

VERDICTS & SETTLEMENTS

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READY TO GO

Neutral Brad Bening does a lot of pre-mediation work that facilitates quick results.

By Don DeBenedictis

Special to the Daily Journal

Brad Bening said he takes “a very aggressive approach to finalizing settlements.” In fact, before any mediation session begins, he usually has a settlement agreement ready to go.

“It’s got all their names on it,” Bening said. “It’s got all the terms and conditions to make sure the lawyers have their clients protected.”

The staff of ADR Services, Inc. know to prepare the agreement as part of setting up mediations for him. During the session, he may modify the agreement a great deal, he said. Or “sometimes it’s just plugging in a number.”

“I’ve done that for 20 years,” he added. “I want to have the agreement signed if at all possible that very day.”

Bening’s ready-to-go agreements are “always very helpful,” San Mateo attorney John Garvic said. They bring “everybody on board before they go out the door,” rather than having to wait six weeks for an agreement to be drafted and approved. “You have to be on your toes to be sure you get everything you want in there,” he added. “I don’t find that to be an issue. It’s good.”

Jamie Couche of Dudnick Dewiler Rivin & Stikker said Bening already had “some structure in place and some ideas” in some family business disputes before mediation thanks to “some good pre-mediation conference work with us.”

Burke, Williams & Sorensen’s Douglas Dal Cielo went a little further. He said Bening is “an aggressive evaluator of cases” who also has “great legal acumen.”



Gary Wagner / Special to the Daily Journal

Bening had a thriving practice handling real estate, construction defect and insurance coverage matters, so he is especially skilled at telling parties the pros and cons of their cases in those areas, according to Dean Rossi of Rossi Dominique. “He has a nice, soft touch at providing evaluations for clients,” Rossi said. “He does a very good job evaluating the risk. He has a pragmatic approach ... that helps people make informed decisions.”

Bening carefully studies a case beforehand and knows it well come the mediation session, according to Ronald Rossi of Rossi, Hamerslough, Reischl & Chuck. Then, because he “has a lot of savvy and trial experience, he can tell clients and attorneys what they face, how

to prove something and how to develop something from a legal and factual standpoint,” Rossi said.

Several attorneys commented on the deep business trial experience Bening brings to his mediations. “The most impressive thing about him is that he’s got a long history of being a successful trial attorney,” said Dawn Sweatt of Berliner Cohen. “It provides substance to what he’s saying.

“Nine times out of 10 he’s got an experience to share,” Sweatt added. “He’s had so many jury trials himself that he is better than other [mediators] at telling you what juries are going to think, ... what is the value of the claims.”

“When he paints the dark side [of a case], he’s been through it,”

Bradley A. Bening

ADR Services, Inc.
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said Gerald Murphy of Lubin Olson & Niewiadomski. “He can cite the law, and he can cite his own experience. ... He delivers that message where appropriate on a regular basis.”

Born in Wichita, Kansas, Bening moved to San Diego with his family — “which was a hell of a good move for a 10-year-old kid,” he said.

Even though he has all that litigation experience now, Bening started out as a theater major. “I liked it, but I just didn’t find it to be intellectually stimulating enough.” With an eye toward law school, he studied political science and economics at California State University, Chico, graduating with honors in 1978. While there, he was the executive director of the Community Legal Information Center, which provided paralegal services to inmates in the Susanville prison.

“That really got me ... wanting to be a lawyer,” he said.

He also worked weekends and summers as a blackjack and baccarat dealer at a Lake Tahoe casino. He earned enough to take a year off to travel from Nepal to England, including breaking down and getting stuck in Turkey.

“I spent about six weeks on the coast of southern Turkey having a great vacation, drinking cheap Turkish wine with a couple other guys,” he said. “It was fantastic.”

When he came home, he returned to dealing blackjack part-time while earning a law degree from UC Davis.

When he graduated in 1982, Bening received offers from several good firms. He chose Hoge, Fenton, Jones & Appel in San Jose primarily, he said, so that he could live in the Santa Cruz area to be close to surfing. He still lives on three acres in the mountains there, about 20 minutes from the beach.

There, he worked with the de-

fense firm’s one insurance-coverage specialist, and soon he became one himself. That focus was “the genesis of me becoming a mediator because there were so many matters ... where the underlying coverage issues were driving the case or were a very, very critical factor in the case, which of course is still true today,” he said.

