

VERDICTS & SETTLEMENTS

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Just Go With It

Neutral Craig Karlan understands that flexibility is crucial to reaching a resolution.

By Shane Nelson

Special to the Daily Journal

Retired Judge Craig D. Karlan said bodyboarding on a big Newport Beach wave as a teenager taught him a lesson he's still using today as a private neutral.

"I got on top of this massive wave. It felt like it was 15 feet, but for all I know it was 6 feet. But it was huge to me," Karlan recalled with a chuckle. "Then it disappeared, and I dropped to the sand, hit the sand, and then the wave crashed on top of me and beat me up and threw me around. For whatever reason, I remembered, 'Don't fight it. Just go with it.' And I did, and it took me about 100 feet up the jetty, and then I managed to get out when things calmed down."

Karlan said he routinely applies that philosophy of "just go with it" during the mediations he handles these days as a fulltime ADR Services, Inc. neutral.

"Every case is different, so let's see what the parties need. Some are hardcore businesspeople, and they want to make a demand within 10 minutes, and they want to get rolling," Karlan explained. "For others, this is their opportunity to be heard, and they want to tell me everything, and it's my job to listen. ... There are a lot of different ways to get to the finish line, to get a resolution, so I try not to be one thing. I try to be whatever the case needs and whatever the lawyers and the parties need."

A 1991 Harvard Law School graduate, Karlan worked as a Los Angeles County deputy district attorney for 11 years before his 2003 appointment to the Los Angeles Superior Court bench, where he



Justin L. Stewart / Special to the Daily Journal

handled civil, criminal, family law, probate and law-and-motion assignments before his retirement last spring.

Karlan joined the ADR Services, Inc. roster of private neutrals in March of 2023, and he's since been working to resolve disputes as a mediator and arbitrator, tackling a diverse collection of business, employment, real estate, professional malpractice, personal injury and probate cases.

"I try to handle things the same way I did in my courtroom," Karlan said of arbitration. "I try to be pragmatic. I try to cut to the chase. I try to get people where they want to go as efficiently as possible. ...

But I also like to avoid stress with people as much as I can, so I try not to ratchet things up."

Prior to his mediations, Karlan likes to receive briefs from all the parties, and if the attorneys would like to, he'll speak over the phone beforehand with counsel. Karlan noted he'll scrutinize whatever the attorneys submit to him and will routinely do his own research of relevant law.

"Whatever the lawyers think is important for me to know, I want to know," Karlan said. "I want to make sure that I am well-versed in the case because invariably there's always a curveball thrown at you when you show up in mediation.

Hon. Craig D. Karlan

ADR Services, Inc.
Los Angeles

Areas of Specialty:

Business
Real Estate
Personal Injury
Probate
Employment
Professional Malpractice

They're never quite as simple as what's on paper."

Karlan said on the day of mediation, he doesn't make use of joint sessions unless that approach is requested, and after an introduction and brief discussion of the day's goals, the ADR Services, Inc. mediator noted that he usually starts by listening for as long as he feels is necessary. And when Karlan thinks shifting to a more evaluative approach makes sense, he'll begin by asking questions.

"How will this look to the jury? What do you think about this?" Karlan said. "These are the things that are going through my brain. ... So let me share with you and see how this affects your analysis."

Los Angeles attorney Noel S. Cohen appeared before Karlan while he was on the bench and has since used him as a mediator on two separate complex contractual disputes.

"He is a very smart guy, and he is incredibly business-oriented," Cohen said. "He came up with some ideas that neither party could see."

Cohen said he was also impressed by how much effort the retired judge applied before and after the actual mediation sessions.

"There's no mediator I've worked with that works harder than Judge Karlan," Cohen said. "For one of them, we had a several-day mediation, and he was a dog on the bone. He would not let it go until he got it resolved."

Karlan added, meanwhile, that he makes use of mediator's proposals for roughly 25% of the disputes he works on to resolve, but that is a tool he uses cautiously.

"I'm very careful with my mediator's proposals," Karlan said. "I don't like to force numbers on people."

Long Beach defense attorney John C. Kelly used Karlan to resolve a difficult medical malpractice dispute that he said the retired judge ultimately managed to settle nine months after the initial mediation session.

"I think we all thought, 'This case is never going to settle,' and I was just planning on trying it,"

Kelly said. "But he stayed on both sides, and I would get these periodic phone calls. He was very persistent. ... It took nine months to do it, but he did it, and some mediators wouldn't do that. They'd get a little frustrated, and they'd think, 'The case is never going to settle. That's fine. You guys go try it.' But he just continued to work with us in a very high-level, professional way."

Longtime Los Angeles litigator Frank Gooch III appeared several times before Karlan on the bench and has since used the retired judge to resolve three different disputes, involving everything from personal injury to intellectual property and breach of contract claims.

"I've appeared before hundreds of judges, and I've never appeared before a finer judge than Judge Karlan, and those talents really have extended on to his role as a mediator," Gooch said. "He's an extremely smart person. He's very creative and thinks outside the box and gets great results. He's very conscientious, and he's sincerely interested in the case you have with

him. ... He treats it like a matter before the U.S. Supreme Court."

Kelly also appeared several times before Karlan while on the bench.

"I thought he was a great judge, but he may even be a better mediator," Kelly said. "Judges have hundreds of cases they've got to deal with, and he handled that very well and very professionally with great judicial demeanor. But now that he's doing mediations, he just has more time. He has more time to spend on one individual case. He gets to know the lawyers; he gets to know the parties. ... So, while I think he was an outstanding judge, he may turn out to be an even better mediator."

Here are some attorneys who have used Karlan's services: Noel S. Cohen, Polsinelli LLP; John C. Kelly, Kelly, Trotter & Franzen; Frank Gooch III Cozen O'Connor; Peter W. Ross, Ross LLP; Matthew S. Dontzin, Dontzin Nagy & Fleissig LLP

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