

# Daily Journal

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## A Mixed Blessing

Ex-Plaintiffs' Attorney Balances Mixed Blessing

By Dhyana Levey

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SAN FRANCISCO - Working 30 years as a plaintiffs' attorney before moving to mediation has been both a blessing and a curse for former Gwilliam, Ivary, Chiosso, Cavalli & Brewer partner Eric Ivary.

While his name remains in the firm's title, Ivary, 63, says his connection continues only as an honorary figure and he no longer tries cases there. He co-founded the Oakland plaintiffs' firm with litigator Gary Gwilliam in 1978 but left in 2001 to begin his own mediation practice, joining ADR Services as a full-time neutral in 2005.



Eric Ivary  
Mediator and Arbitrator  
Age: 63

Affiliations: ADR Services, US Northern District Court ADR Panel  
Location: Bay Area, Sacramento, Los Angeles  
Areas of Specialty: Employment and general tort litigation  
Rate: \$350 per hour

Ivary's lengthy former career as a plaintiffs' litigator has caused some defense lawyers and insurance carriers to call his neutrality into question, sometimes eliciting what he calls a "knee-jerk no" if someone suggests his name as a mediator.

"This is not an overnight success, by any means," Ivary said of his mediation practice. "A plaintiffs' lawyer is a hard sell as a mediator. The only way I get my cases is word of mouth because someone tells someone else, 'Hey, he was a plaintiffs' lawyer but he knows how to get cases settled and he's realistic.'"

Ivary said despite the roadblocks it's caused, spending decades advocating on behalf of plaintiffs has largely had a positive effect on his transition to working as a neutral.

Spending so much time in a courtroom, he noted, has given him a pragmatic view regarding the potential ups and downs of cases that come across his plate for mediations and - 10 percent of the time - arbitrations.

"I know or have seen all the pitfalls there are, all the mistakes that are possible to make as you go down the road," he said.

Ivory is known for telling parties to try to settle the case they have, "not the case you wish you had." He encourages lawyers not to let their judgment get clouded while trying to help their clients settle emotional disputes and to stay realistic regarding what their cases are worth.

"Sometimes you need someone who can talk to a plaintiffs' lawyer in language they can understand," he said.

Oakland defense lawyer J. Randall Andrada, a principal with Andrada & Associates, said he likes working with mediators with a background in plaintiffs' work.

"They pack a lot of credibility with the plaintiff in the case," Andrada said, adding in regard to Ivory, "He evaluates cases reasonably and I trust his judgment. I like him because he's actually tried many, many cases and is not afraid to tell the plaintiffs' lawyers if they are going to lose."

Ivory's two primary areas of practice as a trial lawyer were employment and medical malpractice lawsuits, and now, as a mediator, he's reshuffling his priorities to focus overwhelmingly on employment cases.

They are interesting and, with the poor economy, the industry has a need for more employment-focused mediators, he said. These types of cases tend to elicit a lot of emotion, and Ivory encourages parties to vent in his direction.

"There's a cathartic effect that happens when people unburden themselves, but I'd rather have them unburden themselves on me instead of dump on the other side all their feelings," he said. "I don't care if they yell at me - I'm used to it. There's a lot of shooting the messenger in employment cases."

A Bay Area native, Ivory grew up in Oakland and received his law degree from Santa Clara University School of Law in 1971. At first he shied away from plaintiffs' work after watching experienced and successful, yet dramatic, trial attorneys in the courtroom.

But then he saw Bruce Walkup, founding partner of Walkup, Melodia, Kelly & Schoenberger, at work and realized a plaintiffs' attorney can be successful while having a low-key approach.

"And I thought, 'Well, you know, I can do that,'" he said. "You don't have to be a big bombastic speaker if you are prepared."

As a mediator, he discourages dramatic opening statements because he wants parties to be aware they aren't in court anymore and shouldn't treat a session with him like they are. Ivory said he wants parties to be fluid enough to listen, learn from their opponents and come to more thoughtful conclusions regarding how to settle their cases.

"A lot of mediators play everyone against each other and you feel like you are dealing with a third lawyer as opposed to a mediator," said San Francisco plaintiffs' attorney Nancy Hersh, of Hersh & Hersh.

She said she didn't find this to be the case with Ivary, who mediated a products liability dispute for her a couple of years ago. She described him as direct, analytical and knowledgeable about her case's most pivotal factors.

Steven L. Brown, a personal injury defense attorney at Brown & Gessell in Stockton, first became acquainted with Ivary before he was a neutral, when they opposed each other in a medical malpractice case. Brown said he was so impressed with his rival's professionalism that he later had no problem hiring Ivary for a particularly volatile medical malpractice mediation over a failure to diagnose internal bleeding.

"He handled things even keel," Brown said. "Even though he's a plaintiffs' attorney at heart, he can see things from both sides."

*Here are some of the lawyers who have used Ivary's mediation services:* Steven L. Brown, Brown & Gessell; J. Randall Andrada, Andrada & Associates; Marina Pitts, Stubbs & Leone; Jay Chafetz, Walnut Creek; Janet Holmes, Contra Costa County Counsel's Office; Nancy Hersh, Hersh & Hersh; David A. Depolo, Donnelly Nelson Depolo & Murray; Constantin Roboostoff, Roboostoff & Kalkin; James V. Fitzgerald III, McNamara, Ney, Beatty, Slattery, Borges & Brothers; Terrence J. Coleman, Pillsbury & Levinson; Gregory D. Brown, Burnham Brown; David R. Lucchese, Galloway, Lucchese, Everson & Picchi

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