

## Not-So-New Kid in Town

**After arbitrating 300 cases, Joe W. Hilberman doesn't take anything for granted because as the Eagles' lyric says 'They will never forget you 'til someone new comes along.'**

By Ciaran McEvoy

Daily Journal Staff Writer



LOS ANGELES - To avoid becoming complacent, Joe W. Hilberman, a neutral with ADR Services, has memorized a line from the 1976 Eagles song "New Kid in Town," which goes: "They will never forget you 'til somebody new comes along."

"You can't take anything for granted ... because there is always somebody out there who can do it as well as you can," Hilberman said, summing up the lyric's meaning. "Someone might be able to do it better."

It's that attitude - plus a strong work ethic and a genuine affection for attorneys - that has led Hilberman to be a successful neutral less than two years after his retirement from the state bench. He has mediated and arbitrated approximately 300 cases during this time.

"He is a very savvy mediator," said Bruce A. Broillet of Greene Broillet & Wheeler in Santa Monica. "He is an experienced trial lawyer who can spot the weaknesses in someone's case and gently educate the party about those weaknesses. He finds the common ground even when no such thing seems to exist at the beginning of the mediation."

The UCLA School of Law graduate worked as a civil defense litigator, first at Shield & Smith then at Levinson & Lieberman and finally at his own law firms, Fonda, Garrard, Hilberman & Davis followed by Fonda, Hilberman & Fraser. During his time as an attorney, he also worked as an arbitrator in the Los Angeles County Superior Court's arbitration system.

He said he viewed his job as an attorney as more than winning or losing. It was about seeking justice and fairness.

Despite working on the defense side, Hilberman realized there were cases in which the

plaintiff was entitled to compensation.

"I thought my responsibility was to be the voice of reason - as much as I could - in the courtroom and try and help the jury come to a reasonable resolution of a litigated case," he said.

Hilberman spent nearly 28 years as a litigator before Gov. Gray Davis appointed him to Los Angeles County Superior Court in 2001. He primarily presided over civil cases until his retirement in January 2009, which he said was due to the state's "unreasonably low" judicial salaries and his struggles to pay his daughter's tuition at USC.

"[Being a judge] was a commitment I was happy to make," Hilberman said. "I just ran out of money."

Now back in the world of private practice, Hilberman has become a sought-after mediator.

He brings his expertise as a mediator and arbitrator to personal injury cases, business-related litigation, contract disputes, dissolutions of business partnerships, legal and medical professional responsibility, real estate and homeowners' association cases.

To be an effective mediator, he said, he must be particularly sensitive to "the emotional side of the case rather than the dollars and cents."

Bruce M. Brusavich of Agnew & Brusavich in Torrance said Hilberman's respect for the parties involved is evident.

"He doesn't insult me or my clients telling us about the risk of a jury trial," Brusavich said.

"He lets you put on your case," said plaintiffs' attorney Armen K. Akaragian of Mardirossian & Associates in Los Angeles. "He asks very probing questions that sometimes the attorneys forget to ask."

The state's budget cuts in the court system also have affected Hilberman's practice.

"I'm getting a lot of discovery disputes referred to me by the court because their law-and-motion calendar is getting so large," he said.

As a discovery referee, he deals with disputes involving interrogatories, depositions and other litigation-related matters. In more complex cases, Hilberman will work as an ongoing referee.

"[The parties] might be in the midst of a deposition [and] they'll call me up with a question as to what is appropriate," he said.

Hilberman prides himself most on building trust between himself, the parties and their counsel. He is known to stay late at the office, often using shuttle diplomacy to mediate disputes.

"[Joint sessions] become antagonistic," he said, "and that's not productive."

Randolph M. Even of Even & Associates in Woodland Hills said he has had eight

mediations so far with Hilberman. All of them have settled.

One case, which Even described as "very touchy," involved a medical malpractice default judgment of \$2 million that had not been set aside. At the end of the mediation, both sides left feeling satisfied with the resolution, he added.

Arthur J. Chapman of Chapman Glucksman Dean Roeb & Barger in Los Angeles recalled one of two mediations of his that Hilberman helped settle. The dispute was very difficult, he said, describing it as "two business partners that hated each other's guts and wanted to kill each other."

Hilberman spent time talking with the parties about their children and families before mediating, trying to get into their comfort zone, Chapman said.

"By lunchtime, everyone thought he was a great guy," he said. "He's very popular, and he's probably very tough to schedule at this point."

Hilberman said he sees his role as that of a consensus builder.

"[The] old statement used to be that a good settlement is where both sides are unhappy," he said. "I kind of reject that theory."

"A good settlement is where both sides can say, 'That's OK.'"

"In mediation - based on all the experience I had as a litigator and a judge - you get to observe what the battle is really about," he said, "and try and identify the common interest and resolution and get both sides to achieve that resolution and eliminate the risk of going to trial."

Hilberman, 61, is married to Diana Hilberman, a professor at UCLA. He is the father of two adult daughters, Jessica and Charlotte Hilberman. He also is an avid bicyclist.

*Here are some attorneys who have used Hilberman's ADR services:*

Bruce A. Broillet, Greene Broillet & Wheeler, Santa Monica; Steven M. Cron, Cron Israels & Stark, Santa Monica; Randolph M. Even, Even & Associates, Woodland Hills; Edith R. Matthai, Robie & Matthai, Los Angeles; Matthew B.F. Biren, Biren|Katzman Trial Lawyers, Los Angeles; N. Denise Taylor, Taylor Blessey, Los Angeles; Carey B. Moorehead, Wilson Elser Moskowitz Edelman & Dicker, Los Angeles; Thomas E. Donahue, Donahue & Horrow, El Segundo; Garo Mardirossian, Mardirossian & Associates, Los Angeles; Steven C. Glickman, Glickman & Glickman, Beverly Hills; Jonathan B. Cole, Nemecek & Cole, Sherman Oaks; Stanley K. Jacobs, Jacobs Jacobs & Eisfelder, Los Angeles.

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