of the biggest mistakes a lawyer can make in mediation is being too competitive, according to David Phillips of Signature Resolution.

“When you get too competitive, and you think there might be another two thousand dollars on the table, you can blow a deal when the deal had a range of values,” Phillips said. “My job is to help tamp all that down and to get people thinking and not fall victim to those kinds of mistakes.”

But it takes trust, Phillips said.

“When lawyers trust you, that is to say, they know you’re going to be honest with them, hardworking, will follow up, and do what is in the best interest of each of the rooms, they start to be more open with you. That’s crucial,” he added.

Growing up as the son of Contra Costa County lawyer Carolyn Phillips, Phillips began visiting courtrooms in the San Francisco Bay Area when he was 8.

After receiving a bachelor’s degree in economics and philosophy, a master’s degree in thought and literature and a doctorate in literature from Stanford University, and his law degree from UC Berkeley School of Law, Phillips joined Milbank Tweed Hadley & McCloy LLP, now Milbank LLP, in 1991.

In 1993, Phillips began his own private practice, primarily litigating insurance bad faith cases for plaintiffs. In 2012, he worked almost exclusively as defense counsel in employment disputes at Gordon Rees Scully Mansukhani LLP.

After 25 years of litigation, both as plaintiffs’ and defense counsel, Phillips said one of the best ways to establish trust is transparency. For example, while some parties may be hesitant to exchange case briefs for perceived strategic reasons, as the mediator he highly encourages it.

“The exchange of information and transparency is our friend,” Phillips said. “The more transparent people can be, the better



Emilio Aldea / Daily Journal

off we are in terms of coming to a resolution. The mediator can be instrumental in that to the extent the mediator is entrusted and they can build trust between the two rooms.”

Phillips, who solely focuses on mediation, said the reason he does not work in arbitration is a philosophical one born out of the genuine belief that parties should be empowered to resolve their own disputes.

“When you’re involved in a lawsuit — either as a plaintiff or defendant — there will be a resolution of your case,” he said. “Either you can have a role in what that resolution looks like by coming to an agreed resolution or it is going to be imposed on you by an arbitrator, judge or jury.”

Attorneys who have used his services say Phillips knows when to empower parties but also when to step in and offer his own ideas regarding a resolution. When it comes to a mediator’s proposal, for example, Phillips will never offer one unsolicited but is asked to more times than not.

“I think Phillips is an excellent mediator

David Phillips

Signature Resolution
Los Angeles

Areas of Specialty:

Employment, wage and hour class action, complex business disputes labor and habitability, insurance coverage, bad faith, construction, and personal injury

and falls comfortably in the middle between the too-soft and too-hard approaches,” said plaintiffs’ employment law specialist Marina K. Fraigon of Fraigon Law Group. “My cases tend to be sensitive ones. It takes an excellent mediator to be able to talk to the client about their weaknesses without alienating them.”

While he is usually able to help parties get close to making a deal on their own, 75% of the time he is asked to step in at the finish line and make the proposal, Phillips said.

“When I started, I had this very idealistic approach that I would never do a mediator’s

proposal, I would always empower parties to negotiate to each other, and there would be this kumbaya moment and they would take ownership of their resolution. Great!”

“I realized it’s a great theory but it doesn’t work,” he continued. “They prefer to negotiate in good faith and get close to each other but actually closing the deal is very tough for them to do. Because you’ve worked so hard to establish credibility and trust in both rooms, and they do trust you, they want you to close it for them in the end.”

Employee rights attorney Carney Shegerian of Shegerian & Associates Inc., who has used Phillips at least seven times, said he thought the mediator was a retired judge.

“He’s assertive about his opinion but not too assertive,” Shegerian said. “He understands that a good communicator doesn’t over talk.

While trust, transparency and self-empowerment seem to be of the utmost importance to Phillips, he also seems to know when to allow parties to have a comfortable distance. He said when it comes to employment disputes, joint sessions are essentially never done.

“In employment, the employee is not going back to the company, so we don’t need to figure out a way for these folks to work together going forward,” Phillips said. “When you go to mediator conferences, people will say, ‘Oh that’s really horrible. We need to have

joint sessions,’ and I get and believe that in some sense too. However, it’s not what the marketplace can tolerate right now and that’s fine with me.”

Phillips said when parties are involved in joint sessions, they often take intransigent positions and feel attacked and become defensive, ultimately leading to an unproductive and less collaborative session.

However, there are some occasions when a joint session is appropriate, he said. Habitability cases in which a resident will continue to live on the landlord’s property after the dispute is resolved or in a business disagreement involving family members are examples Phillips used as situations in which joint sessions could be helpful.

“There are different strategies that work for different kinds of disputes and different kinds of litigants.”

Lee R. Feldman of Feldman Browne Olivas, who has used Phillips at least four times, said while he brings a wealth of defense side knowledge to mediations, Phillips is especially attentive to and never tries to minimize the plaintiff’s harm.

“Because of his background, he knows which cases are problematic for the defense, and while he spent a lot of years on the defense side, he does not exhibit any discernible pro-defense bias,” Feldman said. “He doesn’t just get the cold, dry, legal issues; he also understands that the plaintiff is a real

person who has usually suffered significant emotional harm.”

Attorneys describe Phillip’s mediation style as human and sensitive as well as effective and persistent.

“I mediated a cancer case with David,” Fraigun said. “It takes an aware and conscious human being to handle that kind of case with a very sick client while pointing out their risks to them. David has always shown empathy and human compassion while nevertheless pushing and explaining the legal issues as he sees them. He always walks that tightrope beautifully.”

Phillips said he finds it useful to encourage parties to begin thinking about, “What’s life going to be like after we put down this dispute?”

“It’s very hard to let it go, but at some point, it is necessary to do that,” Phillips said. “I think both rooms find that very liberating. Even though it is scary to let go of that dispute, it’s really what they want. So I help with that.”

Here are some attorneys who have used Phillips’ services: Jeff Ranen, Lewis Brisbois Bisgaard & Smith LLP; David Symes, Littler Mendelson PC; Rodney Mesriani, Mesriani Law Group; Jacob Georg, Mathew & George; Leonard Sansanowicz, Sansanowicz Law Group.