In 1991, he and some Hoge Fenton colleagues formed Willoughby, Stuart, Bening & Cook, where he stayed for 30 years. He “had a very psycho diverse practice that really changed over time.” Early on, he represented AAA in handling first-party, complex homeowner and business interruption coverage cases following major fires.

Even as the firm’s practice expanded beyond defense, Bening defended attorneys sued for malpractice who were covered by State Bar insurance. “That’s actually how I became an ABOTA member, I think, because I had so many jury trials [in] ... malpractice cases.”

He also handled complex business and corporate cases. And he won some million-dollar verdicts representing plaintiffs, he said.

In addition, by the late 1990s or early 2000s, lawyers began asking Bening to help resolve coverage disputes. “There were not many mediators that had any subject matter expertise with regard to sophisticated coverage issues. And I did,” he said.

His mediation practice grew, until by 2005 or so he was mediating 50 to 80 disputes a year, he said. Finally, in January 2021, he joined ADR Services, Inc.

Even so, he still has a few litigation matters that he is wrapping up. Last month, he settled a potential multimillion-dollar lawsuit in Monterey on behalf of a trust.

When Bening is assigned a case for mediation, he tries to speak to

each attorney a couple of weeks in advance of the session. “Inevitably, I learn something,” he said.

Then, he prepares. “I try to read everything and make sure I’ve looked at all the exhibits. I really try to make sure that I have an intellectual understanding of the legal issues and a factual understanding ... of the claim.”

At the beginning of a session, he gives a 15-minute talk describing the process, costs and stresses of litigation, including what it’s like to have “skilled lawyers on the other side trying to make you look wrong, bad and stupid.”

Bening mediates many pre-litigation matters, in which he encourages the parties to exchange information as much as they can in advance.

He also handles many cases with multiple parties, especially construction defect cases with several defendants. In those, he typically holds a separate conference with the defense group only. The large ones also often require extensive meetings among the parties’ consultants.

David Marks of GCA Partners in Mountain View said Bening “understands the interplay between the parties and how to organize them” in big defect cases. “He is blunt with his statements, credible and tireless.”

Half or more of his practice involves construction defect or real estate cases. Most of the rest are complex business matters, plus some serious personal injury and civil rights cases. He also serves as a special master occasionally.

Lately, Wilson Elser Moskowitz Edelman & Dicker has brought him to Los Angeles several times for crash settlement days in which he mediates a half-dozen or more cases in two hours or less each. “I never dreamed it would work,” Bening said. He begins by telling every-

one, “Folks, you’re not making demands. You’re not making offers. You’re going to evaluate your case.”

Now, in many of his other mediations, he talks about those Wilson Elser sessions. “I tell people in my pre-mediation discussions what can happen when people are painfully honest with me on a confidential basis,” he said. “When everybody is candid with me, I can say your case is settled.”

Lawyers said he does all that in a friendly, easygoing way. Bening “is not your typical mediator,” Dawn Sweatt said. “He’s not uptight and sterile. He’s more personable and his booming presence kind of dictates that the parties listen.”

Dean Rossi noted that Bening, who is tall and bald, has often played Daddy Warbucks in local productions of “Annie!” Although Bening did not pursue theater as a profession, he said he can act, sing, dance and play classical guitar.

Another member of his family did go into theater, his younger sister, actress Annette Bening.

Here are some attorneys who have used Bening’s services: Brent F. Basilico, Furukawa Castles LLP; Jaime C. Couche, Dudnick Detwiler Rivin & Stikker LLP; Douglas W. Dal Cielo, Burke, Williams & Sorensen LLP; John D. Garvic, Law Office of John D. Garvic; Laura C. Hurtado, Pillsbury Winthrop Shaw Pittman LLP; Edward A. Kraus, Silicon Valley Law Group LLP; E. David Marks, GCA Partners LLP; Gerald M. Murphy, Lubin Olson & Niewiadomski LLP; Michelle R. Press, Wilson Elser Moskowitz Edelman & Dicker LLP; Ronald R. Rossi, Rossi, Hamerslough, Reischl & Chuck; Dean C. Rossi, Rossi Domingue LLP; Dawn C. Sweatt, Berliner Cohen LLP.

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