

Born Mild

Mediator Gary N. Donovan always gravitated to the role of consensus builder and can gently prod parties to settle cases.

Gary N. Donovan

Judicate West

Southern California

Age: 55

Areas of Specialty: Construction,
real estate, personal injury

By Susan McRae

Daily Journal Staff Writer

LOS ANGELES - You might say

Gary N. Donovan was born to be a mediator.

He grew up in an Irish-Italian family, one of five children in a house with one bathroom.

"When I was young, I always tried to mediate and facilitate," said Donovan, now 55. "I tried to work out a way where we could always use the bathroom equitably."

His knack for negotiating wasn't confined to the family.

When Donovan was growing up in Rome, N.Y., a small town near Syracuse, workers at the local wire mill were always on strike. Returning home from college one summer, he tried to reason with friends who had walked off the job.

"I'd say, 'Why are you on strike? Go back to work.'"

His proclivity for settling conflicts prompted colleagues to suggest he become a lawyer, a vision he embraced. Fed up with his hometown's brutal winters, he decided after graduating from Fordham University to enroll in Southwestern University School of Law in Los Angeles, where an aunt and uncle lived. After graduating in 1981, he spent the next six years as an associate at two local firms, focusing on insurance defense. He then opened his own firm, representing plaintiffs and defendants, mainly in construction and real estate cases.

Though he got satisfaction from trying cases, Donovan noticed he was more drawn to settling disputes than to advocating for one side.

"I found when I did that," he said, "everyone seemed a little happier than in a win-lose situation."

During that time, Donovan often brought cases to Judicate West for mediation. He started volunteering as a mediator and arbitrator on court panels in Riverside and Orange counties.

In 2007, after 25 years of litigation, Donovan decided to become a full-time neutral. He talked it over with the people at Judicate West, joining the organization that year. Today, his work is 85 percent mediation and 15 percent arbitration.

Lawyers who have used Donovan's services describe him as persistent, patient and someone who has a calming effect on the parties. They say he brings a New York-style energy to the room that lifts people's spirits and puts them in a positive frame of mind.

"Clients like him," said defense lawyer Norma Chavez of Ericksen Arbuthnot.

She used Donovan to mediate a personal injury case in which she represented a construction company sued by a plaintiff who was hit by a big rig truck.



"He settled a case that was considered unseizable," Chavez said. "He went above and beyond what was called for. He educated counsel on the law. He didn't give up. It took three sessions, but it resolved due to his perseverance."

"Gary is open-minded, and he has a way of making the plaintiff's position understood by the defense," said plaintiffs' lawyer Yoshiaki C. Kubota of Chambers, Noronha & Kubota, the incoming president of the Orange County Trial Lawyers Association. "He doesn't come to the mediation with preconceived ideas about the value or the liability of a case. Trust, for me, is one of his hallmarks."

In the years Donovan has served as a neutral, including the time he volunteered for the courts, he said his style has evolved.

He used to hold joint sessions all the time, for example, but he said he seldom does so now because he found that parties tend to state their positions in an adversarial context, becoming anchored to those positions and making it difficult to be open-minded later. Now, he sometimes finds it useful to hold joint sessions in the middle of the process, if the parties are making progress and need to talk with each other. He recently started holding more premediation conferences to try to get as much information as he can before the sessions.

And he used to frequently offer mediator's proposals, in which he would write down a figure he thought the case should settle for and confidentially share it with each side for consideration. If both agreed, the case would resolve; if not, neither side would know the other side's response.

Over time, he said, he found it more effective if parties came up with their own resolutions, rather than relying on him to do it for them.

Donovan advises lawyers to be prepared and to prepare their clients so that compromises don't come as a shock. Briefs are helpful, he said, but only if delivered in advance. They should be short, concise and outline the facts, damages and the client's expectations. The lawyer-mediator is expected to know the law, but any special doctrine or uncommon area of law should be noted.

Because of his background in insurance defense, Donovan said he often mediates insurance-related cases involving real estate and construction matters. However, he also has mediated some business and employment disputes, as well as catastrophic injury cases.

It's difficult to single out the types of cases he prefers because each one is unique, he said, and he most enjoys the challenge of trying to find a win-win situation for both sides.

"I try to give a reality check and say, 'Where are we going with this,' especially in business cases, which a lot of times aren't insurance-driven," he said. "Business people are more in tune with what it is costing them, and want to find a way to get out of it with some grace."

In contrast, insurers are sophisticated about analyzing the costs, he said, and it can be difficult to get them to change their evaluation.

"I try to work with people so they understand I am there to help," Donovan said. "There's a large amount of personalities I deal with, and I react differently to them." Donovan recalled one case involving an affluent buyer of multimillion-dollar houses in Montecito. The man was remodeling and flipping the homes when he got into a dispute with the contractors.

"He was a very difficult personality to manage," Donovan said. "He made a lot of money when he was young and was used to people saying 'yes' to him. I needed to find a way to make him accept things he didn't want to hear."

In the end, Donovan was able to facilitate a compromise in which the man who was used to getting his way accepted a nonmonetary concession that made him feel he had scored a victory, while the contractors received some money.

Another real estate case involved church elders who required a gentler approach.

Their church had set up a program to help people purchase houses. One family that had bought a home through the program later turned out not to qualify for help, and the church sued for return of the house. But when discussing their philosophy during mediation, the elders concluded the family had made an innocent mistake and decided to change the terms of the arrangement to allow the family to stay in the house.

"I'm not everything to everybody," Donovan said. "I'm certainly not a chameleon. I'm pretty easy to read myself. But I try to be either facilitative or evaluative, depending on the case. When it's high emotions and not about the money, then you have to be more facilitative and more hopeful and understanding. When it's down to brass tacks and more insurance-driven, then I'm more evaluative."

When it comes to his own family, Donovan said his wife, Teri, a special-education aide, always keeps the peace. They have a son who works in Internet technology and a daughter who is majoring in dance at Chapman College.

"At home, the most calming voice is my wife," Donovan said, "even though she will remind me, 'Don't you do this for a living?'"

Here are some of the lawyers who have used Donovan's services: Kenneth G. Ruttenberg, Tesser & Ruttenberg, Los Angeles; Gary L. Chambers and Yoshiaki C. Kubota, Chambers, Noronha & Kubota, Santa Ana; Norma Chavez, Ericksen Arbuthnot, Los Angeles; Gayle I. Jenkins, Winston & Strawn, Los Angeles; George Muhar, Halas, Muhar, Paris & Arnett, Orange; Timothy J. Ryan, Ryan & Associates, Huntington Beach; and Andrew Kohn, Pettit Kohn Ingrassia & Lutz, San Diego.

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