

June 06, 2008

IN PROBATE WARS, OPENING PATHS FOR PEACE

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This article appears on Page 1 of the Verdicts and Settlements

LOS ANGELES - Mediator Paul Fisher is dedicating his life to negotiating death. It's not that he makes deals with the devil. But Fisher, a professor at Pepperdine University School of Law's Straus Institute for Dispute Resolution and a neutral specializing in highly emotional probate disputes, recently has been mounting workshops across the state, inviting lawyers and mediators in hopes of changing the way they approach disputes over estates and trusts.

It's a mission that stemmed from two years of bitter fights and dragged-out litigation over his parents' estate.

"At the time, I was a mediator - I had been a litigator, a trial lawyer - it didn't make any difference in the world, because I was a party to the action," the 64-year-old neutral said ruefully. "We resolved the matter before trial, but not before I'd spent a tremendous amount of money in attorneys' fees, and it destroyed relationships in my family, something which I still endure today."

It's a story he tells with a weary ease that comes from alluding to it many times in mediations. "When I sit across the table from a party, and they're driven by anger, animosity or frustration ... and they have an inability to move on, and they want to get this case to trial and find revenge," Fisher said. "I can talk to them in a way that, from my own personal experience, they can relate to."

With his own nightmarish experience as a guide, Fisher decided three years ago to start surveying estate planning attorneys to see how to speed up the settlement of probate disputes. After receiving feedback, he started setting up workshops with estate litigators and estate planning attorneys to share and discuss the results.

Based on his findings and lawyers' feedback, Fisher is trying to persuade attorneys to change their habit of taking probate disputes to mediation only when a hearing is looming. "Usually there's been a lot of pain that the parties have endured, in addition to a tremendous amount of money for attorneys' fees" when parties wait to mediate, he said. Fisher said that if the disputes are resolved earlier, emotionally fragile parties are more satisfied with their attorneys.

"You might ask, 'What's in it for the attorneys? Why would they give up all this potential revenue?'" Fisher said. "The same reason why civil attorneys do it. It's going to change the culture."

"People are going to start asking for mediation like they do now in civil cases - early on."

To that end, Fisher tries to persuade lawyers that the money they might lose in attorney fees will be repaid by their clients' referrals.

He has now led 10 workshops for the estates sections of bar associations across the state and is working on a series of articles on probate negotiations.

He said the workshops and his own mediations are tied closely together.

He recalled a recent case he mediated in which one party claimed that a deceased parent had planned to amend his trust. The party even had written drafts reflecting that intention, but they were unsigned.

Fisher settled the case by working around the documents. But he was so interested by the complication that he used the situation as an example in his workshops, asking attorneys how they would have handled it.

"This all relates together," he said. "What I learn in my mediation practice I take into the workshops."

Los Angeles-based sole practitioner Lawrence Lebowsky worked with Fisher on one recent probate case involving conservatorship issues.

"It was highly emotionally charged," Lebowsky said. "The parties were factionalized. It was very difficult for them to get along. The subject matter was very difficult, and each of the parties had their own baggage from years ago that they brought with them to the mediation, which just complicated things geometrically."

In the end, Fisher was not only able to deal with the issues mentioned directly in the lawsuit, but he also crafted a settlement that anticipated issues that would arise when the conservatee died.

Lebowsky attributed that foresight to Fisher's diligent study of probate issues.

"He allowed us to take not only the lawsuit issue, but other issues ... and try and solve them now, before World War III breaks out later," Lebowsky said.

Fisher's probate project is not his only educational pursuit.

As an adjunct professor at Pepperdine, he teaches a negotiation course to train the school's competitive negotiation team for American Bar Association competitions. He also lectures on how to negotiate in Southern California, focusing on "how to deal with personalities," such as highly aggressive attorneys, he said.

Fisher's path to becoming a neutral began in 1971 as a construction defect litigator, shortly after he graduated from the University of San Diego School of Law.

After representing clients in many arbitrations, he started working as an arbitrator of complex construction cases in 1978.

He started mediating in 1985, stopped litigating in 1991 and since then has been mainly a mediator.

Fisher has been affiliated with the American Arbitration Association, Judicate West and ADR Services, but he gets nearly all of his cases independently now.

"I'm an independent kind of person," he said.

While Fisher's probate cases can take up as much as half of his calendar, business, construction and real estate disputes also make up a substantial part of his mediation practice.

Marina Del Rey-based sole practitioner Jonathan Schwartz recently worked with Fisher on a construction defect case involving a group of poor families in South Los Angeles who discovered mold and rot in their houses.

Schwartz said that he took the case with little likelihood of compensation and because of the power of the families' stories. He also said he thought Fisher would be able to settle it quickly, keeping Schwartz from needing to commit to a drawn-out trial.

"I got involved with the case with the hope and expectation that I would bring it to Paul and he would mediate it to conclusion. And he did," Schwartz said.

Over several days, Fisher mediated a settlement between the families, insurers, a general contractor and several subcontractors, including roofers who didn't speak much English, Schwartz said.

"He worked just as hard to get a \$5,000 contribution from those roofers as he did to talk to the people who did have the deep pockets," he said. "He wanted every penny he could get into a settlement pool. I've never seen anybody work so hard."

West Hills sole practitioner Harry Gerrity worked with Fisher on an intense real estate boundary dispute between neighbors and noted a similar perseverance.

"It took about 22 hours, but other mediators would have given up," Gerrity said.

After two days of wading through the parties' animosities, Fisher managed to settle the dispute and repair the relationship.

"I know that when they left, they were talking to each other," Gerrity said. "So many times in the lawsuits [in which] I've represented a neighbor in litigation, that's the end of the relationship.

"I was very impressed with his style and with his unyielding effort. He was not going to give up."

Though Fisher has hobbies - he loves to bike and enjoys musicals - his passion is mediation, particularly probate disputes.

"I live and I eat and I breathe this stuff," he said.

Affiliation: Independent

Areas of specialty: Probate, complex business, real estate, construction

Rate: \$450 an hour for simple cases, \$500 an hour for multi-party

Age: 64

Some of the lawyers who have used Fisher's services are: Gary Wunderlin, Allard, Shelton & O'Connor, Claremont; Lawrence Lebowsky, Law Offices of Lawrence M. Lebowsky, Los Angeles; Jonathan Schwartz, Marina Del Rey; Harry Gerrity, The Law Office of Harry J. Gerrity, West Hills; Christina Yu, Fidelity National Title, Irvine; Alice Graham, Law Offices of Alice Graham, Marina Del Rey; Ashley Posner, Law Offices of Ashely D. Posner, Los Angeles; Lee Smith, Smith & Smith, Beverly Hills; Mark Ross, Copenbarger & Ross, Santa Ana; and Cozette Vergari, Vergari & Associates, Los Angeles.