

## Exceptional Mediator Settles ‘Impossible’ Cases

By Peter Zuckerman- Daily Journal Staff Writer

It was an impossible case to settle.

The two sides in a medical malpractice claim couldn't agree on an amount to resolve the dispute. Hours passed, and progress was minimal. It was time to give up, said Arlis A Cohen, a name partner at Cohen & Rudd in Pasadena.

But before the parties left, mediator Martin C. Handweiler stopped them. He told each side how much he thought the plaintiff's case was worth and gave them a week to get back to him.

A week later, the case resolved. Handweiler had settled another “impossible case.”

“He's done that for me three times,” said Cohen, a plaintiff lawyer. Defense attorneys describe similar situations.

“Even when the cases don't settle and go to trial, the amounts Handweiler comes up with are exactly the same as the verdict,” said Chris P. Wesierski, a name partner at Wesierski & Zurek in Irvine.

The ability to accurately assess a case's worth, attorneys said, is what makes Handweiler an exceptional mediator.

Handweiler said there's no simple track to it. Putting a dollar figure on a case is a combination of experience, intuition, and listening skills.

“In mediation, attorneys may do a lot of posturing and say they want XYZ,” he said. “But if you listen carefully and know their cases, you can tell that they'd be happy with ABC.”

Handweiler got into mediation after working as a trial lawyer for 30 years and bringing 50 cases to verdict. Most of those cases, he said, were medical malpractice or personal injury, his favorite kind of case to mediate.

Trials, he said, are grueling for everyone, more so for the clients than the attorneys. Lawyers sometimes try to humiliate or antagonize the opposing side, he said, and high stakes and high costs are at risk.

“I feel that if I could help others avoid the ordeal of trial it would benefit everyone, and there's just no better way than in the median of mediation,” Handweiler said. “It helps the participants as well as the system.”

Most, cases are going to settle anyway, so why string the process out? Mediation, he said is a way around the suffering.

“Done well,” he said “it can even be pleasurable.”

Born in Brooklyn, N.Y., Handweiler moved to Los Angeles, when he was 32. After high school, he joined the Army working in Tokyo and learning Japanese.

In the 1960s, he became a claims adjuster and trial preparation investigator for Consolidated Mutual Insurance Co. Six years later, he took a job as a claims representative for Hartford Insurance Co, in Santa Ana.

In 1972, he received a degree from Pepperdine University School of Law and went into practice at Trotter, Handweiler & Bahan in Santa Ana, doing personal injury plaintiffs' work with an emphasis in professional liability. He landed a seat on the board of directors of the Orange County Trial Lawyers Association in 1975.

He worked as a judge pro tem for the Orange County Superior Court in 1999. That same year, he started his own firm, Martin C. Handweiler, Inc., which specialized in civil litigation and personal injury.

He stayed on his own until 2002, becoming a member of several organizations, including the American Board of Trial Advocates. In 1996, the Orange County chapter gave him the 'Trial Lawyer of the Year' award. He has given presentations to many groups about civil procedure, jury selection and cross-examination of expert witnesses.

The work as a trial lawyer exposed him to mediation, which he like better than trials, he said, because it's less stressful and confrontational and tends to make clients feel better about the results.

To learn more about mediation, Handweiler took a one-week course, 'Mediating the Litigated Case' at Pepperdine's Straus Institute for Dispute Resolution.

He has mediated and arbitrated hundreds of cases. Raising children, shopping and watching people interact, he said, has helped his mediation skills.

"When you buy a car or talk to your child, you're mediating," he said.

Before each mediation, Handweiler reviews the case outlining it the same way he did in law school.

Sometimes he does research on his own, he said, figuring out the strengths and weaknesses of the case. He calls all the lawyers involved and asks them to describe any issues that might be obstacles or aids to the case, such as a client who is hard to control.

He calls his own experts to get their assessment of the case.

He estimates that about 40 percent of the cases he takes are legal or medical malpractice.

He usually begins a mediation with both sides in attendance. He tells the lawyers to be advocates but not adversarial, if they become hostile, he splits the sides apart.

He lets each side vent but strives to keep the atmosphere relaxed.

"If it was up to me, we wouldn't have to wear a suit and tie," he said.

Then he proceeds by asking questions and printing out strengths and weaknesses of the case.

Typically, Handweiler said, he tries to avoid expressing his opinion about the case unless it appears necessary or helpful to resolving it. He usually asks before giving an opinion and only does so after he's learned as much as he can about the case.

"But if we reach an impasse," he said, "I get more involved and tell them where I think their case stands."

The job can sometimes become frustrating, he said, when the parties won't be reasonable, no matter what happens. Still, the effort is worth it, he said, because of all the grief settlement of a case saves.

"Mediation is perhaps the only enjoyable part of the litigation process."