

On the Team

Being a former union worker helps retired justice James Lambden connect with parties.

By Don DeBenedictis

Special to the Daily Journal

James Lambden spent 17 years on the 1st District Court of Appeal and seven years before that on the Alameda County Superior Court, including four years handling the law-and-motion calendar. That assignment “gave me probably two or three PhDs or LLMs in civil procedure,” he said.

As a mediator, though, he sometimes begins by telling participants that he used to belong to the Teamsters. “That helps to convince the clients to trust me,” Lambden said. “One of my friends calls ... that my working-class hero approach.”

Lambden said he tries to connect with the parties by discussing their needs and by introducing himself. Particularly in employment cases he might talk about having worked in canneries and factories and as a landscaper and a phone installer.

“It feels like he’s lived a bunch of lives,” said Gordon & Rees partner Allison L. Cardenas, who represents employers. “He has a way of connecting with people that puts them at ease. ... He makes you feel that he’s on your side.”

San Francisco litigator Kathleen Fisher said Lambden takes the time to build credibility with parties and attorneys. “He’s broadly traveled, broadly read, broadly interested in things,” she said. “He creates a really safe space for everyone.”

Despite his “amazing” résumé, “he’s a regular person who’s real easy to talk to,” said trust and estates litigator Robert Epstein of San Rafael.



Gary Wagner / Special to the Daily Journal

Attorneys also say that once Lambden forms a connection with the participants in a mediation, he uses it to push for a settlement. “He knows when he needs to play hardball,” said estate planning attorney Yulissa Zulaica, who has taken several cases to him. “He’s very pragmatic.”

Epstein said Lambden “will tell you what he thinks” about the facts or law of a case if he’s asked.

And sometimes, Fisher said, “he just decides that he’s going to have to tell something to someone that ... will alienate them. He’s never

been one of those mediators who’s afraid to piss off a lawyer who might bring him more business.”

He also is not shy about telling people how he thinks a case should settle, several attorneys said, meaning that he is very willing to provide mediator’s proposals.

Unlike some retired judges turned mediators, he doesn’t simply announce how a case should settle early on, according to San Francisco trust and estates attorney Sheila Robello. In a difficult case, he “takes on that facilitator role bringing each side’s concerns

Hon. James R. Lambden

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to the other side,” she said. “He gets to the heart of the matter quickly. He lets my clients talk about personal issues ... but guides them to what can be accomplished.”

If a case seems stalemated, he will offer to prepare a mediator’s proposal, but he doesn’t push, she said. “He’s very practical.”

And the mediator’s proposals he provides are “much more thought out” than those from some other neutrals, according to Los Angeles attorney Jana M. Moser, who represents employees. He writes detailed evaluations and proposals that describe the strengths and weaknesses of each side’s case, she said. He goes through the important facts, and he may predict whether dispositive motions or attorneys’ fees will be granted. “It’s very specific to the case, not generic,” Moser said.

Lambden describes his approach to mediation as evaluative, not facilitative. “Typically, I will get to know [the parties and attorneys], get them to trust me, evaluate it, give them my opinions and then try to help them find the middle,” he said. “The tradition of the haggling – the hagggle-wagggle I call it ... I find to be very clumsy and dissatisfying.”

In fact, he frequently cuts off extended haggling. “In very many of my cases, I will declare an impasse and say that the haggling has now got us way late in the day and we’re not getting there.” At that point, he offers to write an evaluation and proposal.

“I do a lot of written mediator’s proposals, and I would have to say that most of them are accepted,” he said.

Lambden was born in Oakland after his family moved to California from Oklahoma, and he grew up primarily in Hayward. While in high school in 1967, he spent four months as a foreign exchange stu-

dent in Japan, “which was a life-changing experience for me and has influenced me ever since,” he said.

As a U.C. Berkeley student, he studied East Asian history and Asian affairs. He also experienced “the turmoil of the 60s ... in great detail” including getting “tear-gassed pretty regularly” while living on Telegraph Avenue.

Lambden received his law degree in 1975 from what is now UC College of the Law, San Francisco and, after a two-month grand tour of Europe, went to work for Fitzgerald, Abbott & Beardsley. One of the oldest law firms in the state, it is now called Donahue Fitzgerald LLP.

