

# Eternal Optimist

*Independent mediator David Sarnoff believes any dispute can be resolved with extra effort.*

By Don DeBenedictis  
*Special to the Daily Journal*

Back when David Sarnoff was representing employees suing their bosses, he couldn't understand why mediators always required both sides to show up to the initial session at the same time. The unavoidable result was that one side, usually the defense, was left hanging around while the mediator met with the other side.

Now that he is a mediator himself, "I stagger my start times," Sarnoff said. "I have the plaintiffs show up at 9:30 ... and I have the defendants show up an hour later at 10:30."

He uses that first hour with the plaintiff to build rapport and develop an understanding of the plaintiff's perspective on the case. That hour gives "the plaintiff enough time to get things off their chest or to feel heard," Sarnoff said. "The first session is about hearing them and understanding and letting them be heard from their position."

But he does more than just learn the plaintiff's view of the case, according to lawyers who've worked with him. In one recent mediation, Sarnoff spent the first half-hour learning about the plaintiff's life, including hobbies and how he'd met his wife, according to Barbara Cowan of The Workplace Advocates. They also shared some animal videos.

"He really took the time to get to know who my client was," she said. "It really created a very strong dynamic in the room."



Gary Wagner / Special to the Daily Journal

The dynamics "are not quite the same" on the defense side, said Duane Morris' Katherine Huibonhoa, who opposed Cowan in that case. But she said that Sarnoff is "a personable, relatable guy, and he does try to connect in general on a personal level. It's helpful in terms of building trust."

His more informal approach gives him "the ability to connect with people and have himself be heard by them," added another employers' attorney, Patrick Hurley of the Contra Costa County general counsel's office.

Plaintiffs' attorney Kathryn Bain of Bain, Mazza & Debski LLP

said the mediator has "a great rapport with the clients. ... He makes everybody feel comfortable and that there's a possibility of a resolution."

Sarnoff said he believes resolution is always possible. "I'm the eternal optimist," he said. "I believe every case ... can be resolved if everyone is there with the proper mindset of trying to compromise. But it takes that extra effort to get there from everybody, including me as the mediator."

"I don't give up on a case at the end of the day or a week later or a month later. If a case hasn't settled, I'm on it until it does or until the

## David J. Sarnoff

Sarnoff Mediations  
Burlingame

### Areas of Specialty:

Employment  
Personal Injury

parties tell me to stop,” he added. If a case doesn’t settle the first day, he asks the attorneys when the next important deposition or motion or hearing will be so that he can follow up with them then.

In fact, Huibonhoa recalled a case that Sarnoff got settled several months after the initial mediation session. “He’s persistent, committed and willing to consider creative solutions,” she said.

Sarnoff said when he was a litigator, mediators didn’t always follow up. “I want to do what’s right by the people that hire me, and that includes working as hard as I can to get their case resolved, no matter when that happens.”

Sarnoff grew up around litigation. His father was a court reporter who founded Sarnoff Court Reporters, which had offices throughout the state as well as in Las Vegas and Chicago. When he was only five or six, his father paid him a dollar apiece to drill and VeloBind transcripts.

He grew up in Newport Beach and later La Jolla. “I never wanted to take what I had for granted, and I understood the fortune that I had as a child growing up,” he said. “My high school project was going to soup kitchens and ... working with those less fortunate.”

He graduated from Emory University with a double major in economics and physics and a minor in computer science. “I’m what you call a nerd.”

From there, he went to Loyola Law School, graduating in 2005. The next year, he joined Stradling Yocca Carlson & Rauth as an associate working on securities litigation. “It was not my cup of tea,” he said. “It was a lot of document review.”

Meanwhile, his wife, whom he had met in his first-year property law class, was doing much more exciting work with an employment plaintiffs’ firm in L.A. So in 2007, he joined a small plaintiffs’ firm as well. “It was much more gratifying to be representing ... those aggrieved individuals who couldn’t necessarily right the wrongs against them without going to court,” Sarnoff said. His wife, Raven Sarnoff, is now with Timeless Estate Planning in Burlingame.

