

## AUGUST 27, 2010 | ALTERNATIVE DISPUTE RESOLUTION

### Mediation - With a Heart

Jay Cordell Horton of Judicate West in Orange County says while he sympathizes with plaintiffs in personal injury cases he's always mindful that his role is to be impartial.

By Susan McRae  
Daily Journal Staff Writer

SANTA ANA - Jay Cordell Horton believes a key to a successful mediation is making sure the claimant understands the process. He should know. He's spent 30 years representing plaintiffs in major injury, medical malpractice and elder abuse cases. Now, as an ADR neutral at Judicate West, Horton gets to put that practice to good use.



"Everybody else has been there before," Horton said. "The claims people and the defense lawyers are experts. They have an understanding. It's the claimant who really needs to relate to the mediation process."

And while Horton said he makes it clear upfront that his heart is with the injured person, he also makes it clear he is going to be impartial in mediating the case. He's not going to advocate for the plaintiff.

A longtime member of the American Board of Trial Advocates, Horton, 67, has won the respect of lawyers on both sides. Even defense lawyers who opposed him as an advocate said they usually agreed with his evaluation of a case.

That view hasn't changed. As a mediator, they said, Horton has a way of communicating the realities of a case to recalcitrant parties in a gentle manner that is extremely effective. They say his wealth of trial experience, coupled with common sense and knowledge, especially of medical matters and physical injuries, is an enormous advantage.

"I think he would make a terrific surgeon," joked defense lawyer Scott L. Ghormley of Ghormley & Associates in Irvine, whose cases typically involve severe orthopedic and neurological injuries. "He's great at understanding all the medical issues, and that's invaluable.

"He is able to remove people from whatever preconceptions they may have had that may be incorrect and gently and inextricably move them toward what is a manageable and appropriate resolution."

"You can talk medicine with him, and he gets it," plaintiffs' lawyer Brian R. Magana of Magana Cathcart & McCarthy in Los Angeles said. "He's been there where I am sitting. He knows how to talk to people, and he still has a lot of heart for those people, a lot of empathy, and I think they get that from him.

"He's not going to fall over and give the plaintiffs whatever they want. But he has sat me down and told me what it will take if I want to settle the case."

Because of the complexity of the cases he mediates, it's not unusual for a case to take longer than one session to resolve. Horton said he looks at mediation more as a process than a half-day or full-day fix - although many cases do resolve in that time frame.

One day recently, for example, he was asked to mediate a case with a plaintiff and six different defendants. He scheduled a full-day session but doesn't know if that will be enough time to settle the matter.

"We may or may not get the case resolved," he said. "But the important thing is to get the process going."

Horton has handled long cases. He was the sole mediator on 45 separate complaints from patients over gross mismanagement and other accusations stemming from the now-disbanded UC Irvine liver transplant program. Because each complaint was different, they could not be consolidated into a class action. So Horton had to have a discussion with each plaintiff's lawyer to try to bring a resolution and avoid going into extensive and expensive discovery.

In the end, Horton said, he was able to resolve 39 of the 45 cases.

Bryan R. Reid, a defense lawyer at the San Bernardino office of Lewis Brisbois Bisgaard & Smith, who represents nursing homes, said Horton was able to resolve an elder-abuse case against his client after a retired judge not only failed but made matters worse by trying to railroad the parties into settling. Horton succeeded, Reid said, by really listening to what both sides had to say.

"Jay seized on the important issues," Reid said. "He got the plaintiff to come down [on the amount they were asking] and the defense to come up.

"He's a rock star of mediation."

The description is appropriate. In law school, Horton won a recording contract with Dot Records. He was singing, playing guitar and writing his own music, but he hasn't been published for a long time. As a student, he said, a lot of famous people wanted to record his songs, but he thought why would he agree to that when he was going to be a big rock star.

Thanks to advice from his father, he stuck to law in case the music thing didn't work out. He still writes and plays music, but at his church. He also exercised his creative urge by writing a science fiction children's book, which began as bedtime stories he told to his two school-age children. He also has an adult son from a previous marriage.

After earning a degree in 1968 from USC Gould School of Law, Horton spent the first five years in private practice on the defense side. In 1974, he formed the first of three successive law firms in Orange County representing plaintiffs, mainly in cases involving catastrophic injury, wrongful death and medical malpractice.

But after 30 years in litigation, Horton said he was ready to do something less stressful than being a trial lawyer. Over his career, he estimates he tried 100 cases to verdict. He also wanted to have more control over his calendar so he could spend more time with his family. And, he wanted a job he could continue doing for a long time because, he said, he soon will have college tuition to pay.

After talking it over with his family, his law partners and other former plaintiffs' colleagues who had successfully made the switch to ADR work, he decided to join Judicate West.

Besides mediating medical-related cases, Horton serves as a mediator on cases involving product liability, insurance coverage and other types of complex litigation.

He also acts as an arbitrator, but the bulk of his time is spent in mediation.

During his six years at Judicate West, Horton has developed his own approach and style, which basically is to guide the parties into making their own decisions in resolving a case, he said.

"You really can't make someone change their mind, but you can help them to change their mind," Horton said. "If they make the decision based on the mediation process, after being presented truthfully with the risks and benefits of resolving the case, I think the chances are far greater that they will make the right decision in getting the case resolved."

*Here are some of the lawyers who have used Horton's ADR services:* Bruce Fagel, Los Angeles; Russell Kussman, Kussman & Whitehill, Los Angeles; Brian Panish, Panish, Shea & Boyle, Los Angeles; C. Michael Alder, Beverly Hills; Brian R. Magaña, Magaña Cathcart & McCarthy, Los Angeles; Janee M. Tomlinson, Hewitt & Truskowski, North Hollywood; Denise Taylor, Taylor & Blessey, Los Angeles; David O'Keefe, Bonne Bridges Mueller O'Keefe & Nichols, Los Angeles; Bryan Reid, Lewis Brisbois Bisgaard & Smith, San Bernardino; Michael J. Trotter, Carroll, Kelly, Trotter, Franzen & McKenna, Long Beach, and Scott Ghormley, Ghormley & Associates, Irvine.

[susan\\_mcrae@dailyjournal.com](mailto:susan_mcrae@dailyjournal.com)