

## Neutral Displays ‘Compassion, Intelligence’

By Goneva Whitzmarsh- Daily Journal Staff writer

The parties in a personal-injury case gathered around a table at Judicate West shoulders slumped, eyes weary. But mediator Byron M. Rabin greeted them with a big smile.

“I hope you didn’t lose any sleep last night,” Rabin said. “Everyone at this table is looking to come to a solution, and that means this is a very good day.”

That, he said, is the way he has jump started many of the thousands of mediations he’s conducted since 1977, when he became involved in dispute resolution as a judge pro at Orange County Superior Court.

In 1998, he became a full-time mediator and arbitrator with Judicate West, specializing in a wide range of personal-injury matters.

“People often ask me, “How are you!” and I tell them, ‘I’m great. I found something I love to do,” Rabin said. “It’s the satisfaction of giving people a chance to be heard and solving problems in a non-contentious environment. That fits me.”

It was a career in psychology, however, that Rabin initially planned to pursue when attending San Jose State College in the mid 1960s.

“I was told I’d have to dissect a pig,” he said, laughing, “and I couldn’t do it.” So, instead, he followed his older brother to law school at Hastings College of the Law. “I can’t say I ever really enjoyed law school,” Rabin said. “But I never start something when I’m not able to complete it, and it was a question of finishing it.”

After receiving his law degree in 1972, Rabin worked briefly at the Law Offices of Joseph M. Feinberg in Corona Del Mar before joining Rose, Klein & Marias, in Santa Ana. Five years later, he took on the Ford Motor Co. in the highly publicized *Gray v Ford Motor Co.*

Rabin’s clients had said the automobile manufacturer, alleging that a flawed gasoline tank in a 1971 Pinto led to the death of a female passenger. According to the complaint, the Pinto burst into flames after another car struck it at an impact speed of 28 mph. The woman’s son was badly burned in the crash.

An Orange County jury awarded the victim’s family \$12.8 million. In making the argument against the manufacturer, Rabin presented the jury with Ford Studies that showed the gas tank always ruptured in crashes involving speeds of more than 25 mph.

Furthermore, he said, although Ford was aware of the design flaw, the company refused to pay the minimal expense of a redesign. Instead, Rabin argued, Ford decided that paying off possible lawsuits from resulting deaths would be cheaper.

“The entire legal community is aware of the case because it was one of the first cases involving gas tanks in the Ford Pintos,” Rabin said. “It was a two year pursuit and six months in trial. I was fairly pleased with the verdict, and the people involved certainly deserved it.”

When Rabin retired from the firm in 1998, he considered returning to school for the long sought after degree in psychology. “But I realized,” he said “that what really appealed to me about psychology, I could do as a mediator. When you sit down and talk to people, you out what’s at the root of their problem.”

As a mediator, Rabin meets with the parties separately rather than in a joint conference room. “I think that, when you throw people together, they don’t think about resolution or peace but about being defensive or taking a stand,” he explained.

And, he said, each party should be able to state his or her side of the case in a non-threatening atmosphere. "I had a case involving significant injury and wrongful death [in] a van rollover," Rabin said. "The case came to me five months [after the accident] and prior to the filing of litigation. Both sides were certain the case couldn't be resolved, but we were able to.

"For the people involved, it was a matter of being able to participate in the process and feeling as though they were being heard."

When Rabin began his career in mediation, mandatory settlement conferences were heard at the court, and clients would sit in the halls and wait for the lawyers to come out of the conference and share with them what offers had been made.

"It was a very exclusionary process," he said. "In mediation, the clients participate. After all, it is about them. It is much more fulfilling and it gives them insight about the thoughts of the neutral regarding both the strengths and the weakness of their cases.

"I often let the clients know that, although there are times that I am directing my conversation to the attorney, I never lose sight that it is about them, and I never forget that they are in the room."

Rabin said that is the sort of awareness he tried to teach students at Western State College of Law. As an adjunct professor of mediation in 2001, Rabin told his students on their first day of class that 20 percent of their grade would come from taking five minutes a day to look at nature and write about what they saw.

"I wanted to make sure they maintain a certain balance," he said. "Some of the students understood what I was trying to teach them, and some didn't quite get it."

So, in addition to the nature assignment, Rabin asked the students to read two mediation textbooks.

"I told them all they need to do was read it by the end of the year," he said. "A lot of the students rejected that idea, some of the students rejected the idea that they didn't have assigned reading each day, but self-responsibility is an important part of being a lawyer."

Rabin said that attorneys who appear before him should be well-prepared.

"The harder they work, the luckier I am," he said. "If an attorney really knows his case, he can give me the tools I need to conduct a successful mediation."

Paul S. Meyer, a Costa Mesa-based attorney who has used Rabin to help settle cases, described the mediator as hard-working, with "incredible compassion and keen intelligence."

"He tried many cases when he was a lawyer," Meyer said, "and he brings that experience into mediation. He really sees through to the issues in front of him, and he gets to the heart of the matter."

Rabin said he has no plans to retire from mediation, which, he said, "saves the system money and serves 'the people' who use it stress and anxiety because [the court system] isn't fun."

"It definitely is a good day for them when they're sitting there in front of me, willing to work out something that is important to them," Rabin said. "Not only do I tell them that, but I let them know that I'll work hard to find a good compromise because I know their case is important to them. And that's what I do."