



ERIC IVARY, ESQ.

50 Fremont Street
Suite 2110
San Francisco, CA 94105
(415) 772-0900 Tel.
(415) 772-0960 Fax

www.adrservices.org

BACKGROUND

After a 30-year career as a highly successful trial lawyer, Eric Ivary, Esq. became a full-time mediator, arbitrator and referee. As a member of ABOTA and the ATLA, he is frequently selected as a neutral in situations where counsel value his ability to gain the trust of the participants. He is also known for his ability to grasp complex subject matter, particularly medical disputes, and communicate the issues effectively to counsel and their represented parties. This ability to communicate intricate matters and gain the trust of the participants makes him particularly well suited for the most challenging cases.

LITIGATION EXPERIENCE

Founding Partner, Gwilliam, Ivary, Chiosso, Cavalli & Brewer (1978 - 2000), Oakland, California.

- Worked principally as a trial lawyer, trying medical malpractice and employment as well as insurance bad faith cases.
- Also tried or handled virtually all other types of personal injury and product liability cases, including aviation accident cases.
- Served as the firm's Vice President and Managing Partner.

ALTERNATIVE DISPUTE RESOLUTION (ADR) EXPERIENCE

- Has mediated over 100 cases involving:
 - Personal Injury
 - Medical/Hospital Malpractice
 - Public Entity Liability
 - Civil rights
 - Police/fire misconduct
 - Employment (wrongful termination, retaliation, age & gender discrimination)
 - Insurance (coverage denials, failure to defend, bad faith)
- Mediator and Arbitrator for contractual arbitrations, including the Kaiser System and Uninsured Motorist proceedings.
- Appointed to the American Arbitration Association Panel of Arbitrators.
- 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 Personal Injury, Federal civil rights, Medical Malpractice, ERISA, ADA and Jones Act. (since 2004)
- Panelist for all of 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
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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 of interest (including confidentiality, changes in the law, etc.)

PROFESSIONAL ASSOCIATIONS

- Mediation Society
- Northern California Mediation Association
- American Board of Trial Advocates, inducted 1989
- American Inns of Court, Wiley Manuel Chapter, Senior Mentor, 1999-2000
- Trial Lawyers for Public Justice, Sustaining Member, 1997
- California Consumer Attorneys (Member, Board of Governors, 1999-2000)
- Association of Trial Lawyers of America, (Advocate, National College of Advocacy)
- Alameda-Contra Costs Trial Lawyer's Association
 - Board of Governors, 1975-90
 - Editor of *The Verdict*, 1986
 - President, 1990
- Alameda County Lawyer's Club

AWARDS & HONORS

- 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

- *Winning at Arbitration* (book chapter) Bancroft Whitney (1992)
- *Electronic Fetal Monitoring*
- *Medical Malpractice Jury Instructions*
- *Punitive Damages in Employment Cases*
- Invited Panelist and Speaker to Employer Groups and Panelist for Employment Law Seminars.

MEDIATION APPROACH

The best description of my approach to mediation is “**facilitative**”. But 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 carries a very different charge than a police misconduct case or a medical malpractice case. Probably the best way to describe my approach to mediation is **that I do everything in my power 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 a lot of 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.org). Although originally written as a practical guide for the plaintiffs’ bar, it also tells the defense how I approach mediation. My mediation style is also described in an article published in The Recorder in 2005 entitled “Love Thy Enemy”. This article can also be downloaded from the ADR Services website. References, both plaintiff and defense, can also be found at the same site.

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.

For mediations, there is no record of course and **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 the “might lose their case”.