

VERDICTS & SETTLEMENTS

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Relentless optimist

Neutral is a peacemaker in delicate matters

By **Steven Crighton**
Daily Journal Staff Writer

For neutral Monty A. McIntyre, it's not enough to be an optimist — someone who simply hopes parties will work toward a resolution that leaves everyone happy.

You have to be relentless, too, keeping the conversation alive and pushing the parties' goals closer together until the dispute is resolved and everyone can move on with their lives.

"There's a tremendous amount of peace that comes when you've finally found a solution, as opposed to the stress and uncertainty and the continuing drain on resources," McIntyre said. "But we need to work through the process in a way that makes sense for everyone."

McIntyre begins mediations by describing his role as such, introducing himself to clients as "a relentless optimist." He uses it so frequently, that the Candide-like McIntyre thinks of it as "potentially a trademark."

McIntyre became a full-time neutral in 2013, but he's worked as a part-time mediator since 1993. After a 30-plus year stint as a trial lawyer, McIntyre said he became increasingly enamored with the resolutions that mediations were able to achieve.

"I came to the view over the years that I was helping people more when I could help find a solution, help them find a way to settle a dispute, than I could if I was representing them through a trial, even if we won," McIntyre said.

As a trial lawyer, you have to work to establish a narrative that your case lives and dies by, McIntyre explained. As a mediator, your role is much more straightforward; you make peace.

"I think I've evolved to the point where I'm helping the most, at this point in my life, when I'm using my abilities best by being the peacemaker," McIntyre said.

These peace negotiations, as such, typically start with McIntyre encouraging attorneys to establish what they see as a realistic range of outcomes. Ideally, the method prevents either side from starting off from too extreme a position

while still leaving room to negotiate.

McIntyre said there's sometimes a disconnect between the outcomes an attorney expects and the one their clients expect. That's because for the client, whether it's an inconvenience over a construction defect or a medical malpractice tragedy, the much more pressing and immediate issue is on an emotional level.

"I think there's often times emotional dynamics and issues that are present. What I think can happen too easily is people try to get too quickly into the legal analysis, and not just let some of these emotions be dealt with," McIntyre said.

That's why throughout a mediation, McIntyre tries to gauge whatever underlying emotional issues could be preventing the client from budging. If that problem can be addressed, a mediation becomes much more cut-and-dry.

"You've got to help the parties get to a point where they felt they've had the opportunity to express themselves and now we can move onto what's just a problem solving exercise. If you don't recognize a few of those emotions, you won't ever get the best solution to the case," McIntyre said.

McIntyre encourages attorneys to prepare their clients for the realities of a mediation, and always pushes for a pre-mediation telephone conference to get a good feel of potential underlying problems.

"Good lawyers will prep the client and explain the mediation and talk to them [about] the potential upsides and downsides and the different variations that could occur," McIntyre said.

Thomas Peabody, a partner with Carroll Kelly Trotter Franzen McKenna & Peabody, said that McIntyre's personality and temperament allow him to control a room and deal with just about anyone, be it a distressed client or hard-nosed defense attorney.

"He has a great command of the facts and how to deal with personalities and people. He comes up with creative solutions to very delicate situations," Peabody said. "I just had a case with him, a very emotional case. He handled it both impeccably for the



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plaintiff and the defense."

He doesn't control a room by playing to egos or telling people what they want to hear, though. Joseph Fox, of counsel for Murchison & Cumming LLP, said it comes from telling it like it is.

"Monty's just a real straight shooter, he's very up front," Fox said. "He treats clients with respect, communicates very well. In my case, my client being a business, it was important to him that he was being understood."

Fox's client was a tenant involved in a dispute with his landlord. Re-modelling was negatively affecting the client's business, leading to the mediation.

Landlords can often be difficult personalities to deal with, Fox said, but McIntyre had no problem cutting to the chase.

"Their leases can be quite onerous, with all kinds of provisions and all sorts of claims for damages," Fox said. "The laws can make it tough on the tenant, and that's one of the issues Monty pointed out."

When a resolution seems unattainable, McIntyre has no problem putting forward a mediator's proposal. And rather than letting them take it or leave it, he rigorously advocates for it.

In a recent real estate issue, McIntyre put forward a mediator's proposal, which one side almost immediately said they would not accept.

"I could have just said, 'Well, that's your decision. You've done everything you can.'" McIntyre said. "So I very frankly had a discussion with them. I said 'Here's the downsides, here's all the different ways this can go.' I said at the end of the day this is the best bet if you want to really find a solution. I'm sure the lawyer wasn't all that comfort-

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able with that conversation."

At the end of the day, both sides accepted.

McIntyre said he is not concerned with record-setting settlements or impressing attorneys. His primary motivation, the neutral asserted, is helping people close a difficult chapter in their lives. Helping people is all he's wanted to do since 1968, when as a 7th grader, he decided he wanted to become a constitutional lawyer.

Through mediation, though, he's found a way to more directly impact on people's lives.

"I get to really help people in a very profound way, and help them get beyond their problems," McIntyre said. "It's a wonderful way to use my skills to try and meet that original goal of mine."

Here are some attorneys who have used McIntyre's services:

Rick McCarthy, San Diego; Thomas Peabody, Carroll Kelly Trotter Franzen McKenna & Peabody; Kevin Quinn, Thorsnes Bartolotta McGuire LLP; Robert Frank, Neil Dymott Frank McFall Trexler McCabe & Hudson APLC; Norm Finkelstein, San Diego; John Hershberger, Dillon Gerardi Hershberger Miller & Ahuja LLP; Oleg Cross, Cross Prescott APC; Thomas Diachenko, San Diego; Patrick Barry, San Diego.