

# VERDICTS & SETTLEMENTS

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## Calm and Measured

*Neutral David Rosen doesn't get riled up while engaging in the merits of a dispute, attorneys say.*

By Shane Nelson

Special to the Daily Journal

David A. Rosen decided to retire from the Los Angeles County Superior Court in September 2023 because he wanted more time with his family.

"I have a couple of young grandchildren that - at least for now - love spending time with me," Rosen said. "And I know that's a temporary condition, so I didn't want to miss that."

And while he was certainly eager to free up more room on his calendar for time with his wife, his grandkids, adult children and his 93-year-old mother, Rosen wasn't ready yet to separate himself entirely from the law. So, he joined the ADR Services, Inc. panel of private neutrals and he's since been tackling business, personal injury and employment disputes as a mediator and arbitrator.

"I would like to do some family law matters as well," Rosen added, explaining that nearly half his eight years on the bench was spent running a family law calendar.

"It was an assignment where, as a judge, you could visibly see and appreciate actually helping people on a day-to-day basis - whether people were children or adults or families or both," he said. "It was rewarding and interesting, and that's why I'd like to do some more of that now."

A 1981 Loyola Law School graduate, Rosen spent more than 35 years at Rose, Klein & Marias LLP, representing plaintiffs in toxic exposure, personal injury and employment litigation. He was appointed to the bench late in 2015 and handled criminal, family law and civil assignments.



Justin L. Stewart / Special to the Daily Journal

While most of his work has been as a mediator, Rosen noted that he has issued a couple of rulings as an arbitrator over the past year and considers comprehensive arbitration briefs critical.

"Not so much as a persuasive document, but more as a roadmap of what the lawyer or party intends to prove at the arbitration," Rosen explained. "That's what I'm looking for. What are the elements of your case? What is your evidence supporting each of those elements? That's what I need to know."

Rosen also likes to receive briefs from all the parties before his mediations and tries to speak with

counsel over the phone about a month beforehand.

"I don't really go over the case with them - although I do some of that," Rosen explained. "More of what I do is try to get to know the lawyer a little bit, have them get to know me a little bit - at least in terms of style."

Rosen said preparation, active listening and perseverance are the three most important components of his approach to mediation.

"Active listening always - even when I move towards evaluative thoughts or suggestions - active listening is critical," he said. "And then perseverance. One side or the

### Hon. David A. Rosen (Ret.)

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other, or both, often get to a point in the mediation where it looks to them like it's not going to settle because the other side's not moving the way they thought. ... You just have to keep at it."

Rosen added that he applies a careful approach when weighing in on the merits of a case.

"I might be thinking in my head about numbers, but what I do is I share my views of either weaknesses or strengths in each side's case that maybe they hadn't thought of - or more commonly, that maybe they thought nobody else would notice. This can sometimes make one side or the other or both move towards the middle."

Rosen will make use of mediator's proposals later in the day if he feels the parties are in enough agreement about the facts of the case.

"In a case where the parties disagree about critical facts, it's very difficult - not impossible - but very difficult to make a reasonable mediator's proposal," he explained. "But where the parties agree about what the facts are and what the law is and simply disagree about the

dollar value of those facts, then it's possible the mediator's proposal will be helpful."

Claremont appellate attorney Jeffrey I. Ehrlich used Rosen recently to resolve what he described as a hard-fought tort matter, and said he appreciated the mediator's willingness to thoughtfully discuss the case's merits.

"He engaged with me, he engaged with the other side very specifically about various issues of the case and how we would address them," Ehrlich said. "He didn't just go back and forth, delivering a message of: 'Their offer is this. What do you want to do?' ... He really would engage on a granular basis on the arguments that were being made and how - if he were on the bench - he would probably be likely to look at it. And that was very helpful."

Redondo Beach plaintiffs' attorney Joseph M. Barrett used Rosen recently to resolve a personal injury matter involving uninsured motorist complications. He said the retired judge's reputation for being fair is well deserved.

"He's not perceived as somebody that's for one side or the other. He's perceived as somebody with integrity," Barrett said. "And he worked each side the way an effective mediator should by understanding what's the medicine, what happened in the incident, what are the expectations of the party, what's at issue and what can I accomplish here."

Barrett noted that Rosen's evaluative insight proved particularly helpful in this case.

"He gave my client a really good understanding about what could be done and what couldn't be done," Barrett said. "That allowed us to kind of reset our expectations, and I think he did the same thing with the defense. Had we just continued with our original expectations, we probably wouldn't have settled because we would have been seeking way more than they would have paid."

Los Angeles defense attorney Lara A. Shortz has used Rosen to resolve four employment disputes, and said he brings a great deal of intelligence and gravitas to his mediations.

"He's very thoughtful, well-prepared," Shortz said. "And he doesn't get riled up. He takes a very legal and practical approach in a very calm and measured way."

Shortz added that Rosen was terrific with her clients.

"He can speak very well with business owners and executives," she said. "If you need someone to beat up the other side for your case, [Judge Rosen's] not who I would pick. But if it's a more complex legal issue - or something where you're dealing with professionals or more intellectual folks - I think he comes off very well for both sides."

*Here are some attorneys who have used Rosen's services:* Jeffrey I. Ehrlich, Ehrlich Law Firm APC; Lara A. Shortz, Michelman & Robinson LLP; Joseph M. Barrett, The Barrett Lawyers APC; Andrew J. Waxler, Kaufman Dolowich Voluck LLP; William M. Karns, Karns & Karns

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