

Knowing When It's Right

Michael J. Roberts, of ADR Services Inc., says settling tough construction, real estate and employment disputes requires flexibility, and timing is key.

By Mandy Jackson, Daily Journal Staff Writer



Timing is everything for Michael J. Roberts, a neutral with ADR Services Inc.

"In my business, the right answer at the wrong time is the wrong answer," Roberts said. "You need to negotiate in a way that you're not suggesting possible options until someone is ready to hear them from you."

He's spent more than 20 years adjusting his strategy to suit each case so that he can pinpoint the right time to settle disputes.

Roberts' mediations largely fall into the realms of construction, employment, insurance, business and real estate. Those are the same areas in which he worked as a litigator beginning in 1974.

Roberts, a University of San Diego School of Law graduate, worked as both a litigator and a mediator at his last law firm, Jennings Engstrand & Henriksen in San Diego.

With his feet in both worlds, retired judges who served as neutrals advised Roberts that if he wanted to be a full-time mediator, he had to work independent of a law firm to remove any potential for conflicts of interest. In 1993, he struck out on his own with a mediation-only practice.

"One day I had a mediation - an impossible case that no one thought was going to be settled - and we settled it," Roberts said. "The parties' lawyers, who were some very prominent lawyers, stood up and they applauded me."

It felt great, he said, to be the recipient of such gratitude. For him, the conciliatory tone of mediation was much more appealing than the adversarial world of litigation.

"It just was one of those very unique experiences in life where you realize this is your calling," Roberts said.

Since that revelation, attorneys have called on his mediation skills in many complex matters, especially in the area of construction defect claims.

Gregory P. Konoske of Shifflet Kane & Konoske in San Diego said he doesn't know if Roberts made construction defect one of his specialties or if the lawyers who have worked with Roberts brought the specialty to him.

"Some of it's based on his ability to deal with people," said Konoske, who has worked with Roberts on multiparty construction disputes involving landslides.

"He has a unique ability to extract money from defendants with dignity," Konoske said. "He's able to put settlements together in cases that are very difficult. And still, because he has a genuineness to him, people want to help him get to a settlement."

Some of the most difficult construction disputes in recent years have been homeowners' lawsuits against cities over destructive landslides.

"You have a mediation that starts off with construction issues. Did a leaking water main cause or contribute to a landslide?" Roberts said. "You then have the issues of how you repair it. It requires meeting with a lot of experts to work that out."

Then there is the question of who must pay - the city and its current or past insurers - and who will be repaid? Every damaged or destroyed home has at least one mortgage company, and often multiple lenders, who want their money back.

The sluggish economy has Roberts working on a lot of real estate workouts between lenders and developers, construction disputes and some employment claims.

"The employment practice, to me, is really the most interesting for a mediator," Roberts said. "You've got people problems. You've got valuation problems. You've got legal problems, because the law is evolving. You get a lot of emotional problems, because employment relationships are like marriages in a way."

Each case - employment or otherwise - requires its own approach.

"Too often, there's a cookie cutter mediation approach, where many mediators apply the same techniques to all cases," Roberts said. "I don't think you can do that. I think you have to be flexible."

Mediators have to get to know the parties they're working with and get to the heart of the issues that are most important to them. That's why Roberts begins with a facilitative approach and likes to start with a joint session, if the parties' attorneys agree to it.

"A lot of lawyers today fear that a joint session at the beginning of a mediation is going to constitute a lot of antagonism; that a lot of emotions are going to come out and it's going to harm the ability to negotiate," he said.

On the contrary, parties in a dispute can benefit from the opportunity to hear from each other directly.

"I think they need to know that their points have gotten through to the decision makers on the other side and that it hasn't been filtered through the lawyers," Roberts said. "Many times a settlement will not occur, because somebody is convinced the other side is not getting the correct information."

In meetings alone with each side, he continues to ask questions and build a rapport. As the day goes on, he'll direct the two sides toward a compromise.

Valentine S. Hoy, partner at Allen Matkins Leck Gamble Mallory & Natsis in San Diego, said in the 20 years that he's known Roberts, he's seen that the mediator has a way of putting people at ease so they can come to an agreement. Hoy has mediated both construction and real estate disputes with Roberts.

"Mike has a very calming personality and a way with people, particularly when you have people who are emotionally involved in their cases," Hoy said. "Even when the speaker doesn't stick to common sense, he doesn't abandon common sense."

If you're persistent enough, Roberts said, you can settle almost any dispute.

"But, again, it has to be the right time and sometimes it just isn't going to happen until it's ready to happen," he said. "You just keep pushing at it and make progress a little at a time and get it done."

Here are some attorneys who have used Roberts as a mediator:

Robert L. Shipley, Law Offices of Robert L. Shipley, Carlsbad; John F. McGuire Jr., Thorsnes Bartolotta & McGuire, San Diego; Jeremy Roth, Littler Mendelson, San Diego; Douglas W. Grinnell and Jon H. Epsten, Epsten Grinnell & Howell, San Diego; John B. Campbell, Campbell Souhrade & Volk, San Diego; John Schroeder, Schroeder & Associates, Brea; P. Randolph Finch, Marks Golia & Finch, San Diego; George Fleming, Fleming PC, San Diego; Albert E. Haverkamp, Lucas & Haverkamp Law Firm, San Diego; Victor M. Felix, Procopio Cory Hargreaves and Savitch, San Diego; Larry Arnold, Cummins & White, Newport Beach; Roger C. Haerr, Luce Forward Hamilton & Scripps, San Diego; and Samuel L. McDermott, Wood Smith Henning & Berman, Newport Beach.

EDUCATION

University of San Diego, San Diego JD

PERSONAL

Birthplace: San Diego

Recreation: golf, skiing, music - blues guitar