

VERDICTS & SETTLEMENTS

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Breaking bread breaks the ice

Mediator Harris Weinberg likes to put out the fire rather than fan flames

By Shane Nelson

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Neutral Harris E. Weinberg has been working to resolve disputes for more than three decades, but the pandemic forced him to alter what had been a longstanding, core component of his mediations.

"History, literature, the Bible are full of stories of competing parties coming to resolution breaking bread together," Weinberg said. "So, for all 35 years I've been doing this, it's been my tradition to try to humanize the parties at the outset of the mediation before inviting them to step into their roles as advocates in an adversarial proceeding. And before Zoom, I would accomplish that by bringing pastries, croissants, sweet rolls, bagels - and from time to time, God help me, donuts - to the mediation."

Weinberg said he'd have the table set beforehand, and once parties arrived, he would invite everyone to sit down, break bread together and spend 10 minutes or so discussing topics unrelated to the dispute.

"Let's talk about our children. Let's talk about what we did last night. Let's talk about our plans to travel this summer," Weinberg explained. "And then I would have a joint caucus."

Weinberg said he hasn't yet found an efficient way to deliver pastries to all the different physical locations involved in his Zoom mediations, so he employs a different strategy these days when working remotely.

"I invite each person to talk to all of us about where they are," Weinberg said. "And it's interesting because you will learn some people are visiting their parents in a vacation home. Some people are away with their children, looking at col-



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leges. And it gives an opportunity for people to actually come to see each other in a different context."

Weinberg was first introduced to mediation in the mid-1980s when he and his ex-wife made use of a mediator during their divorce.

"I was a trial lawyer in the first part of my career," he recalled. "And I found myself intrigued, seeing that there was someone else who was active in the legal field of disputes whose job was to put the fire out rather than to set the flames."

Routinely tackling maritime, commercial, employment and personal injury cases, Weinberg has been part of the ADR Services Inc. panel of neutrals for the past seven years.

He still encourages parties to break bread before his in-person mediations, and he continues to encourage joint caucuses.

"Parties sometimes don't want to. They'll push back," Weinberg said about joint sessions. "I'll always recognize that the ultimate decision-making belongs to the parties, not to me. I may advocate for certain things that I believe to be effective, but ultimately those decisions are theirs, and I respect that."

Oakland plaintiffs' attorney Monica J. Burneikis has been using Weinberg to settle auto-related personal injury cases for 15 years, and she's taken part in several joint sessions with the mediator.

Harris E. Weinberg

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"A lot of times, parties don't want to," Burneikis said. "They don't want to sit in the same room as the person that brought them into this entire process - especially my clients, because they're the injured parties. And they're having to face the person that caused the injury or caused their loved one to die."

Even so, Burneikis said she's seen Weinberg's joint sessions break down barriers and set an early tone for constructive dialogue.

"I can't speak to the data behind this tactic," she explained. "But I've seen firsthand how this ritual of breaking bread does have a tendency to break the ice in the room."

Weinberg likes to receive briefs from all the parties before his mediations and will speak over the phone with counsel beforehand when necessary. Early on the day of his mediations, the neutral said he works hard to connect with the litigants.

"From the opening bell, my first duty is to earn the trust of the parties," he said. "Because I know there's going to come a time in that mediation that any possibility of me being effective is going to first and

foremost require that I succeed in earning the trust of the parties. And if I am not, it's my failure, not theirs."

Weinberg noted that listening closely and thoughtfully helps him to ask the right questions later in the day about each case's strengths and weaknesses.

"I don't want to tell the people what to do," he explained. "I want them to reach that on their own. If they get there on their own, they'll own it because they'll know why they got there. So, what I would prefer to do would be to ask the right questions. ... I would much rather do it that way than tell them what I think they should do."

Burneikis said Weinberg's background as a trial attorney helps him to provide meaningful insight, and she described him as "a true neutral."

"He never takes sides," Burneikis said. "But he knows how to push and persuade appropriately to keep parties moving toward resolution."

San Francisco defense attorney H. Grant Law started using Weinberg to mediate auto-related product liability disputes 15 years ago, and he said the neutral is terrific at

identifying the true nature of separation between the parties.

"He finds the factual gaps in how each side views its case and zeroes in on that," Law said. "He recognizes that if there are material, important factual gaps that you're just living in two different worlds. And it's hard to come to an agreement when you can't agree on exactly what happened. So, he identifies those and tries to close those gaps, so everyone's looking at the case the same way. You still may not agree on the value of it, but at least you find the common ground."

Oakland plaintiffs' attorney Joseph S. Nierenberg has been using Weinberg to resolve wrongful death and catastrophic personal injury disputes for 20 years, and he described the neutral as a "tenacious mediator."

"Sometimes I butt heads with Harris in mediations," Nierenberg said with a chuckle. "But it doesn't necessarily mean that I don't respect what he has to say and what his opinion might be about something."

Like Law, Nierenberg said Weinberg quickly grasps the key elements of a dispute.

"He understands the issues probably better than any mediator I've ever used," Nierenberg explained. "And I don't think anybody ever gets the sense that Harris is favoring one side or the other side."

Weinberg noted, meanwhile, that even after 35 years of resolving disputes, he has no plans to stop mediating soon.

"I consider myself an extremely fortunate man. I found work to do that I love doing," he said. "I am enormously humbled and honored every day by the trust that people accord me, and that I continue to be able to do this work is a great blessing."

Here are some attorneys who have used Weinberg's services: H. Grant Law, Shook Hardy & Bacon LLP; Joseph S. Nierenberg, Weber & Nierenberg; Monica J. Burneikis, Burneikis Law PC; John R. Hillsman, Law Offices of McGuinn, Hillsman & Palefsky; Andrew I. Port, Gordon Rees Scully Mansukhani LLP.

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