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Alternatives for Dispute Resolution

Tips for Picking a Mediator

Ethics – Independent Judgment



By Betsy S. Kimball

Some Alternative Resources for Dispute Resolution

“Our courts provide the forum for, and the answers to, questions pertaining to intricate family matters, complex business disputes, public safety, and more. Delay of these determinations is, in fact, justice denied.” So concluded the SCBA’s December 2013 report, “State of the Judiciary in Sacramento County” (available at <http://www.sacbar.org/>).

Delay is upon us. A resolution passed by the ABA in August 2013 noted that “the Judicial Conference of the United States ... identified five federal districts laboring at near breaking point levels of caseloads” The first court listed is the Eastern District of California, with weighted caseloads exceeding 1000 per judge. In California, the Judicial Council’s 2013 Court Statistics Report, State-wide Caseload Trends, for FY 2011-2012, identifies the Third District Court of Appeal as the court with the highest level of pending appeals per justice (31 percent *higher* than the statewide average) and as the court with the longest median time from notice of appeal to opinion filing, at 551 days. Sacramento County Superior Court **Presiding Judge Robert Hight** and **Assistant Presiding Judge Kevin Culhane** told the attendees at a March 2014 CCTLA lunch that civil trials are now being set one year out.

I mean no criticism here – just the opposite. Many dedicated and talented people, from the Chief Justice of the California Supreme Court “on down,” are working to fix, or at least mitigate, this situation. We need to work with them. The *alternative* dispute resolution services offered by JAMS, the AAA,

Joe Genshlea, Darrel Lewis, Brian Van Camp, Raul Ramirez, Ken Malovos, Lori Gualco, and many other talented local ADR professionals are well known. This issue of the magazine focuses on several of the perhaps lesser known ADR options that may be available, some of them at little or no cost, to assist litigants and would-be litigants to resolve their disputes, including the Eastern District’s Voluntary Dispute Resolution Program, the Third District’s Appellate Mediation Program, and the various community-based mediation services offered by California Lawyers for the Art. Ken Malovos contributes his advice for how to pick the right mediator. This issue also contains **Brendan Begley’s** profile on **Daniel Yamshon** and his unique ADR career. I have inset below a photo that I took in Ghana three years ago.



Daniel is looking quite happy – and with good reason. The seated woman to his left is Her Ladyship, the **Chief Justice of the Supreme Court of Ghana, Georgina Wood**. At that dinner, Her Ladyship acknowledged Daniel, Sacramento State **Professor Ernest Uwazie**, and the gentleman standing (S.K. **Asante**) for their roles in creating and integrating ADR into the legal system of Ghana.

I hope that this issue of the magazine is *informational*. It is intended to be. 🍴



By **Brendan J. Begley**

The Internationally Renowned Daniel Yamshon

Photo courtesy of Daniel Yamshon



Daniel Yamshon shaking hands with His Lordship, Stephen S. Brobby, Chief Justice of the Supreme Court of the Gambia

Local arbitration and mediation excellence with an international flair: That might be one of the most accurate and succinct ways to describe **Daniel Yamshon**, a Sacramento attorney whose practice has focused exclusively on alternative dispute resolution – ADR – for two decades. Practicing in litigation since 1974, Yamshon transitioned to a full-time neutral in the early 1990's and has spread his ADR wisdom on five continents since then.

"I took my last case as a litigator in 1992 and closed my last litigation file in 1994," Yamshon recalled. "I initially started working as a mediator in 1987, but a mentor said I should do arbitrations too – so my practice as a neutral expanded."

He has watched ADR mushroom since then. "Back when I was a litigator, there was very little mediation and a fair amount of resistance when anyone suggested such an

approach," he said. "Now there is much more mediation and many contracts that used to call for arbitration now call for both."

It did not take long for Yamshon to find his first opportunity to bring his expertise as a neutral to other countries. His keen interest in ADR and his natural abilities caught the eye of **William F. Lincoln**, a mediator providing advanced mediation training. Lincoln asked Yamshon to teach such courses with him in the early 1990's and later invited Yamshon to go to Russia with him to help develop ADR programs.

