

Marin mediator looks beneath the economics

Steven Rosenberg likes a good conflict. So before the mediator gets conflicting parties together, he encourages them to spew some of their bile.

"What I think my skill is, is differentiating between helpful and unhelpful hostility," he said. It's the mutual airing of that helpful anger — the wounded feelings that the opposing party can help remedy — that Rosenberg says is the most important part of resolving a case.

"You can accomplish so much more when you bring them together," he said.

That's a different approach than the one taken by many neutrals, said lawyers who've hired Rosenberg. In a mediation of a business partnership dispute, for example, "the parties met together in general session for longer than is usual, and longer than I thought would be effective," said William Orrick, a partner at Coblenz, Patch, Duffy & Bass.

On the Bench

It was a bit uncomfortable, he added, but it worked. "The people ended up hugging at the end of the mediation," Orrick said. "It was most odd."

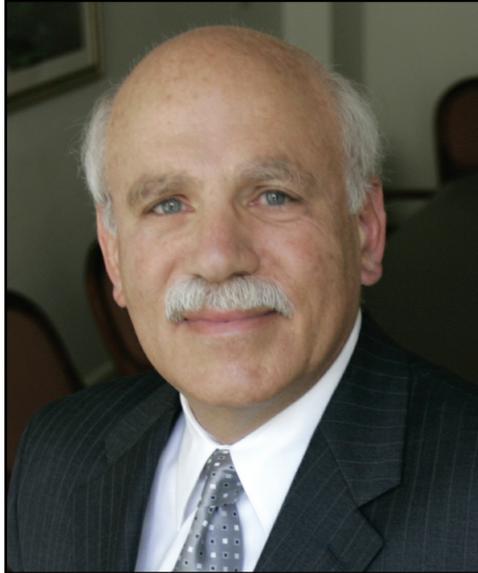
Rosenberg's path toward becoming a full-time mediator was as eccentric as his style — out of law school, he joined the Marines as a Judge Advocate General, serving first in Japan.

After leaving the military, Rosenberg and a friend moved to Germany to start a private practice representing soldiers in courts-martial. "One of us would work and the other would travel, and then we'd come back and trade off," he said.

After two years, the two moved to California, and briefly Hawaii, to start a general litigation firm. Rosenberg eventually went solo, and from his Mill Valley office handled cases ranging from personal injury suits to real estate disputes.

But all the fighting got to him (he now refers to litigation as a "horrible burden") and he found himself increasingly unhappy being on one side of a conflict. And while he continued to enjoy the courtroom aspects of trial work, Rosenberg became frustrated with the weight of pretrial paperwork as a solo.

Then, in the late 1980s, Rosenberg took a mediation class and realized that he could



JASON DOY

make a living entering conflicts as a neutral.

"The frustrations I had with the practice were 90 percent eliminated in mediation," he said. "When I started comparing the results my clients were getting in mediation, versus what my clients were getting in litigation, I decided to pack it up and become a full-time mediator."

It took a few years to build up enough business to drop litigation altogether, but by 1992, Rosenberg was no longer litigating.

Now, he mediates a wide range of cases, and twice a year teaches a mediation class to attorneys and retired judges hoping to start settling disputes for a living.

Lawyers who've taken disputes to Rosenberg say he's a good listener and a comforting talker who's able to get people to reach the core of their grievances.

"He has a particular personality, and I think it's effective to draw things out of people," said John Haapala, a partner at Haapala, Altura, Thompson & Abern in Oakland, who's worked with Rosenberg several times. "He's a pleasant person, I think number one, that's it."

Rosenberg said that when he enters a mediation, his first goal is to prove to the parties that he understands their grievances.

To do this, he meets with each party sepa-

Steven Rosenberg

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rately and then discusses with them how they can best communicate their grievances to the opposition.

Once the parties get together, Rosenberg said, it's generally tense. His goal then is to make sure things stay productive, and, he said, he does that by confronting problems directly. He likens it to negotiating an obstacle on a mountain bike.

"Instead of running from it, you hit it head on, but you don't keep looking at it," he said.

Lawyers who've hired Rosenberg said his approach helps clients see that money isn't the only issue in a conflict.

"His approach was somewhat unusual and very effective," Orrick said. "I think his strength is in interpersonal dynamics and helping people understand the non-economic as well as the economic considerations."

But Rosenberg also likes to point out that if people don't feel like digging up the seeds of their discontent, he'll work to resolve a case purely on the economic and legal grounds. Haapala, who has taken Rosenberg's mediation class, said that while Rosenberg teaches his students to avoid taking on the role of evaluator, he is willing, in his own mediations, to tell people what he thinks their cases are worth.

The last year has been a busy one, Rosenberg said, and he recently bumped his rate for a two-party mediation from \$425 an hour up to \$500 for most disputes.

He said most of his cases resolve after a day of mediation, either at the end of that day — he recalled one instance of staying with parties until 3 a.m. to hammer out a deal — or in follow-up negotiations, which he often facilitates over the phone.

— Justin Scheck

Steven Rosenberg

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