

Jay Cordell Horton

Affiliation: Judicate West

Rate: \$550 an hour

Location: Orange County

Specialty: Arbitration and mediation. Complex litigation, personal injury, medical malpractice, elder abuse, product, premises and public entity liability, insurance coverage

Cases: Mediated two medical-malpractice cases involving the failure to timely diagnose and treat a bowel obstruction in a toddler, resulting in the loss of the bowel and the need for lifetime intravenous feeding. One case settled for \$10 million, the other for \$8.9 million. Also mediated more than a dozen cases involving the failure to respond to fetal distress that resulted in brain damage. Settlements ranged from \$1.2 million to \$4.5 million.

Background: Name partner, Horton, Barbaro & Reilly, medical-malpractice litigator

Strategy: Horton cites 35 years of experience in medical malpractice as a trial lawyer on both defense and plaintiff sides, which helps him to relate to parties in mediations and guide them through the process.

Quote: "You can't make someone change their mind, but you can help someone change their own mind. It's a subtle difference, but I think if you can do that, you'll be successful."



Making It in ADR: Passion and Dedication

By Susan McRae

Daily Journal Staff Writer

LOS ANGELES - When judges began leaving the bench in the early 1990s to enter the budding field of private dispute resolution, just having the title of honorable in front of one's name was enough to get started.

Not any more.

Now, every court in the state requires some form of mediation before trial, and more and more people opt to go outside the courts to use an arbitrator or private judge.

It takes more than a title or famous reputation to make it in this increasingly competitive arena.

Although some neutrals strike out on their own and some join existing service providers, they all agree that success requires passion, total commitment and embracing the marketing aspects of the business.

"I think you have to prove that you have a skill set and competence equal to what you did before," said Lucie Barron, director and founder of Alternate Dispute Resolution Services Inc.

When Barron opened her offices in 1994, she began by soliciting a handful of retired judges to work for her.

Today, with 150 active mediators and arbitrators on her roster and one or two more people from both the bench and the bar applying to join her firm every day, she said she's seen a dramatic change in the industry.

"You may have a fine reputation as a judge and a fine presence, but that doesn't mean you will be good in the field," Barron said. "The same is true with famous lawyers.

"As soon as you go into ADR, it's another story."

Gone are the days when a judge could retire and dabble in mediation or arbitration, or a lawyer could mediate part time while continuing to practice.

Today, one must be skilled, dedicated and committed to the field full time.

Top universities, courts and community service organizations also have gotten into the game, offering academic courses and hands-on training.

"It's a tough profession," Toluca Lake mediator Steve Cerveris, named as one of the Daily Journal's top neutrals for 2007, said.

"A lot of people from the outside looking in think it's a great gig and pretty easy," Cerveris said. "I try to be encouraging but realistic. It's not a job; it's a calling.

"People skills are by far the most important part of the job. If you're passionate about it, it can be done."

Cerveris is among a minority of mediators who have made a living in the field as an independent, without being affiliated with one of the better-known conflict resolution provider firms.

He didn't plan it that way, he said. But not being a retired judge or a high-powered litigator, he didn't have the service providers beating down his door to sign him up.

Cerveris jokes that he's the anti-establishment mediator.

Instead of a sleek, downtown high-rise, his offices are in a single-story Hollywood bungalow. In place of a corporate boardroom atmosphere, his mediations take place in a living-room-type setting, complete with sofas, overstuffed chairs and his business partner's mother's homemade Greek cookies.

Although Cerveris doesn't specialize in just one type of case, others have found happiness in digging in to their chosen field.

Jill Robbins, another independent neutral, used her extensive background in family law to launch her into the field, after retiring from a lengthy career as a Los Angeles County Superior Court commissioner.

Robbins attributes a lot of her early success to luck.

Having been the only bench officer in the court hearing family law matters, she got to know most of the lawyers in the field. She also gained a reputation for settling cases because it was the only way she could get through her heavy calendar.

So, when she decided to retire 13 years ago, she said, she had a built-in clientele. Still, Robbins said, because she was a commissioner, not a judge, she was concerned that she might not draw enough business.

She needn't have worried.

Her first case as a neutral was a trial that was slated to last three days. She settled it in one. She continued her settlement streak, she said, and one case led to the next and the next.

Having a specialty helps in finding a niche as a neutral, Robbins agreed. She said it is especially true in family law, a growing field that could use more neutrals.

Robbins said 80 percent of her business involves mediations. She spends the remainder as a private judge pro tem, which is what arbitration is called in family law.

To get started, and remain successful, Robbins recommends staying visible by attending bar meetings and events in one's area of expertise. She also recommends volunteering on the courts' mediation panels and, even though she has remained independent, signing up with any number of dispute resolution service providers.

Another suggestion, Robbins said, is to offer to mediate a case at half one's regular fee.

"If they think you are good, they will hire you again for your full price," she said.

Although Robbins and Cerveris have been successful as independents, many neutrals find it easier and more lucrative to affiliate with one or more service providers.

Robert Kaplan, another Daily Journal top neutral for 2007, left his career as a high-powered litigator in San Diego after realizing he enjoyed helping people settle disputes rather than fighting in court.

Kaplan set about it methodically. He saved enough money to last several years without an income. He enrolled in courses at the Strauss Institute for Dispute Resolution. Kaplan also began contacting everyone he knew to let them know what he was doing.

During that time, he also began compiling notes for a how-to manual to help others wanting to break into the business.

"You must come up with a niche that separates you from the pack," Kaplan wrote. "Doing so does not ensure success. However, failing to do so will almost certainly ensure that you will not

succeed."

Kaplan, a former insurance defense specialist, decided to focus on mediating insurance disputes. He quickly gained a reputation for what is known in the business as "a closer," someone who is able to settle cases. That success led to his being called on to mediate the toughest cases, regardless of the subject matter.

But getting to that place took time, patience and hard work.

Being unknown and untested, Kaplan faced the age-old dilemma of not being able to get hired by any of the service providers without a track record and not being able to build a track record without being hired.

So he started out on his own, armed only with a deep conviction that this is what he was wired to do.

He opened an office in downtown San Diego. It was serendipity that Judicate West decided to open an office in that city at the same time - and in the same building.

As Kaplan told it, one thing led to another, and a year into his new career, he began an affiliation with Judicate West.

Although Kaplan was determined to succeed and believes he would have no matter what, he also believes that the best shot for someone starting out, if possible, is to affiliate with a provider.

"I think what happens is, if nothing else, a provider helps in expediting one's business," Kaplan said.

The providers takes care of administrative, scheduling and marketing duties.

But whether independent or affiliated, Kaplan said, the most critical aspect is that one has to be committed and give it one's all.

"Ten years ago, you could straddle the fence and keep your law practice going while starting to do mediation," he said. "Nowadays, it's really hard unless you take the plunge."

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