

True Believer

Neutral favors power of mediation over all alternatives

By Gautham Thomas
Daily Journal Staff Writer

Steven H. Krus is a mediation true believer.

That might be exactly what one would expect from the longtime neutral and former litigator who mediated his first case in 1993. It's part of a broader philosophy for Krus, who spoke fondly of the mediation process and its capacity for results that litigation just can't achieve.

"Litigation is very destructive, and it just takes its toll on lawyers, clients and judges," Krus said. "You're constantly fighting, and I don't think that's our nature."

He recalled a "profound" mediation in which a young woman confronted the man who had molested her as a young child.

"I remember it like it was yesterday," Krus said. The parties arrived at a monetary settlement, but also agreed to a joint session with the woman, her former abuser, and his parents.

The woman had the opportunity to directly address her abuser and hear his remorse, Krus said.

"That is a case that demonstrates the beauty of mediation and you can do things there that you can never achieve in court, and in many ways do a lot more good," he said. "I'm always mindful of that. I want people to get closure and move forward. To minimize animosity."

The critique of the litigation process comes from experience. Krus began his career as an assistant prosecutor in Elkhart County in his home state of Indiana, after completing his undergraduate and law degrees at the University of Notre Dame. Assigned to the felony court, Krus said, he tried one case every three weeks.

By the time he transitioned into a full-time mediation practice, he had reached the managing partnership at Higgs, Fletcher & Mack LLP, San Diego's oldest law firm. At Higgs, Krus chaired the real property litigation group after a long career specializing in real estate and property issues, including representing the San Diego Association of Realtors.

Steven H. Krus

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Krus is so infatuated with mediation that he has left arbitration behind — his last was in 2004. The adversarial process and its unilateral decision-making left him uncomfortable.

"I like to say that for every arbitration, you lose two mediations," Krus said, meaning that at least one party ends up unhappy.

"I would agonize over it, want to do the right thing, and spend a lot of time deciding the case," Krus said of his arbitrations. "You can't be yourself."

To Krus, being himself means bringing to bear an empathetic personal style with parties to a dispute. According to attorneys who have worked with Krus, his focus on making sure that clients' grievances are heard and acknowledged pays dividends in paving the road to a settlement. Empathy and patience were qualities attorneys who worked with Krus frequently mentioned.

"He takes a lot of time at the beginning of the mediation to build a relationship with the parties," said Stephen L. Schreiner, partner and general counsel at Solomon Ward Seidenwurm & Smith LLP, who said he goes to Krus for his expertise in real estate matters.

"My clients, even on cases that haven't settled with him, they still walked away feeling like he cared about them, cared about the case and cared about getting it resolved, because he took that time to build rapport and build credibility," Schreiner said. "If it comes time to push on them a little bit, they don't feel railroaded."

Krus is comfortable shifting between a consensus-building, facilitative mode in search of common ground to a more adjudicative mode, Schreiner said.

"A lot of cases get resolved on that basis," Schreiner said of Krus's consensus-based approach.

"If he needs to, he can shift into more of an adjudicative mode late in the day," Schreiner said. "If a party's stuck, he'll say, 'I understand your position, but I've been doing this for 25 years at Higgs,



Tom Kurtz / Special to the Daily Journal

and 15 years elsewhere, and here's the problem with your position.' Sometimes it takes that dose of cool water to take somebody to move."

Krus never gives on a case — even if it doesn't settle immediately in mediation sessions — according to Krus and the attorneys who have worked with him. Persistence is one of the qualities he feels allows him to contribute value for his clients, for whom he handles matters in a broad range. His specialty as an attorney was real estate, but his mediation practice includes probate, employment, personal injury, professional liability and business matters.

"Follow-up is important," Krus said. "Cases settle, the question is when. It's like fine wine — it has to age a little bit before you try for settlement." Krus said, describing how he keeps in contact with mediation clients and keeps looking for creative solutions.

That's also what William J. Caldarelli described when he recounted his work with Krus. A founding partner at Caldarelli Hejmanowski Page & Leer LLP, Caldarelli takes contractual disputes and real estate disputes to Krus.

"[Krus] will make suggestions, or come up with creative terms in areas where parties have come to an impasse," Caldarelli said. "When those suggestions are coming from the mediator, from someone who's neutral, they're received a lot less defensively. He's very good about injecting creative ideas in the process in a neutral manner that help us get around the roadblocks."

"My cases are all about human behavior," said Susan M. Swan, an employment lawyer at Gruenberg Law who complimented Krus's intelligence in that arena. An employment dispute means more than hurt feelings, Swan

said: Her clients have lost their means of support and perhaps their identity and sense of purpose.

"Steve is good at noticing when emotions regarding [a client's] former job are affecting negotiations and harnessing them to settle the case," Swan said, adding that Krus does not shy away from directly addressing strong emotions.

Jonathan P. Geen concurs. Geen, a partner at Borton Petrini LLP, usually represents employers in the cases he's brought to Krus. In a case where a longtime employee was terminated for what the employer felt was a serious incident, Geen said, strong feelings contributed to entrenched positions. But listening first and talking second is an attribute that distinguishes Krus from other mediators.

"Both sides felt pretty strongly," Geen said. "Steve did a good job giving both sides the opportunity to vent, to see the strengths and weaknesses in their sides, in reaching an agreement that both parties could live with."

Here are some lawyers and clients who have used Krus's services:

Susan M. Swan, Swan Employment Law, San Diego; Joshua D. Gruenberg, Gruenberg Law, San Diego; Alreen Haeggquist, Zeldes Haeggquist & Eck LLP, San Diego; Jonathan P. Geen, Borton Petrini LLP, San Diego; William J. Caldarelli, Caldarelli Hejmanowski & Page LLP, San Diego; Stephen L. Schreiner, Solomon Ward Seidenwurm & Smith LLP, San Diego; Ian M. Green, Hill Farrer & Burrill LLP, Los Angeles; Brian H. Erickson, San Diego; Paul F. Sorrentino, Jackson Lewis LLP, San Diego; John D. Hershberger, Hershberger Law Firm APC, Carlsbad.