Then, in late 2008, he went to work for Schonbrun DeSimone Seplow Harris & Hoffman LLP. “Jim DeSimone is a fantastic trial attorney. I learned a ton from him,” Sarnoff said.

Nevertheless, in early 2010, he and his wife formed their own law firm handling all types of plaintiffs’ employment litigation.

One of their early matters, however, was in a very different area of law. They filed amicus curiae briefs at the 9th Circuit and the U.S. Supreme Court in opposition to the Defense Department’s “don’t ask, don’t tell” policy. They were brought into the case by a friend at White & Case, which represented the plaintiffs, to represent an LGBTQ organization called Servicemembers United. *Log Cabin Republicans v. United States*, 658 F.3d 1162 (9th Cir., 2011).

Several years later, Sarnoff won an important appellate decision in a disability discrimination case that also resulted in a statutory change. He represented a woman who was fired after she requested work accommodation before heart surgery. *Moore v. Regents of University of California*, 248 Cal. App. 4th 216 (Cal. App. 4th Dist., June 2, 2016).

In one of his favorite cases, he represented a woman who was fired because her employer wouldn’t accommodate her need for religious observances. He won that in an arbitration.

But what he really preferred was settling cases, particularly when his client was finally able to “let go of the past,” he said.

“Litigation by its nature is retrospective. You constantly have to be looking backward in time to a historic event,” Sarnoff said. “Parties to litigation cannot truly look forward and focus on the future.”

Helping clients attain that outlook was very rewarding for him. “Some of my fondest memories as a litigator were getting a phone call or email ... following a successful resolution from my clients telling me they’d had the best night’s sleep they’d had in years. They just didn’t have to think about it anymore.”

In 2018, he decided to become a mediator. He took the course offered by the Straus Institute at Pepperdine’s law school and began to take on cases to resolve. “I had my first mediation booked before I took the class,” he said.

He continued to also take on cases as an attorney. But in 2021, Sarnoff switched to mediation full time.

He begins his mediation sessions by trying to put everyone at ease. “I try to deal with stressful situations with a little bit of humor, a little bit of lightheartedness,” he said.

Sarnoff “is very friendly and affable,” Bain said. “He comes in with a good attitude.”

And he is skillful at bringing parties to settlement, Hurley said. “He had a really good ability to cut

through the noise of the case and identify the issues that were going to drive the case ... and to highlight the salient issue,” the defense attorney said about the case he had with Sarnoff. “It allowed us to see the case clearly.”

“I think David was born to do this,” said Cowan, who has known him for years as a litigator.

In a case she took to him recently, Sarnoff “really brought the healing aspect” of settlement out. She said he talked about litigation being backward-looking and “about what settlement meant, not just money. It’s healing, moving forward.”

Sarnoff works independently rather than with a large ADR provider. “It allows me to be a little bit more flexible. I keep my own calendar. I respond to emails, I respond to phone calls,” he said. “When I say I’m going to follow up, that’s me, not a case manager.

“I like that personal contact. Being able to engage with people on a personal level is really important to me.”

*Here are some attorneys who have used Sarnoff’s services:* Ethan Chernin of Cozen O’Connor; Katherine Debski of Bain, Mazza, & Debski; Tod Gurney of Garcia & Gurney ALC; Martin Horowitz of Horowitz & Rubinoff; Laura Mazza of Bain, Mazza, & Debski; Allison Moser of Coblenz Patch Duffy & Bass LLP; Michelle Dye Neumann of Neumann Law; Elizabeth Peck of Peck Law; Stephanie Rubinoff of Horowitz & Rubinoff; Jennifer Smith of Community Legal Services; Jesse Stratos of Brock & Gonzales, LLP; Brad Weintraub of Gordon Rees Scully Mansukhani LLP.