After that trip, Yamshon returned to Russia alone to provide further ADR training. He traveled there a third time on behalf of a business program sponsored by California State University, Sacramento, in collaboration with the Russian American Program on Conflictology. Yamshon's fourth trip to Russia (to evaluate the state of ADR in that country) resulted in an article he coauthored with his wife, **Ellen Yamshon**, published by the *Harvard Negotiation Law Review*. But Yamshon's international ADR activities could not remain confined behind the former Iron Curtain.

"While I was in Russia, I received a call from **Ernest Uwazie** at the Center for African Peace and Conflict Resolution," Yamshon explained. "He asked me to do ADR training for lawyers and judges in Africa, and I happily agreed to do so."

Yamshon's ADR impact on countries in Africa has been extensive. Among other things, he developed and facilitated a culturally valid training program for complex mediation in a petroleum development context in Ghana, and participated in the development of court-annexed mediation and in inter-ethnic/inter-religious conflict-resolution in Nigeria. In Kenya, he helped to develop and present ADR training for attorneys. He also assisted in efforts to develop conflict-resolution systems in post-civil war Liberia.

After all that, Yamshon could hardly leave the rest of the world out in the cold. He has worked in eleven countries, presented introductory mediation-training courses and developed a culturally valid curriculum at Universidad Rafael Landivar College of Judicial Sciences in Guatemala, and recently returned from the Philippines where he trained deputy attorneys general in arbitration advocacy and worked on developing tax court annexed mediation. Not ignoring matters at home, Yamshon is a coauthor of *Construction ADR*

published by the ABA, speaks regularly at seminars and symposia, and has published over thirty articles relating to law and ADR.

Regardless of whether arbitrations are conducted locally or abroad, Yamshon said he subscribes to and endorses what he calls “kiss-arbitration,” an acronym for the “keep-it-simple” approach to arbitration. “When used well, ADR saves time and money and can build goodwill,” Yamshon observed. “But many lawyers don’t understand the benefit of a simplified process with a neutral who has subject-matter expertise. When lawyers who are unfamiliar with arbitration try to bring in too many of the attributes of litigation, it can make it counterproductive and diminish the benefits of ADR.”

Accordingly, in a typical arbitration handled by Yamshon, the parties exchange pertinent documents and disclose the identities of their witnesses in advance of the proceeding. However, there are almost no depositions or interrogatories. By minimizing such discovery distractions, Yamshon said the time to case closure is reduced, thereby making ADR much more cost effective.

“The process works,” he said. “Otherwise arbitration would not be the standard in so many industries.”

Yamshon’s career background has provided him with a solid viewpoint from which to compare the advantages and disadvantages of litigation and ADR. Indeed, he started out in 1974 as an associate at the law offices of *Karlton, Blease & Vanderlaan*, and then ran his own shop as a litigator until the early 1990’s (at which time he transitioned his practice to ADR).

The partners who showed Yamshon the ropes at his first firm were no litigation lightweights. The **Hon. Lawrence K. Karlton** has been a federal district judge since 1979, and the **Hon. Coleman Blease** has been an associate

justice at the California Court of Appeal for over 34 years. “They truly were inspirational role models, always showing great integrity and giving it their all for top-notch work,” Yamshon reminisced.

While not hesitant to sing the praises of worthy mentors and colleagues, Yamshon is more modest in describing his own accomplishments. “I was your basic ‘ham-and-eggs’ litigator, but with an emphasis on industrial accidents and construction,” he said. However, when pressed to disclose some of his accomplishments as a litigator, he laughingly recalled overhearing one opposing attorney say to another, “That son of a [expletive deleted] Yamshon sure is good at getting his clients money they don’t deserve.”

In light of his litigation background, it comes as no surprise that Yamshon’s work as a neutral typically tends to be in legal disputes involving construction, commercial, or real-property disputes. However, regardless of the area of law, and whether he is here in Sacramento or in some far off country, Yamshon advises that “toughness or being accommodating does not necessarily equate with skillful negotiating.”

According to Yamshon, there are times when taking a firm stance is the right approach, and other times when being more flexible is the better path – and the lawyers who are most successful are the ones who know their case and their clients’ underlying interests. In sum, Sacramento is fortunate to have a neutral like Yamshon whose wisdom and skills are in demand yet available both at home and in distant locales. ⚖️

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Daniel Yamshon
working with a group
in Accra, Ghana



Photo courtesy of Toni Garrett