

# VERDICTS & SETTLEMENTS

FRIDAY, OCTOBER 25, 2019

## Gentle Persuasion

*Not a fan of brute force, neutral Jeff Kichaven prefers a soft approach to dispute settlement.*

By Jessica Mach

Daily Journal Staff Writer

LOS ANGELES — On a wall in Jeff Kichaven's office hangs a framed drawing of a building. The drawing, he said, was done in the 1930s by his father, who would later work as an architect — a fact that might explain Kichaven's own preoccupation with space and its capacity to steer the mood of the people inside it.

His downtown Los Angeles office might be on the 18th floor of a skyscraper, but it's nestled in a co-working space that telegraphs a decidedly unstuffy approach to business with its sleek, colorful fixtures, open concept layout, and jean-clad clientele. In the independent mediator's own office, leather and velvet chairs in a circle encourage conversation, not hierarchies, and the room's surfaces are discreetly dotted with artwork made by friends or bought during his travels.

His goal for the office, Kichaven said, was to create a calm environment, one that could soften the agitation and aggressive posturing that can often define the mediation process. Kichaven believes when people are in a setting where they can be level-headed, a good settlement is a "natural byproduct."

He should know. After all, the Los Angeles native has worked in mediation full-time for the past 23 years, long enough to understand that gentle persuasion is ultimately more effective than brute force.

That's why his method is less geared toward telling people what to do and more toward providing the conditions for a productive discussion. By being a model of calmness, acknowledging the concerns, emotions, and needs of everyone involved, and providing information drawn from decades of experience, he said he tries to create a space that encourages and accommodates meaningful participation by attorneys and their clients.

"I call it subtle. I hope those experiencing it find it that way ... that they were respected through every step of the process," Kichaven said of his approach. "We're dealing with adults who are dealing with situations that are important and significant to their lives. Otherwise they wouldn't be in litigation. And they deserve to be respected as people who are able to make decisions."

Kichaven has mediated cases across the country and focuses on high-end intellectual property and insurance coverage cases, particularly business to business disputes. He has worked on cases involving trade secrets, trademark, copyright, patent, liability, and legal malpractice as well as commercial disputes involving contracts, real estate, trusts and estates.

While Kichaven said he firmly believes every mediation is different, he always starts with the same two steps: He asks the attorneys for their briefs or mediation statements and gives each



Justin Stewart / Special to the Daily Journal

### Jeff Kichaven

Jeff Kichaven  
Commercial Mediation  
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#### Areas of specialty:

trade secrets, trademark, copyright, patent, liability, legal malpractice, commercial disputes involving contracts, real estate, trusts and estates insurance coverage

of them a call. "Lawyers are not comfortable ... writing about the interpersonal things: Who's getting along with whom? Who's not getting along well? What are people's emotional states?" Kichaven said. "There are emotional as well as legal and factual barriers and challenges, ... and the issues are so sensitive, people are unlikely to put them into writing. So those telephone calls are essential."

Navigating the emotional stakes of a case that has dragged on for years can be especially hard, but Fabio E. Marino, office managing partner at Polsinelli in Silicon Valley, has watched Kichaven do just that. This summer, Marino said, he worked with Kichaven on a patent infringement case that was simultaneously "pretty simple and in some ways really complicated" due to the parties fighting over what was essentially a minor sum.

"He was very good at ... getting people to focus on the economic realities as opposed to the emotions that accumulated over the years of litigation between these two competitors," Marino said.

Once Kichaven has identified the keystone issues in a dispute, he'll develop a game plan. Sometimes, this might involve a session where attorneys speak directly to each other instead of through the mediator. Such sessions have fallen out of fashion due to their tendency to get ugly, said Kichaven, but he maintains they work as long as they're structured intelligently.

"When I promise the lawyers that the agenda is limited, and the time is often limited as well, they will often agree to give it a try. And it works," he said. "We

exchange a lot of helpful information about the keystone issues. It's calm, cool and collected, by and large. Clients get to hear other lawyers present the other side of the case, in their own words. This lays the groundwork for productive conversations in the caucuses which immediately follow and then for bargaining, which often goes more efficiently than it otherwise would."

Kichaven acknowledged his approach isn't for everyone. The attorneys using his services should expect to work harder, he said. He isn't interested in coming up with settlements on his own, and he said he would never try to rush a settlement by asking parties for their bottom lines at the beginning of a session. Each of these methods makes it less likely that the parties will try to learn more about each other's positions, according

to Kichaven, who wants disputing parties to "learn new facts."

"They may learn new things about ... people's positions on the law," he explained, "why they take those positions, what their support is."

With new information, he said, they are more likely to shift their expectations and be happy with the resulting settlement.

"Lawyers have to work a little harder in these kinds of mediations," he said. "The benefit of it is that their client gets to see them in action. The client gets to work shoulder to shoulder with their own lawyer, and they come up with ... many times a result that they hadn't seriously thought of or even imagined before ... that leaves them much more satisfied than they thought they would be."

"I want clients to think that their lawyers are the greatest lawyers in

history," he added. "I want clients to think that their lawyers have done a super job for them."

Kichaven grew up in Los Angeles and graduated from Harvard Law School. For the first 15 years of his career, he worked as a litigator in what he describes as a "high stakes, high pressure environment" that gradually grew less exciting after he got married and started a family. After taking mediation training and volunteering as a mediator in the court system, he launched his own practice.

"I have the benefit of never having been a judge, and I'm not afraid to say it," he said. "What many retired judges do, and call it mediation, is actually arbitration without the benefit of due process. ... It deprives lawyers and clients of the opportunity to collaborate and work together and bond and cement their relationship."

Roman Silberfeld, national trial chair at Robins Kaplan LLP, said he's worked with Kichaven on about 10 high-profile, business disputes since the 1990s. "Many mediators have a way of doing things, and it's got to be their way or the highway. That's not Kichaven," Silberfeld said. "He really does listen, and he fashions results that fit the needs of the parties. That's why he's so good. He's very creative."

*Here are some attorneys who have used Kichaven's services: Fabio E. Marino, Polsinelli; Roman Silberfeld, Robins Kaplan LLP; Mary Craig Calkins, Blank Rome LLP; Maurice Suh, Gibson, Dunn & Crutcher LLP; Irene Lee, Russ, August & Kabat.*

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