His practice was mostly civil litigation, including probate, business matters and water rights. He also became active in state and local bar matters, which led to his being named to the Alameda County Superior Court by Gov. George Deukmejian in 1989.

He handled felony cases initially, then the four-year stint running the court’s law-and-motion department and then moved to civil trials. Gov. Pete Wilson elevated him to the appellate court in 1996.

Two of his three colleagues on Division Two of the 1st District Court were J. Anthony Kline, the former legal affairs secretary for Gov. Jerry Brown, and Paul R. Hearle, who was Gov. Ronald Reagan’s appointments secretary. And that “pretty much meant that I had the deciding vote,” Lambden said. In his 17 years on the court, he only wrote one dissent, “and it was an extremely kind of silly little case.”

He did write a separate opinion concurring with Kline in a very high-profile case that held a gun manufacturer had some liability for the 101 California mass shooting. “We argued that case in chambers for months because it

was such a difficult case,” he said. *Merrill v Navegar Inc.*, 75 Cal. App.4th 500 (Cal. App. 1st. Dist., Sept. 29, 1999)

The state Supreme Court later largely sided with Hearle’s dissent and reversed.

While on the bench, Lambden was a founder and chair of the California Access to Justice Commission and of the state Judicial Council’s Access and Fairness Advisory Committee. The advisory committee focused on “opening up the courts both in terms of racial and ethnic diversity, but in particular in terms of the participation of women,” he said. By now, the California judiciary is about 40% women.

When he retired in 2013 to become a neutral, Lambden chose ADR Services, Inc. in large part because it is women-owned. Since then, he has happily discovered “a breathtaking array of dispute resolution issues beyond just the daily litigation.”

About 40% of his work is mediation and an equal share is arbitration. The remaining 20% includes being the discovery referee in very complex civil cases, serving as a hearing officer in municipal tax disputes involving high-level commerce clause issues, and conducting peer review hearings for hospitals.

Many matters involve very complex health care cases. He arbitrated a matter involving the DaVinci robotic surgery device. Currently, he is six months-deep into a health care mediation with multiple parties that is likely to continue for several more months, he said.

One of the attorneys in that case is Greenberg Glusker’s Pierce O’Donnell, who hadn’t used Lambden before but said he now rates the retired justice as one of the top five mediators in the state. “He’s very efficient, he’s methodical about staying on top of the issues ... [and] a taskmaster in a

good sense,” O’Donnell said. He also called Lambden shrewd, affable and funny. “He hasn’t got our case settled yet, but I think he will.”

Robert Bunzel of Bartko LLP is on the opposite side of the case. He has known Lambden for years. “All the parties trust his judgment. He doesn’t get hung up on the legal issues; he focuses on ... the timelines and business objectives,” Bunzel said. “I think he’s doing a great job.”

Lewis Brisbois partner Amy Pierce in Sacramento said Lambden is “a particularly good person for some of these cases that aren’t easy-peasy.” She brought him to consult on a nine-year-old case. He got up to speed on the case in a few days and gave very good advice, she said. “He just knocked it out of the park.”

Lambden said he has handled several matters over many months, including one mediation that took nearly two years. “I’ve had two or three judges retire out from under me in one of my cases.”

Over his career, Lambden said, he has had “every good job” being an attorney, a trial judge and an appellate justice. “I really enjoy mediation as much as any of them because of the satisfaction of dealing one-on-one with very talented lawyers and their clients in a way that resolves their disputes.”

Here are some attorneys who have used Lambden’s services: Scott E. Boyer, The Homampour Law Firm; Mollie Burks-Thomas, Gordon & Rees Scully Mansukhani LLP; Frank A. Cialone, Shartsis Friese LLP; Jason J. Curliano, Buty & Curliano LLP; Robert D. Eassa, Duane Morris LLP; J. Gary Gwilliam, Gwilliam Ivary Chiosso Cavalli & Brewer; Gary Lafayette, Lafayette & Kumagai LLP; Theodora R. Lee, Litter Mendelson P.C.; Lisa P. Mak, Minami Tamaki LLP; Latika M. Malkani, Siegel Lewitter Malkani