

VERDICTS & SETTLEMENTS

FRIDAY, FEBRUARY 23, 2018

Flexible Thinker

JAMS neutral Ellen James says her mediation approach is like yoga, not fixed.

By Malcolm Maclachlan
Daily Journal Staff Writer

SAN FRANCISCO — JAMS neutral Ellen S. James is an avid runner and bicyclist. But her mediation approach is more like yoga.

“I don’t come to a mediation with a set point of view,” James said. “I’m very flexible in my thinking.”

Attorney John N. Frye said James also preaches flexibility to litigants.

“The last case I had [with James] I didn’t think it was going to settle,” said Frye, a partner with the plaintiffs’ firm Galine, Frye & Fitting in San Mateo. “She was just very good at convincing both sides they needed to significantly compromise their position so settlement was possible.”

James was a judge for more than 20 years before joining JAMS in 1997. While her work now is less about determining who is right than what the parties can live with, she said her time as a judge reminds her how slippery facts can be.

“There is a jury instruction that’s saying, in essence, different people may remember an event differently,” James said. “That is assumed in court.” Attorney Aaron P. Minnis said James doesn’t have the demeanor of “a judge who has spent a lot of time telling people what to do.”

“A judge mediator may sort of browbeat one side into accepting something,” said

Minnis, a partner with the San Francisco employment law plaintiffs’ firm Minnis & Smallets LLP. “Mediation is a voluntary process. If a mediator is too heavy handed, that can backfire.”

In her more than two decades at JAMS, James has become a true generalist. Her practice is about 70 percent mediations and 30 percent arbitrations. She is also able to take on nearly any type of case that walks through the door, from accidents at oil refineries to unpleasant experiences at water parks.

She is probably best-known for her work on transportation related disasters, particularly in helping sort out 88 wrongful death claims resulting from the crash of an Alaska Airlines jet off the California coast in 2000.

James also has long experience in areas that had dominated the headlines recently: gender discrimination, sexual harassment and sexual abuse. Matters involving employers and schools take up a lot of her time, particularly a school’s liability in cases where teachers or others “groomed” victims and perpetrated crimes for long periods.

Beth W. Mora of Mora Employment Law APC in San Ramon is a plaintiff’s attorney who represents many alleged victims of sexual harassment. She said these cases present a difficult balancing act for many mediators. Many victims feel violated, Mora said, both



Sam Attal / Special to the Daily Journal

by the harassment and then often by the defenses used by employers.

“Sexual harassment, to be actionable, has to be unwelcome,” Mora said. “An easy defense is that the alleged victim wanted it.”

This causes many to relive the experience, Mora added. James, she said, has a skill in explaining the weaknesses of a claim to a client without making them feel violated all over again.

James credits some of her interest in the law to her strong mother.

“She would have been a wonderful lawyer,” James said. “Instead she was president of the PTA. She could have been a CEO somewhere, but it was a different time for women.”

Her father was an early pioneer of industrial photography, and enjoyed a 50-year career. James’ brother is also a photographer and manages their father’s extensive archives.

James said she enjoyed an “outdoor California childhood” despite growing up in New Jersey. Her parents regularly enjoyed hiking and camping with their three children. James

Ellen S. James

JAMS

San Francisco, Silicon Valley, Walnut Creek, Sacramento, Santa Rosa

Areas of Specialty:

Employment, sexual harassment, wrongful death, complex litigation

competed in archery.

After graduating from Sarah Lawrence College, James attended UC Berkeley School of Law. She later ended up in the Contra Costa County public defender’s office. The public defender at the time was Charles H. James... whose last name she now carries.

“It was an office romance,” James said. “We’ve been married 40 years.”

Charles James retired from that job in 1999, and teaches criminal law at the John F. Kennedy University School of Law in Pleasant Hill. The pair has a son in his 30s; James also has a stepson from Charles’ earlier marriage.

James now enjoys a very California-style adulthood as well, filled with outdoor sports and Mediterranean cuisine. Last summer, she and Charles rode a tandem bicycle from Stockholm to Copenhagen. They're now planning to ride from Charleston, S.C., to Savannah, Ga.

They live on more than two acres in Martinez and have a certified organic olive orchard. They produce a few hundred bottles of olive oil each year, and sell to restaurants.

On top of all of that, she's in a long-running book group with "some serious intellectual readers" and also takes piano lessons. In fact, minus a long break during the busiest years of her career and parenthood, James has been taking piano lessons for most of her life.

"When I tell you the number of years you'll think I'm playing Rachmaninoff, but I'm not," James said with a laugh.

James was just a few years out of law school when Gov. Jerry Brown named her to the bench in 1976. Because of her relationship with the public defender, she recused herself from criminal cases.

She became the presiding judge of Contra Costa's civil division in 1991. In this role, she spent years working to settle cases — a role that led directly to her becoming a full-time neutral.

But she still adjusted her approach when she made the move to JAMS. James spends a lot more time talking to the litigants themselves than she did when she was a judge.

"She has tons of empathy,"

said Andrew C. Schwartz, an attorney with Casper, Meadows, Schwartz & Cook in Walnut Creek. "The litigants love her, as opposed to the litigators. She shows a lot of sympathy to the parties."

Schwartz said one case in particular stands out to him: the one James mediated for free.

Hurt v. Contra Costa County, CV05223 (Contra Costa Super. Ct., filed Nov. 16, 2015) was a civil rights complaint filed after officers entered a home without permission and attacked residents, thinking they were responding to a home invasion. James mediated the case pro bono.

"It's pretty rare that mediators of her talent and expertise are willing to dedicate their time to the federal panel," Schwartz said.

James said she tends to keep the parties separate for most of the process — especially during sexual harassment cases.

To make sure the parties don't even encounter each other in the lobby, she takes full advantage of the sprawling JAMS San Francisco offices, which take up two floors in a high-rise.

"I do a lot of sensitive cases where people have to be on separate floors so they don't see each other," James said. "I've climbed 25 flights of stairs."

Here are some attorneys who have used James' services: Anne C. Costin, Costin Law Inc.; Shella Deen, Hoge Fenton ; John N. Frye, Galine, Frye & Fitting; Paul T. Llewellyn, Lewis & Llewellyn LLP; Douglas J. Melton, Long & Levit LLP.