ERIC IVARY, ESQ.

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EXPERIENCE

- Associate Attorney, Law Office of Alred R. Naphan 1972-1978
- Co-Founding Partner, Gwilliam, Ivary, Chiosso, Cavalli & Brewer (1978-2000), Oakland, California, Managing Partner 1988-2000
  Tried all types of personal injury cases, employment cases, medical and hospital negligence as well as insurance bad faith.

ALTERNATIVE DISPUTE RESOLUTION (ADR) EXPERIENCE

In the past 15+ years, Mr. Ivary has mediated over 1,000 cases involving:

  - Personal Injury / Products Liability
  - Employment (wrongful termination, retaliation, age & gender discrimination)
  - Public Entity Liability, including school districts
  - Civil rights, discrimination of all types, police misconduct
  - Insurance, including arbitration of UM/UIM cases
  - ERISA, both disability claims and employer contribution liability
  - Served 12 years' on the Northern District panel for ADA cases involving disability access, architectural barriers for all types of commercial establishments, including nationwide corporate policy for institutions such as hospitals, and also cases involving service animal access and related issues.

- Served as Judge Pro Tem for the Superior Courts for three Bay Area Counties since 1989.
- Mediator for the United States District Court ADR Program in the fields of Employment, Federal civil rights, Medical Malpractice, ERISA, ADA, Maritime and Federal Tort claims.
- Panelist for all the Alameda County Settlement Programs (since 1985).
- Panelist for the Contra Costa County Courts programs (since 1991).
- Panelist for San Mateo County Courts MAP Program (since 2008).
- Panelist for Santa Clara County Court

EDUCATION

- B.A., Saint Mary's College of California, 1968
- J.D., University of Santa Clara, 1971
- Admitted to State and Federal Courts, 1972

- Continuing Education requirements met in all fields, including Advanced Mediation Training for both State and Federal courts

MEDIATION TRAINING

- Initial training through San Mateo, Contra Costa and Alameda County court sponsored ADR Programs (MAP, EASE, SMART and TOT programs)
- 40 Hour Intensive Mediation Training course taught by Nancy Yeend (2001)
- 20 Hour US District Court training program
- Multiple CLE programs on a variety of topics, as well as regular updates on specific mediation issues on interest (including confidentiality, changes in the law, etc.)

PAST & PRESENT PROFESSIONAL ASSOCIATIONS

- American Board of Trial Advocates (ABOTA), Advocate, inducted 1989
- American Inns of Court, Wiley Manuel Chapter, Senior Mentor, 1999-2000
- Association of Trial Lawyers of America, (Advocate, National College of Advocacy)
- Alameda-Contra Costa Trial Lawyers Association
    - Board of Governors, 1975-1990
    - Editor of *The Verdict*, 1986
    - President, 1990
- Alameda County Lawyer's Club

AWARDS & HONORS

- AV Preeminent, Martindale Hubbell Rating for 30 years in a row, 1993-2023
- Lawyer of the Year, Alameda County Lawyer's Club, 1995.
- Selected as Evaluator by the CEB Trial Advocacy Program.
- State Bar Commendation for Outstanding Contributions to Pro Bono and Voluntary Legal Services.

PUBLICATIONS

- *Mediating with the Difficult Plaintiff*
- *Medical Malpractice Jury Instructions*
- *Punitive Damages in Employment Cases*
- Invited Panelist and Speaker to Employer Groups and Panelist for Employment Law Seminars.

MEDIATION APPROACH

Experience has taught me to do what works and not get too caught up in theory or the academic side of mediation. My goal is to get the case in a position where the parties can see a clear path to settlement.

My approach varies because no two cases are alike. For example, an employment case can be very sensitive to the parties involved as can a police misconduct case or a medical malpractice case. Probably the best way to describe my approach to mediation is **to be sure that the parties are dealing with their REAL case, not the one they wish they had**. This often involves asking both sides questions, sometimes uncomfortable ones. (The tough questions are asked in separate sessions).

