

Olive Branch Bearer

Neutral Ellen S. James has enjoyed slowing down to connect with both sides of disputes to help them avoid court.

By John Roemer
Daily Journal Staff Writer

SAN FRANCISCO – JAMS neutral Ellen S. James works in a downtown high-rise and goes home at night to the olive orchard she runs in Contra Costa County with her retired attorney husband.

The olive branch is a universal sign of peace and goodwill, so James' avocation is an apt metaphor for her day job helping disputatious parties find a tranquil middle ground.

She's serious, both about dispute resolution and the organic extra virgin Arbequina olive oil she and husband Charles H. James sell under the Vaqueros Ranch label.

"It's good olive oil," James, 67, said in an interview. "And I do have a high settlement rate. Closure is why people come to see me."

James developed settlement skills as a trial judge hearing civil cases in Contra Costa County Superior Court. Gov. Jerry Brown handed her a robe in 1976.

She stopped hearing criminal matters when she married Charles James, then the county's public defender.

In one construction defects case, she took a novel approach that saved months of court time and vast litigation costs. She appointed an advisory jury, directed the lawyers to keep opening statements to 20 minutes and told their experts to give 45-minute presentations with no cross-examination. The jury then had six hours to reach a nonbinding, nonappealable advisory verdict.

Then James and the lawyers went to work and within a few days settled all of the claims for an amount within \$10,000 of the figure the jury had decided upon. A lawyer said at the time, "She's the most accomplished judge here at moving a calendar. You never have a problem getting her attention or getting a case out to trial."

James is proud of a subsequent Daily Journal article naming her "Queen of the Rocket Docket."

Even so, the judicial process was beginning to test her patience. "I watched verdicts in jury trials, and I saw how one side's expectations were dashed," she said. "Then they'd take it up on appeal. There was no resolution or closure. I made up my mind to leave the bench and come to JAMS."

James soon realized there are profound differences between judging and mediating. "In Superior Court, I'd spend an hour every morning settling half a dozen cases, then start a jury trial," she said.

"Here, I have the luxury of a case per day, and there is a much deeper human connection and more serious factual and legal analysis.

"Trial judges are trained to rule immediately, and cases are assigned to you. In mediation, you do a lot of listening. I'm the guest at someone's dispute, and they have chosen me to be there."

Little Mendelson P.C. partner Nancy Pritikin knew James as a judge and has since litigated employment cases before her in James' new role. "She was legendary as a settlement judge, and she is extremely effective doing ADR," Pritikin said. "She gives both parties her objective view of the case. She puts it into perspective so they can make rational decisions. I think very highly of her."

James joined JAMS in 1997. One of her first big cases involved the 88 separate wrongful death lawsuits filed by the heirs of the victims of the Jan. 31, 2000, crash of Alaska Airlines Flight 261 off the California coast, killing all aboard.

After the airline and the plane's manufacturer, Boeing Co., conceded liability for the crash, settling the amount of damages for each lost life was James' task.

Over the course of a year, she met with the families of the dead, with their attorneys, with airline representatives and with insurance company lawyers. "There were so many different stories," James said. "The passengers were all different ages, different income levels, different finances, different families. The whole range of humanity is on a plane. These are complex decisions. Emotions are raw.

"All our conference rooms come with Kleenex."

James, whose fee is \$7,000 per day, settled each of the 88 cases before trial for sums ranging from a couple of million dollars to more than \$20 million, according to published reports. The precise financial terms remain sealed.

Veteran personal injury lawyer Brian J. Panish of Los Angeles' Panish Shea & Boyle LLP negotiated multimillion-dollar settlements for several victims of the Alaska crash, his firm's website says.

"Judge James is an excellent mediator who shows great compassion to clients and is tough when she needs to be," Panish said. "She has a great positive demeanor and personality that keeps things moving along when it looks like they might be stalemated. Lawyers have great respect for her."

James can get creative in nudging the parties before her toward settlement. In one case, there had been a jury trial, an appeal and a reversal. James



COURTESY PHOTO

Ellen S. James

Affiliation: JAMS

Location: San Francisco

Specialties: employment, trusts, estates and probate, personal injury, wrongful death, complex insurance coverage and construction litigation

was helping the opposing sides try to avoid a second trial. Her opening gambit? "I handed out copies of the first 20 pages of 'Bleak House,'" she said, referring to Charles Dickens' sardonic portrayal of everlasting litigation entangling, among others, a couple named Dedlock.

"It's wonderful to help people avoid court," James said. "I like to see people leave happy to have resolved their case."

Some cases take time, like Bleak House's interminable *Jarndyce and Jarndyce*. One of James' mediations went until 4:30 a.m. "I got home at six, and my husband had the car packed to go skiing," she said. "You have to have a lot of stamina."

Victor Schachter, a co-chair of Fenwick & West LLP's employment practices group, said James worked until 10 p.m. — despite a heavy cold — to complete an employment dispute.

"She was a real trouper in a fairly contentious matter," Schachter said. "Most impressive was her uncommon quality of showing real ownership and interest in attaining resolution, instead of just going through the mediation motions as some neutrals do. At the end, each party felt all the issues had been heard and an amicable result achieved."

Said James, "I think of myself as a friend of each side. I get to know them, and that's a trait of mediation. You come to understand the broader range of interests involved.

"In court, no one ever says, 'I'm sorry.' In mediation, an apology can be profound. It can help people move on."