

Daily Journal

www.dailyjournal.com

FRIDAY, MARCH 17, 2023

Relevant Experience

Leslie Marks draws on years in the trenches of construction and real estate litigation to settle cases.

By Shane Nelson

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Leslie S. Marks spent four decades practicing law before he decided to focus full time as a mediator, arbitrator and insurance umpire in 2019. But the longtime construction and real estate litigator has been a member of the AAA National Roster of Arbitrators since 2002, experience that he said also helps him to mediate.

“Sometimes when people pick a mediator, maybe they’d rather have a judge, who has all this experience,” said Marks, who is affiliated with Alternative Resolution Centers. “But the next best thing is I’ve been an arbitrator for more than 20 years, and I’ve sat in judgment. I’ve issued awards. I’ve been on panels, and I’ve been chair of panels. I can share that experience when I mediate cases. ... I think having worn a lot of hats over the years helps me settle cases.”

A 1980 graduate of Loyola Law School, Marks said he started out working in personal injury before moving into construction and real estate. He then spent 33 years at Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP, where he was the managing litigation partner while also working frequently as a mediator and arbitrator.

“I just really enjoy resolving cases,” Marks said of his decision to focus full time as a private neutral. “I know what people go through when they’re in litigation. It subsumes your life, and it takes over if you let it. ... I really enjoy helping to settle cases



Justin L. Stewart / Special to the Daily Journal

because I think big picture people shouldn’t be fighting. They should get things resolved, so they can move on with their lives.”

Since joining ARC, Marks said he’s focused largely on construction and real estate cases as well as commercial and business disputes, homeowner association and employment matters. As an arbitrator, Marks said that AAA’s rules of evidence aren’t especially oppressive, and with that in mind, he wants to have full and fair hearings.

“I allow evidence to come in that’s relevant that’s nonprivileged that would otherwise not get in and would otherwise be subject to exclusion,” Marks explained. “Unless, of course, the arbitration

clause requires you to follow the rules of evidence. But if it’s just the AAA [rules], then I let it in. Why? Because if it’s relevant and non-privileged, I want to understand and see the big picture. ... I don’t get bogged down with motions to exclude evidence. I would rather let it in and have it go to the weight of the evidence than not let it in at all, because if it gets in, I’m able to see the big picture.”

Before a mediation, Marks likes to receive briefs from all the parties and speak over the phone with attorneys.

“I just find it’s invaluable to know the attorneys really well,” Marks explained. “I talk to them about family, about their back-

Leslie S. Marks

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ground, and I try to share [my] background. I think once there's an element of trust with the attorney, you're halfway there. Then I ask, of course, about the client and what's their background and what can I anticipate, what can I expect."

He dedicates significant time at the start of his mediations to getting to know the clients.

"It's not contrived. I want to get to know these people," Marks insisted. "They have issues, they have problems, and I want to try to resolve them. But also, it builds up a sense of trust. ... I think that's what this is all about. It's about people and preparation."

El Segundo litigator Jeremy J. Osher has used Marks as an arbitrator and mediator in several real estate and business disputes.

"Les has got a really good way about him. He's really good at sizing people up and developing rapport," Osher explained. "I've had him with clients that are difficult, and I've had him with clients that are not so difficult, and he's been able to adjust to the client and to the personalities in the room. ... He does a really good job of con-

necting with people of all types and personality profiles."

Along with his facilitative work to build a connection and trust with clients, Marks noted that he sees evaluation as a critical component of his approach to mediation. And that means frankly discussing best-case and worst-case scenarios at trial as well as applying a risk management perspective in areas such as liability, damages and award collection.

Marks added that he will make use of mediator's proposals but only if both sides agree on the tactic, and said when a deal is reached, he insists on having a settlement agreement signed by all the parties.

"I've seen buyer's remorse," Marks recalled. "And I will never let that happen again. People start thinking about it overnight: 'Did I do the right thing or not?' So I make sure that we have an enforceable settlement document signed that day."

La Mesa litigator Craig P. Fagan first used Marks as a mediator for a homeowner association rule dispute during the height of the pandemic, and Fagan was so pleased

that he's since used the neutral several times to resolve far more complicated landlord-tenant disputes.

"I've probably done over 300 mediations, and I can count on one hand the good mediators I've used, and Les is definitely one of those few," Fagan said. "Les is determined, but he's not arrogant. He really, really works to get things done, and he doesn't give up. ... He's a super smart guy and very well prepared and all that other stuff, but like I said, his mix of no ego and determination really makes for a good mediator."

Irvine real estate litigator Brian C. Plante opposed Marks a number of times when he was still representing clients and has since used the ARC neutral as a mediator and an arbitrator, including one complex multimillion-dollar dispute between a homebuilder and subcontractor.

"He really had to get into the weeds and look at the contractual provisions, look at the accounting records and really try to parse through all of that evidence and figure out what happened and who was at fault and how much were the damages," Plante recalled. "I

thought he did a great job – really spotting the issues, sorting through what was relevant evidence and what's not and then ultimately coming up with the right decision."

Osher added that Marks is an especially proactive arbitrator.

"A lot of arbitrators will just sit back and listen and take things in and then issue a ruling," Osher explained. "But he was really engaged and asked questions where he didn't see the dots being connected, and I thought that was really helpful. ... And he wasn't one-sided. He beat up equally on both of us. I haven't found him to be plaintiff oriented or defense oriented. He's settlement oriented. He just wants to get the case resolved."

Here are some attorneys who have used Marks' services: Mark K. Worthge, Litchfield Cavo LLP; Jeremy J. Osher; Boren, Osher & Luftman LLP; Brian C. Plante, Plante Lebovic LLP; Steve J. Revitz, Raitskin & Revitz; Craig P. Fagan, Law Offices of Craig P. Fagan.

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