

ADR Profile: Hon. David Brickner (Ret.)

JAMS neutral David Brickner prods both sides to settle.

By Henry Meier
Daily Journal Staff Writer

ORANGE — David H. Brickner, a former Orange County Superior Court judge who's now a mediator with JAMS, is known for his relentless attempts to push cases to resolution.

He probes and prods parties for information, endearing himself to both sides, with a sharp wit and a gregarious sense of humor, according to attorneys who have used him as a neutral. Brickner engages both attorneys and parties, searching for bits of information that he can use to bring the sides together.

"Usually something will emerge from the dim recesses of information passed back and forth that both parties probably dislike but that's also in the realm of possibility," Brickner said.

Attorneys said it rarely takes Brickner long to figure out what that "something" is.

"He is terribly bright and will figure out the issues pretty quickly and hone in on them," said Jack Smart, a sole practitioner in Irvine who's used Brickner several times in mediations.

Others said that Brickner's ability to relate to clients can help settle even the most contentious and complex cases.

"He's a dignified presence that makes both attorneys and clients respect and listen to what he says," said Wayne Call, a principal at Call & Jensen in Newport Beach. "I had one particularly difficult client and he was very good at working with her and simplifying a very complex matter in a way that helped her understand."

Brickner himself said he is sensitive to clients' relationships with their lawyers.

"How do you break bad news to a party without hurting the reputation

of the lawyer?" he said. "Frequently I'll give bad news in front of both lawyer and client, but sometimes, if the situation warrants it, I'll talk to the lawyer first. And I'm typically very effusive towards the lawyer."

That doesn't mean that Brickner sugarcoats everything, especially if a client is out of control.

"If a client is driving the bus and a lawyer is tagging along it can be difficult," he said. "...I might talk with someone for an hour, but eventually I just ask candidly, 'What can I do to help you today? What do you want?'"

Attorneys who have used Brickner as a neutral said their interactions with him can be just as candid.

Barnet Resnick, a partner at Vogt, Resnick & Sherak LLP in Newport Beach, said Brickner is often "brutally honest."

"He's not averse to telling me I don't know what I'm talking about," Resnick said. "He's a bulldog and he doesn't let up. He'll beat an attorney up."

Resnick said that Brickner's doggedness often moved the matter forward and that any candid analysis, no matter how harsh, came from a "place of mutual respect."

Attorneys agreed that Brickner is strong in terms of follow-up. If there's a case that can't be resolved during a session, Brickner will repeatedly reach out to see if he can help move things along.

"Most cases settle during the mediation session, but sometimes you don't get it done and then it's lots of emails and phone calls," Brickner said. "Stuff starts percolating in the back of your mind and you follow up with the parties until the case either settles or they stop taking your calls."

When it comes down to it, Brickner said he's a pragmatist and with his only goal being a settlement, other considerations go by the way-side.

"What is a number at which the



Henry Meier / Daily Journal

case can settle?" he said. "I don't care about justice or principle. My client is the deal."

Brickner was born in Huntington Beach and has spent much of his life in Orange County. He left briefly to earn his undergraduate degree at Stanford University in 1961 and spent the next three years as a lieutenant in the U.S. Navy. When he left the armed services, he enrolled at UCLA School of Law and received his law degree in 1969.

After passing the bar exam, Brickner joined the Orange County district attorney's office, but left after a few years to start his own private criminal defense practice. He was appointed to the West Orange Municipal Court by Gov. Jerry Brown during the governor's first stint in office. Brickner was elected to the Orange County Superior Court bench in 1986.

Despite his practice background in criminal law, Brickner spent his judicial career presiding over civil cases. He spent 15 years hearing complex civil matters until he retired in 2003.

Brickner was not one to sit idle in retirement.

"I think I had 30 days of vacation and I almost went mad," he said.

He initially contemplated whether he would sit as a judge on assignment or work as a mediator, but

David H. Brickner

JAMS
Orange

Areas of specialty: employment, insurance, personal injury/torts, real estate, business/commercial

after he chose JAMS there's been no going back.

In his spare time, Brickner said he enjoys playing golf and guitar, going to the gym and "doing the dishes and cooking dinner for my wife." He and his wife, Leah Brickner, have two sons. Brickner has three more sons from a previous marriage.

Here are some attorneys who have used Brickner's services:

Matthew J. Fletcher, Connor, Fletcher & Hedenkamp LLP, Irvine; Carl J. Pentis, Orange; Richard K. Bridgford, Bridgford, Gleason & Artinian, Newport Beach; Jack Smart, Irvine; Laurence P. Nokes, Nokes & Quinn, Laguna Beach; Mark A. Nialis, Orange; Stephen A. Madoni, Newport Beach; Wayne W. Call, Call & Jensen, Newport Beach; Thomas P. Davis, Laguna Beach; Daniel J. Kessler, Burkhalter Kessler Clement & George LLP, Irvine; Barnet Resnick, Vogt, Resnick & Sherak LLP, Newport Beach