When parties request I will become very active in their negotiations. For a full explanation of my mediation style and philosophy, please download an article I wrote for the SFTLA magazine. It can be found at the ADR website (www.adrservices.com). Although originally written as a practical guide for the plaintiff's bar, it also tells the defense how I approach mediation.

My assumption in mediation is that the parties are there to get their case settled, not just have a discussion or use the process as a discovery vehicle. **I view the process as a "time out" from the litigation** and an opportunity to identify the REAL case.

I work with little formality. As long as the attorneys agree, anyone can speak, not just the lawyers. I insist on civility but I am very sensitive to what the parties themselves want the process to be.

I discourage "opening statements" and oral arguments. My theory is that the briefs should adequately cover the parties' legal positions and opening statements and arguments only reinforce entrenched positions and don't help settle cases.

In my opinion, mediation should not resemble what we experience in court. Trial is always an option if you don't settle your case. I don't try to tell the defense about the "cost of defense" or tell the plaintiffs that they "might lose their case".

REPRESENTATIVE CASES

Employment

- 38-year veteran elementary school teacher with M.S. claimed the district failed to accommodate her disability, forcing her to retire. District disputed the claim and asserted it made every effort to accommodate her disability and engage in the interactive process. Settled for mid 6 figures plus mediation cost.

- Mediated a withdrawal liability under ERISA. Employer agreed to pay $1.9 million for going out of business before properly funding the plan,

- Plaintiff was employed as a highly placed management employee of a boutique industry. She claimed that her boss sexually assaulted her at a company event offsite. Employer claimed that sex was consensual. 925k settlement

- Female clerical employee in her twenties claimed her employers gave her unwanted massages at work in her cubicle from behind her desk. Later he attempted a full body massage. She had only been employed for three months. She first began taking time off to avoid the behavior and finally left her employment voluntarily. She claimed emotional distress, no wage loss claim. (low 6 figure settlement)

- 28 construction workers joined as Plaintiffs discrimination case alleging various theories, including Failure to hire, wrongful termination / race discrimination. Case complicated by insolvency of principal employer leaving Project owners and general contractor as Defendants. Confidential Settlement.

- Low 6 figure settlement for an Elementary School teacher who claimed she was harassed and constructively terminated for reporting an incident of clergy abuse in her distant past.

- Low 6 figure settlement for a Female employee terminated when her Employer perceived (incorrectly) that she was pregnant. Employer denied that was the reason, suggesting there were performance issues.

- Confidential high 6 figure settlement for a Departing Corporate Officer who claimed he was owed an additional million dollars in compensation while the Board claimed he committed misconduct and was overpaid.

- Low 6 figure settlement for a Female employee who claimed sexual harassment, retaliation and constructive termination. Employer asserted performance issues were cause for termination.

- Mid 5 figure settlement for a Night shift employee of a mass Transit Employer. Plaintiff claimed he was being intentionally harassed and endangered by day shift managers and claimed Constructive termination. Employer claimed the offensive acts were committed by peers and, if they occurred at all, were trivial in nature and that he simply left on his own.

- Settlement for male office worker who was terminated after asking to take family leave to care for his pregnant wife who was about to undergo an experimental in utero operation to fix Spina Bifida. Employer claimed the plaintiff had recent performance issues all arising after his request for leave. Plaintiff had only been on the job for 6 months. Confidential 315k settlement

- 125k settlement for failure to pay severance after plaintiff's employer assigned him duties in another company under its control He was terminated within year for "poor performance"

Personal Injury / Products Liability

- Intersection accident. Defendant had $100k Policy, case settled for 200k with $100k personal contribution by the insured.

- A helmet-wearing bicyclist sustained back and closed head injuries after being rear-ended by a city truck. low 6 figure settlement

- Police car ran a red light with no siren and no lights on, hit the passenger side of a car and caused the passenger multiple skeletal injuries and closed head injuries causing changes in behavior and loss of impulse control. claim for reduced future wage loss. Settled in mediation for 5 million dollars.

