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## O.C. NEUTRAL FEELS AT HOME DOING MEDIATIONS

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COSTA MESA - Neutral Robert A. Merring played in the Rose Bowl twice, on New Year's Day 1971 and 1972.

But marching down the field for Stanford University, he wasn't wearing a helmet and a chin strap. Instead, he carried tenor sax and wore a neck strap as part of the school's notoriously irreverent marching band, which occasionally has gotten thrown out of games for its satirical halftime shows.

Merring remembers a couple of those shows fondly, as when the band mocked arch rival Cal's impending suspension from the Pacific-8 conference with a formation that spelled out "P-A-C-7."

"But I don't think we ever got banned from a campus," he said with a loud laugh.

The jovial 57-year-old Orange County neutral said he doesn't play much anymore, but he still has a thing for woodwinds.

"I love a bassoon, I really do. I keep on threatening to buy one," said Merring, who recently befriended a bassoonist in the Pacific Symphony Orchestra after writing fan mail to her.

After his sax-playing Stanford days ended, he attended Columbia Law School, graduating in 1977. He then careened through several Los Angeles firms, handling securities, real estate, antitrust, tax, business and commercial actions, and landing as head of the litigation department at Irvine's Friedemann & Hart in 1988 and 1989.

Then he went into private practice, handling a variety of intellectual property, real estate, business, trade secrets and unfair competition matters, as well as moving into transactional work - "one-stop shopping for a small business," he joked.

These days, he still does some lawyering from his home office, but ADR has become his passion.

Merring jumped into arbitration in 1993, signing on with the American Arbitration Association. He started mediating in 1996, thanks to a bit of a fluke.

When prominent Los Angeles mediator Jeffrey Krivis asked around for suggestions on a guest speaker for a mediator training program at Pepperdine University School of Law, Merring offered the name of the Irvine Co.'s general counsel, Peter Zeughouser.

Zeughouser agreed to speak, and Krivis offered to let Merring take the course for free as thanks.

Now, although Merring admits he could make more money by focusing on his law practice, he cites scholar Joseph Campbell's call to "follow your bliss" as his reason for mediating.

"It's just where I want to be," Merring said.

He mediates and arbitrates independently and for the American Arbitration Association, where he's on the large, complex case panel. He is also on the Orange County Superior Court's new mediator panel.

As a mediator, Merring said he tends to be "highly evaluative," citing an American Arbitration Association study that found 80 percent of parties want a thorough evaluation of their cases' merits in mediation.

But he also said he is a "quick learner" and can adapt to circumstances when a more hands-on approach is needed.

That happened in a recent mediation involving the dissolution of a gay couple's relationship. One man sued the other over \$40,000 in shared property, but after Merring broke down the case on its merits, the mediator found he wasn't getting anywhere.

"I sensed after an hour that things were just too damn bitter," Merring said.

So he tried to find out what the plaintiff really wanted. He learned that it was a "written apology to show to our mutual friends," showing that the plaintiff didn't instigate the breakup. The parties and lawyers spent hours laboring over every grammatical detail of an apology letter, then "they spent five minutes on a property settlement," Merring said.

Merring said his only caveat to parties using him as a mediator is not to be set on a dollar-value for resolution.

"Don't start with a bottom line because that is definitely the way you are not going to resolve a case in mediation," Merring said. "It really is a give and take."

When necessary, Merring offers to mediate in the comfort of the suburban Costa Mesa home he shares with his wife, using the dining room table for joint sessions and the other rooms for caucuses.

"It was the first time I ever went to anyone's home for a mediation, but we did, and it didn't seem problematic whatsoever," said Newport Beach attorney Mark W. Eisenberg of the Eisenberg Law Group.

Eisenberg said that the mediation dealt with some of the issues in a joint-venture business dispute. While it didn't settle, he said, it mainly was due to a lack of discovery.

"But he knew the issues," Eisenberg said. "He took the time to read everything, he was well-versed in the law insofar as it related to the issues presented."

Eisenberg said that Merring's candidness in evaluating the case was "really quite beneficial."

"He was very hospitable in terms of responding to inquiries and came right out and told you if he thought your position was untenable," Eisenberg said.

Los Angeles attorney Harrison Dossick of Katten Muchin Rosenman didn't particularly take to the at-home mediation method.

"I didn't feel that the environment was particularly conducive to the process," Dossick said.

Still, he said, the case settled anyway because of the economics of continuing to litigate.

Merring said he considers the in-house mediations an advantage. Those who come in can expect to get a tall mug of hazelnut coffee and a slice of his wife's cranberry bread.

"My wife almost always puts something on," Merring said.

Attorney Benjamin Pugh of Enterprise Counsel Group in Irvine used Merring to mediate a \$12,000 dispute over a real estate purchase. That mediation took place in Pugh's conference rooms, and Pugh said the mediator did "an excellent job."

"A lot of mediators seem to show up and kind of wing it without preparing, but he was very knowledgeable about the case and the claims of each of the parties," Pugh said. "It made it all go a lot faster."

Merring's evaluation got the value of the case across to the parties, Pugh said, and the seller settled in about two hours with a buyer who was backing out.

"He's very blunt, to the point and because of that - and [because] he's clearly knowledgeable - I think his opinions come with a decent amount of weight," Pugh said.

"He's also much cheaper than some of the other big clearinghouses of mediators," he added.

Merring, who charges \$250 independently and \$300 through the American Arbitration Association, said he doesn't mind being known as a bargain.

"If I can get somebody in on price, that's fine with me," he said.

## **Biographical Information**

**Age:** 57

**Affiliation:** American Arbitration Association

**Location:** Costa Mesa

**Areas of Specialty:** Business, real estate, employment, intellectual property

**Rate:** \$250 to \$300 per hour

*Attorneys who have used Merring's services as a mediator include:* Mark W. Eisenberg, the Eisenberg Law Group, Newport Beach; Harrison J. Dossick, Katten Muchin Rosenman, Los Angeles; Benjamin Pugh, Enterprise Counsel Group, Irvine; John J. Hamilton, Hamilton & Hamilton, Irvine; Bryce L. Letterman, the Law Office of Bryce L. Letterman, Newport Beach; Eric C. Bradley, McNeill, Tropp, Braun & Kennedy, Costa Mesa; Matthew C. Lapple, Heller Ehrman, San Diego; Richard F. Weiner, Fidelity National Financial, Irvine; and Thomas E. Christensen, Christensen & Associates, Corona Del Mar

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