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On a Road Less Traveled

Claudia M. Viera launched her mediation career by attending classes and sitting on panels.

By Jill Redhage

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SAN FRANCISCO — Mediator Claudia M. Viera grew up in the 1970s at a time when lobbyists and legislators had reinvigorated their focus on the proposed equal rights amendment.

First proposed in 1923, the amendment intended to guarantee equal rights under the law for all Americans, regardless of gender. It finally achieved success in Congress in 1971, but was never ratified by the necessary 38 state legislatures. Coming of age in that era inspired Viera to specialize in labor and employment law, a field in which she could focus on questions of equality and discrimination.

After graduating from UC Berkeley School of Law in 1998, Viera began her career as an associate at labor and employment law firm Littler Mendelson in San Francisco. Three years into her tenure there she shifted her practice to consulting and training. She spent the next four years

teaching courses to clients on workplace harassment, employment law, diversity and other topics.

But Viera knew already during law school that she wanted to be a mediator.

“Law school is very much about thinking analytically and critically, and not involving your emotions,” Viera said.

But after two years of law school, she arrived at the mediation class of a noted lecturer, mediator Laura Farrow. Farrow showed up on the first night of class in sweatpants and talked about emotions and about bringing one’s “whole self” into the work that one does.

“It was such a breath of fresh air to feel like it was legitimate to think about both the law and your intellectual areas of expertise, and your emotional being. For me, it was this instant realization of the path I belonged upon,” Viera said.

But mediating is a position often reserved for long-time lawyers and retired judges. Viera was faced with the question of how

to fast-track her way to that role.

“I think if you really feel like it’s the right path for you, you’ll find a way to make it happen. For me ... it was more a question of how, than if,” Viera said.

She started by becoming a Sloan fellow at the Center for Mediation in Law and participating in mediator Gary Friedman’s basic training program at Green Gulch Farm Zen Center in Mill Valley, north of San Francisco. She then teamed up with a group of eight to study with Friedman outside of normal class hours. The group met monthly for four years. When she “graduated” from the group in 2007, she said all but one of the eight participants had launched full-time mediation practices.

Viera attributes her ability to start her full-time practice in 2004 to the support of that group. Now based in Oakland, Viera has been mediating to varying degrees for 10 years. Mostly she does labor and employment cases, including sexual harassment, racial discrimination and wage-and-

Mediator Takes an Alternative Route to Alternative Dispute Resolution

hour disputes. Business disputes, such as partnership dissolutions, and some family law cases also compose her time.

Her mediations take her from Santa Cruz to Sacramento, though most are in the Bay Area. As an independent mediator, she typically has clients come to her through referrals. She also participates on mediation panels: She is a contract mediator for the U.S. Equal Employment Opportunity Commission, and she volunteers for the state Court of Appeal's 1st and 3rd districts, San Francisco Superior Court, Yolo County Superior Court and the San Francisco Bar Association.

Viera said 20 to 30 percent of her mediations have a Spanish component.

Michael Meuter, an attorney with California Rural Legal Assistance in Salinas, said many of his office's clients are Spanish-speaking. The EEOC has assigned Viera twice to Meuter's mediations.

"What impressed me is the effort she makes and the ability she has in making our [Spanish-speaking] clients comfortable with the process," Meuter said.

Both cases Viera mediated for Meuter were sexual harassment cases. The second also involved a claim regarding retaliation for complaining about that harassment. The first case settled, while the second did not. Although Meuter said he believed the second case was as likely to settle as not, he couldn't think of anything he would have had Viera do differently to achieve a settlement.

In early 2008, Viera handled an EEOC employment discrimination dispute for Richard N. Hill, managing shareholder of Littler Mendelson in San Francisco.

"The reason that she was very effective in my case was that she's bilingual," Hill said. Viera teed off that mediation with an extended joint session, which lasted about an hour. Then the parties caucused. Hill said she was able to translate seamlessly between the plaintiff, who was Spanish-speaking, and the rest of parties present.

He also praised Viera's "low-key" style.

"She conducted the joint session in a way that neither side got antagonized or their blood pressure up about the case," Hill said. "Claudia just has this soothing, calm manner that's going to work well with anyone

who has a beef with his or her employer She's good at calming people down."

That's especially helpful for the complainants, who are more emotionally invested in the process. Hill said his clients, the employers, typically approach the cases from more of a business perspective.

Viera said she always begins a mediation with a pre-mediation conference call with the attorneys. That's meant to set up a feeling of collaboration and a cooperative spirit, and she gains a sense of the attorneys' relationship to one another. Then she reviews briefs, usually 10 pages or fewer, which are due five days before the mediation.

She strongly prefers beginning the mediation itself with a joint session. She starts there and stays as long as it's useful. She welcomes the clients' full participation in the mediation. All parties have a chance to voice their stories and ask questions. Viera said she believes it's more efficient for the parties to talk to each other, rather than through an intermediary, and she likes to make everyone feel included in the process.

Disputes that come before Viera are especially emotionally charged, because parties in employment cases almost always have a prior relationship.

"[Sometimes] you have to be willing to walk into the heart of the matter and have a conversation that can be difficult and emotional and involve anger and tears and frustration and hurt," Viera said. Those are conversations Viera is willing to have, if they seem like they'll be useful for a settlement.

Two years ago, for example, Viera mediated a wrongful termination-meets-landlord/tenant dispute between two men with a long friendship. One man was the owner of a company and also a landlord. His employee and friend was also his tenant. Over time, their relationship deteriorated, and the employee was fired, then evicted within two months. When the mediation reached an impasse, Viera took the two men aside and conducted a mini-mediation within the mediation. The insurance representatives and lawyers were supportive, and Viera coaxed the parties into their first conversation in two or three years. After that talk, the men hugged, and the owner apologized and told his friend he missed him. The case then settled within 30 or 45 minutes.

Nancy Watson, an employment attorney with Bozman-Moss & Watson in Santa Rosa, complimented Viera's handling of a sexual discrimination case earlier this year.

"She was very attuned to both parties and their feelings and to the personal dynamics of the parties," Watson said.

Viera spends half her time mediating, taking on three to four cases each month. Then she spends about a quarter of her time conducting investigations for clients, for whom she serves as a neutral fact finder. These usually occur pre-litigation for harassment claims in the workplace.

During the remainder of her work life, Viera administers trainings for private clients on topics such as conflict resolution, communication skills and harassment prevention. These trainings range from two hours in length to full-day sessions. She also teaches classes on employment law, conflict resolution and conducting lawful investigations, and she guest lectures for mediation training courses.

Ron Kelly, who teaches mediation at UC Berkeley Extension, often invites Viera to be a guest instructor for his class. One of her most impressive abilities, he said, is the way in which she seamlessly uses role-playing and other illustrative forms of teaching.

"She can convey more as a teacher than most," Kelly said.

Kelly and Viera teach his students how attorneys affect the interplay between parties during employment disputes. Together, they model for classes how to leverage attorneys' energies toward cooperative and creative settlements.

"She has a very keen sensitivity about the assumptions people make and the way we make decisions," Kelly said.

Here are attorneys who have used Viera's services: Thomas B. Gill, Law Office of Mary-Alice Coleman, Davis; Nancy E. Watson, Bozman-Moss & Watson, Santa Rosa; Richard N. Hill, Littler Mendelson, San Francisco; Jacqueline C. DeSouza, DeSouza Law Offices, Berkeley; Pamela F. Ellman, DeSouza Law Offices, Berkeley; Michael L. Meuter, California Rural Legal Assistance, Salinas.