- The plaintiff, a 78-year-old retired man was jogging on a high school track and was killed when a member of the school track team knocked him down from behind during a varsity practice. The coach was absent but before he left, he had authorized the practice without first clearing the track. The case settled for 545k

- Federal case where a homeless man with serious drug problems was struck on the head by a falling pod from the upper branches of a tree located on a federal park. Federal government and tree

maintenance contractor sued. Case settled for 950k

- 325k settlement for Plaintiff tripped on decorative stones at the base of the stairs at Defendant's vacation rental house in Lake Tahoe. skeletal fracture, Settled for policy limits of 300k.

- Intersection collision, defendant admitted fault. Major driver side damage to plaintiff's car. Fractured rib and claimed other injury to knee. Also, claimed PTSD. defendant had $100K policy. The case settled for $200K with $100K contribution by the insured.
- 350K settlement for a High School student's mother who tripped and fell on outdoor makeshift steps while attending daughter's tennis match. The fall resulted in disfiguring facial injuries.

- Confidential low 6 figure settlement for a Plaintiff who accidentally cut off 2 fingertips while using a table saw for a home improvement project. Plaintiff claimed the saw was defective because, although it came with a safety guard, the guard was removable and he had removed it. Claimed safer available technology.

- 5 figure compromise settlement for Intersection accident where both vehicles had a stop sign. Case resolved by discussion of physical evidence. No witnesses. Multiple skeletal injuries.
- Low 7 figure settlement for a Seaman who suffered disabling back injuries after slipping and falling in a walk-in freezer aboard ship. Maritime law issues.

- Confidential 7 figure settlement for the family of a Dockworker crushed by container during unloading of vessel. Wrongful death claim. Longshoreman and Harbor Workers' Act.

- High 6 figure settlement for a Personal injury and 2 wage and hour cases brought on behalf of three Tree Service workers. Employer had failed to procure Workers' Comp coverage. Settlement included both cash and medical coverage to be purchased by Employer.

- Severe dog bite to a six month old infant necessitating facial surgery. Dog ownership was disputed. Both the purported dog owner and the kennel where he was kept contributed equally to a 1.25 million dollar settlement.

- Plaintiff maintenance mechanic injured when the Gantry crane collapsed on her while she was using it to work on heavy machine parts, rendering her a paraplegic. Case settled with the Comp carrier paying 3

million dollars and waiving its lien. The self-insured crane manufacturer contributed 8 million dollars for a total settlement of 11 million dollars

- $6 million settlement. Wrongful Death for spouse and children of decedent in his fifties making over $100 K / year. Decedent was walking home from a party when he was struck and killed by a drunk driver. Plaintiffs claimed the City was on notice from neighborhood complaints about excessive vehicle speeds. Claimed improper road modifications, road design , lack of sidewalk, unsafe lighting and absent traffic controls. City claimed immunities . City paid $5.650 million and drunk driver's insurance paid $300K, and the driver contributed $50 K.

- 325k settlement for a pedestrian who was hit after falling down in a crosswalk. 2 defendants were sued. One defendant was the driver who hit him and the other was the driver of a car who nearly hit him first, causing him to fall.

- Plaintiff roofer got into an altercation with a fellow worker who was employed by the owner of the house. Each worker blamed the other for the fight and there was a dispute about how the plaintiff came to fall off the roof. Plaintiff claimed he was shoved. Major coverage dispute with defendant owner's carrier denying coverage due to a business exclusion. Plaintiff's main injury was a fractured wrist which he claimed prevented him for working as a roofer. After 2 sessions the case settled for 750k inclusive of a 90k comp lien. The carrier denying coverage paid 200k toward settlement

Medical / Hospital / Pharmaceutical/ Malpractice

- 750K settlement for the Death of a 38 year old unemployed woman due to overmedication during outpatient plastic surgery. No anesthesiologist in attendance. Surgeon fled the jurisdiction. Case settled against physician group.

