

July 30 | ALTERNATIVE DISPUTE RESOLUTION

Common Ground

Jonathan A. Brenner
Mediator

Age: 49

Affiliation: Judicate West

Location: San Diego

Areas of Specialty: Personal injury, employment, business, wrongful death and other disputes

By Mandy Jackson
Daily Journal Staff Writer

Angry churchgoers coming to blows? No problem. A grieving mother who needs a shoulder to cry on? He can handle it.

Jonathan A. Brenner of Judicate West in San Diego is described as a tenacious yet courteous mediator. Brenner's known as someone who can get down to the dollars and sense of things, but deal sensitively with emotional parties in a dispute.

Brenner attributes his success as a mediator to his experience as a lawyer. He was a plaintiffs' attorney - most recently at Simpson & Brenner in San Diego, in-house counsel for USAA Insurance Co. and a defense attorney for various firms.

Like his mediation practice, much of Brenner's legal experience is in personal injury, including plaintiff and defense work, but he also has handled wrongful death, elder abuse, employment and business matters.

"I'm a big proponent of approaching each case individually and I think that the style that I use is very dependent on the type of case involved," Brenner said.

His first mediation, a dispute between two factions of the Samoan Church of Christ, came to blows - both verbal and physical - before the two parties agreed to discuss a settlement regarding the groups' shared use of church facilities.

The matter of mind over muscle wasn't a problem for Brenner, a Tae Kwon Do black belt and bodybuilder, who brought the gigantic men to tears when he asked the pastor involved as an expert witness to lead the parties in a joint prayer to help them find a resolution to their dispute.

"A volatile case would be perfect for him, because he's good at tamping down emotions," said Daniel M. White, partner at San Diego law firm White Oliver & Amundson.

White described Brenner's style as low-key, but insistent.

"He's tenacious in an extremely polite and gentlemanly way," he said.

Brenner savors the moments when he can help parties resolve their conflicts and move on with their lives.

Last year, he mediated a settlement in a wrongful death case between the city of San Diego and the mother of a man shot by police during a traffic stop after an officer mistook a toy gun for a real one.



"At the end of that mediation, we got it resolved and the mother was crying on my shoulder, hugging me, thanking me for getting this resolved," Brenner said. "In some small way, I think I was able to help that woman put this behind her, which was certainly more beneficial to her than had she litigated that case."

Craig Higgs, of Higgs Fletcher & Mack LLP in San Diego, said Brenner is good at mediation because it is clear that he likes what he does for a living.

Higgs has known Brenner for a long time and recently took a case to him for mediation.

"He was very well prepared. He knew the key issues of the case and he got right down to what was important," he said. "He's very knowledgeable of realistic values of cases. He has the ability to gain the confidence of the parties and the attorneys." Higgs said Brenner's background as a trial attorney helps him get down to the key issues of the matter before him and a realistic evaluation of the case.

"When he speaks about what's likely to happen in a trial, he speaks with authority," Higgs said.

When mediations began to emerge as a preference to non-binding arbitration, Brenner was not a fan of the process, until he went through several of them on behalf of clients. Then, in the late '90s when the state courts funded a mediation pilot program, Brenner thought he could be a good mediator, so he enrolled. Later, when USAA began to lay off workers in 2000, that experience led to a partnership with Sean Simpson, the other named partner in Simpson & Brenner. On top of his litigation on behalf of plaintiffs, Brenner developed a practice that had him tying up conference rooms with mediation clients four or five days a week.

"I always thought I was a good trial lawyer and I enjoyed being a litigator, but [mediation] was something that I really loved doing," he said.

He later took regional vice president Mark Kaufman up on his offer to join Judicate West as a full-time neutral in 2008.

"I think I have a pretty good feel for the valuation - what cases are worth and what they're not worth - and how to size up a witness and what issues each side is looking at and looking for," Brenner said.

There are no hard-and-fast rules to mediation in his eyes. Flexibility is key, because some parties need to spend a lot of time discussing their feelings about the issues at hand while others need to cut to the chase.

"One of the most frustrating things to me was when I would walk into a mediation and the mediator had a set agenda," Brenner said. "I've seen many mediations go south, because the mediator wouldn't be flexible."

He follows the lead of the attorneys who seek his services and welcomes their input on how he might handle their clients and their opponents.

"I think you have to afford people dignity and courtesy," Brenner said. "Sometimes one side will come in and maybe emotions run high or maybe they just disagree with the other side's position and they just think the other side is way off base. You have to be able to look at that and assess the full picture."

Here are some of the lawyers who have used Brenner's mediation services:

Robert D. Shoecraft, Shoecraft Burton; James P. Frantz, Frantz Law Group; Harvey C. Berger, Pope Berger & Williams; William M. Berman, Berman & Riedel; Randall W. Kaler, Gilbert Kelly Crowley & Jennett; Gregory L. Johnson, Law Offices of Gregory L. Johnson; Gregory C. Kane, Shifflet Kane & Konoske; Robert Juskie, Wingert Grebing Brubaker & Goodwin; Bill Harris, Austin Brownwood & Cannon; Douglas W. Lewis and David Driscoll, Lewis Brisbois Bisgaard & Smith; Harvey Levine and Harris I. Steinberg, Levine & Miller; John H. Gomez and Robert N. Hamparyan, The Gomez Law Firm; David S. Casey, Robert J. Francavilla, Frederick Schenk, Gayle Blatt, Thomas Penfield, Casey Gerry Schenk Francavilla Blatt & Penfield; Otto Hasselhoff, Law Offices of Otto L. Hasselhoff; David Strauss, Law Offices of David P. Strauss;

Michael R. Marrinan, Law Offices of Michael R. Marrinan; David W. Baumgarten, Yale & Baumgarten.
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