

"Law School? Who Needs It? Not This Mediator"

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By Emma Dewald

Lee Jay Berman is not a lawyer. Never has been.

But he is a mediator, and most years he resolves from 75 to 90 disputes.

James L. Wraith, a name partner at Oakland law firm Selvin Wraith Halman, was a little hesitant to use a mediator who had never been to law school.

After Berman mediated one of his cases, however, Wraith decided that it was not an issue.

"I would use him again," Wraith said. "That's probably the best recommendation I could give."

In fact, Wraith suggested that Berman's lack of traditional legal background might stand him good stead.

"It may be that the fact that he was not legally trained means that he listens more," Wraith said.

Some mediators, he said, are dilettantes - former lawyers or retired judges dabbling in a new field. And mediation requires an entirely different skill set.

According to Wraith, a mediator has to "be a general" but "never lose sight of the fact that [the parties] may know more than you."

Although those skills may not come from a law degree, nonattorney mediators are still a rarity in the area of commercial dispute resolution. Berman estimates that nonattorneys represent only 3 percent to 5 percent of mediators in the field.

Berman has made it his career.

"I absolutely love what I do," said Berman, a UCLA graduate. "I know this is what I was meant to do."

He also conducts a few arbitrations every year through the American Arbitration Association, but the bulk of his practice is mediation.

Berman, 45, started out in business. While working for a real estate developer in 1992, he got a taste of mediation.

The developer he worked for had its eye on a 600-acre parcel in San Diego County. But the Nature Conservancy also was making a run for the land. A bidding war was in the offing.

Berman could see that, in the political climate of the time, if the developer won the day, a number of environmental restrictions would be placed on the property. And if the Nature Conservancy prevailed, it would face huge pressure to allow the parcel to be used for roads and infrastructure.

"This isn't a battle that makes economic sense for either of us to win," Berman thought.

So the developer and the Nature Conservancy began working together to find a solution. That effort eventually ended when the federal government claimed the land.

About the same time, Berman saw a Wall Street Journal headline on how mediation was changing the face of litigation.

Something clicked, he said, and shortly thereafter he found himself at the Los Angeles County Bar Association's mediation training.

Although Berman has no qualms about his lack of a formal legal background, it's not as though he hasn't educated himself about the law.

"You've got to be comfortable with the law," he said.

In his first three or four years as a mediator, Berman attended a continuing legal education function every week, "more than an entire midsized law firm put together." And in the past 13 years, he has covered a great deal of the legal landscape. In 2004, he taught mediation skills to Croatian lawyers and businesspeople. Last year, he spent 12 days training sitting judges in India. He is the director of a mediation program at Pepperdine. And he was instrumental in implementing Santa Barbara County's alternative dispute resolution system.

It's not as though he started from zero, either. His work for the real estate developer often entailed complicated contractual negotiations, not to mention navigation through the regulatory mazes laid down by local, state and federal government agencies.

Berman reads the parties' briefs thoroughly, once for the law and once for everything else. But he doesn't try to decide who's right. And when he's in the mediation, he tries to remember that mediators "know the least about the case of anybody in the room."

"I help people identify what their choices are," he said.

After all, Berman said, to be a successful mediator, you also have to be "really good with people."

"I get picked a lot when lawyers have clients they want talked to," he said.

Brenda K. Radmacher, a partner at Wood, Smith, Henning & Berman in Glendale, met Berman at one of his mediation training courses.

She's had cases with him with "some very emotional people on the other side."

"He was able to gain the trust of these individuals, who were not familiar with the legal process," she said. "He was able to take the fact that he's not a lawyer - because a lot of people just hate lawyers - and use that."

Indeed, some of Berman's cases have stemmed entirely from personal relations gone awry.

A lawyer who attended one of Berman's training sessions asked Berman afterward whether he would conduct a mediation with the lawyer's wife and mother, who hadn't talked in two years.

Berman said sure.

He gave the lawyer a "slight discount," he said.

Later, the man told Berman that he would have paid twice that for the resulting family harmony.

One of Berman's strengths as a mediator is his unwillingness to give up. He will stay until the wee hours of the morning sometimes - not because he needs to see the case settled but because that's what the parties came there for.

"They came here because they wanted to settle," he said.

It's his job to make that happen.

Last year, Berman settled 92 percent of the cases that came before him. This year, he has four unresolved cases of 55 or 60, he said.

"[Lawyers] come to me as the closer," Berman said.

Although he believes that settlement is almost always the best outcome, there are exceptions to that rule.

In one case, one of the clients finally said that he was done with the mediation process.

"I'm a devout Catholic," Berman recalled the client saying. "I believe God will make this right."

"Something inside me just said 'Back off,'" Berman said.

If this had happened early in Berman's career, he would have kept pushing for a settlement.

But, he said, "a couple times a year, the best that I can do is wish them well."

Berman's persistence, though, is what impresses Radmacher and Wraith.

The case Wraith mediated before Berman was one Berman conducted pro bono. But that didn't change Berman's style.

"He was very tenacious," Wraith said.

And Radmacher had one case mediated by Berman in which the parties could not agree on a settlement. Another mediator, she said, would have given up. But Berman stayed with it, calling and following up until the case eventually settled. And he wasn't paid for the telephone calls.

"He really believes in the process of mediation," Radmacher said.

"My job's not to change their minds or judge them," Berman said of the people who come before him. "My job's to get them to a point where they want to say 'yes.'"

Berman's hoping that will happen in one of those four lingering cases.

"We just haven't settled it yet," he said.



***Lee Jay Berman** is a full-time mediator and trainer based in southern California. He is a Distinguished Fellow with the International Academy of Mediators and a Diplomat with the California and National Academies of Distinguished Neutrals. He is the founder and President of the American Institute of Mediation, offering world class training for the complete mediator. He can be reached at 310-478-5600 or leejay@mediationtools.com.*