- Feeding tube placed in airway instead of stomach. Wrongful death of 63 year old woman. Confidential low 6 figure settlement.

- Ventilation tube placed in esophagus instead of airway. Wrongful death. Limited economic losses. Mid 6 figure settlement.

- Medication error by Compounding pharmacy not discovered by Retail Pharmacy. Damages disputed. Main issue was that the patient's claimed adverse reaction was inconsistent with published side effects. Confidential mid 5 figure settlement.

Civil Rights / Law Enforcement / Public Entity / School District Liability

- $2.5 million dollar settlement for a high school freshman who was sexually molested by her teacher for over a year. Claimed negligent supervision and failure of mandatory reporters to report incidents of questionable behavior. Damages alleged need for lifetime therapy.

- $50K settlement for an African American attorney whom Police stopped, detained and briefly handcuffed after shots had been "reported in the area" over the radio with no specific location.

- High 6 figure settlement for the family of an African American inmate suffocated by correctional officers when his seizures were mistaken for a threat during the booking processing.

- 800K settlement for an 80 year old woman who was attacked in her kitchen by a Police dog allowed off-leash. Severe tissue and nerve damage to arm.

- High 6 figure settlement for the spouse of a former gang member placed in a holding cell after exhibiting bizarre behavior at arrest. Over a 6 hour period, the Prisoner hanged himself with a makeshift rope fashioned from his shirt. Claimed he should have been put on a suicide watch. Wrongful death. Immunity issues.
- Plaintiffs, husband and wife, claimed that the State and local Joint task force drug raid erroneously targeted their residence. Occupants claimed Warrants were defective and overbroad. Claimed damages for False arrest / wrongful detention. Emotional distress claimed. No physical injury. Low 6 figure settlement.
- Mass Transit Police shoot a suspect on a platform after he threatened them by throwing a Bottle. Suspect carrying a knife not visible to officers. Compromise 5 figure settlement.

- Mass Transit Police stop, pursue and arrest a passenger who ran away when ordered to stop playing loud music. Alleged excessive force. Minor injuries. Mid 5 figure settlement.

- Disability discrimination / Civil rights claim. A 21 year old student with Autism claimed mistreatment by staff based on his disability. District claimed that such physical restraint and confinement was necessary to contain his violent behavior. Settled via Mediator's proposal for low 6 figures.

- Sexual abuse claimed by 2 adolesent girls who attended a private school By the time the lawsuit was filedThe school had gone out of business in a Bankruptcy proceeding. Plaintiffs each sought recovery for sexual abuse by the same teacher. The school had a dollar 6 million dollar liability insurance policy which was by then the sole asset of the bankruptcy estate. The court ruled that therefore the insurance was the sole source of recovery. Case settled after 2 sessions for 5 million dollars, each girl agreeing to take no more than the other regardless of their individual damages

- Mass Transit Police Beat patron with a baton causing superficial bruising. Plaintiff claimed beating was for failing to follow instructions. Excessive force claimed. Mid 5 figure settlement.

Business / ERISA / Other cases

- Settled numerous cases involving retail establishments sued over alleged architectural barriers. Handicap Access compliance, Readily Achievable standard, attorneys' fees.

- Negotiated numerous settlements involving ERISA issues including Claims by Plan Members for denial of medical/disability benefits. Issues typically included the standard of Review, Delegation of Discretion, the Role of Trustees in determining plan benefits and the determination of offsets for Social Security and Workers Compensation. Other ERISA cases involved Actions by Trustees alleging Underfunded Contributions by Employer, Audits.

- Real Estate Broker sued Commercial property owner for Commission after backing out of sale at the 11th hour.

- Commercial Tenant sued for violation of non-compete clause contained in Shopping Center master lease.