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PERSPECTIVE

Resolution Agent

Harold 'Peter' Smith thinks about what makes protagonists tick, and calls out their biases

By Shane Nelson

Special to the Daily Journal

Mediator Harold "Peter" Smith served on the Oakland Planning Commission for six years, an experience where he said it was critical to make sure people felt they were heard.

"It really helped me to ask questions that demonstrated I understood what people were saying, and I understood it on their terms — even if I disagreed with them," Smith explained, noting he sat on the commission and took part in public hearings from 1991 to 1997. "I learned how to have them go away feeling they had their day in court, their time to put their position out there and that we listened. And some of those skills are very important in mediations I do today."

Smith grew up in the Bay Area, and after he graduated from the University of San Francisco School of Law in 1986, he worked for three years as a deputy district attorney in Alameda County. He went into private practice in 1989 and spent the next 30 years as a civil litigator and trial attorney, representing clients routinely in business, real estate, construction and internet content cases.

"When I started out practicing law, I always focused on early intervention dispute resolution rather than dragging out litigation," said Smith, who also worked regularly as a mediator while he represented clients as an attorney.



Gary Wagner/Special to the Daily Journal

"I view litigation as a terrible lifestyle for the client and as a highly inefficient way to resolve our differences," Smith added. "There are some cases that need to be tried, and I get that. But the vast majority are coming from places where people simply aren't trying hard enough to understand how to solve a problem, and I like being the agent that helps with that."

Smith has been tackling disputes full time as a private neutral for ADR Services Inc. since November 2021, working to resolve cases in many of the same areas of law where he practiced as a trial attorney.

Before a mediation, Smith said he likes to receive briefs, and encourages parties to exchange them. Smith also likes to speak over the phone beforehand with attorneys to ask questions and get a better understanding about the dispute and who's involved.

"I spend a lot of time thinking about who the protagonists are and what makes them tick," he said. "I probably do spend more time than most really thinking through not only how I can relate to somebody, but also how I can get the two protagonists relating to each other."

Smith added that his preference is to begin on the day of mediation in a joint session, but he was quick to note he discusses that with attorneys ahead of time to see if that approach might do more damage than good.

"I vastly prefer joint sessions because then you get the sides talking to each other without filters," he explained. "But I recognize that sometimes that's not necessarily productive."

Smith said he also makes regular uses of brackets and mediator's proposals, but he prefers to start out with a more facilitative

approach and save his evaluative strategies for later in the day.

"Every mediation has its own pace and flow, but I tend to be a good listener at the beginning," he explained. "And I typically spend a lot of time thinking about and calling out implicit bias. I find that a lot of times protagonists are taking their positions because they don't fully understand their adversary and that can be biased on any number of fronts — political bias, socioeconomic bias, racial bias, unconscious bias. I've found that it helps to call that out."

Sacramento real estate attorney Stephen S. Brand has used Smith to settle several cases, and he said the neutral's demeanor and extensive experience are an excellent combination.

"He's a good listener, very level headed and extremely knowledgeable in real estate law and litigation," Brand said. "But he's not a

Harold "Peter" Smith

ADR Services Inc.
Oakland

Areas Of Specialty:

Business
Real Estate
Internet Content
Employment Termination
Construction

guy that's spouting off about how knowledgeable he is. He's a guy that sits there, and he listens, and he asks questions. In order to get things resolved, you have to first find out where the sides are coming from, where the people are coming from, and that he does very well."

Brand also said disputants feel comfortable with Smith, which helps a great deal.

"People trust him," Brand said. "It's hard to go from the plaintiff to various defendants and communicate with them all and then also have trust with all of them. Usually, you end up with a situation where one party trusts you, and the rest of the parties think you're against them. But Peter really has an ability to work with all the various parties and have them all trust him, and because of that,

they all keep going along with him to try and get things resolved."

Emeryville real estate litigator Kenneth S. Katzoff has used Smith to resolve several disputes, and like Brand, he said the neutral connects quickly with clients. He also noted that Smith has a knack for crafting successful mediator's proposals.

"The best settlements are when no one is happy. If one side is happy and the other isn't, then it's not a good settlement. Both sides have to give a little bit," Brand explained. "And Peter's not only good at getting people to an agreement, but he also follows through, and when he does use a mediator's proposal, it's usually accepted. He usually finds a space where both sides can agree. They may not like the number, or they may not like the terms, but they

see the wisdom in the proposal."

Santa Monica real estate litigator Richard G. Stoll used Smith to resolve a dispute in August, and while he agreed the neutral's easygoing demeanor endeared him quickly with the disputants, Stoll said Smith wasn't shy about getting tough when it was needed.

"He was firm and able to twist arms," Stoll said. "But he did it in a palatable way. Sometimes you get mediators who will deliver the bad news, but they'll piss off everybody at the same time, which doesn't necessarily help out. And then you've got a lot of mediators that are kind of everybody's best friend, but they're not effective at telling the other side, or your client, 'Look, you've got some real problems here.' Sometimes you need somebody that bangs people's heads together.

And Peter was kind of in the middle on that, which I thought was really good."

Smith added, meanwhile, that resolving disputes is something he feels comes naturally for him, and it's really work he's been doing for quite a long time.

"I'm a middle child — I have an older sister and a younger sister," he explained with a chuckle. "So, I'm the one that's always been trying to find a way for everyone to get along."

Here are some attorneys who have used Smith's services: Kenneth S. Katzoff, Katzoff & Riggs LLP; Stephen S. Brand, Law Office of Stephen S. Brand; Richard G. Stoll, Shoreline ALC; Kathleen R. Hartnett, Cooley LLP; Jason J. Curliano, Buty & Curliano LLP.