

Legal elite



ALTERNATIVE DISPUTE RESOLUTION

John H. O'Brien Jr.
The McCammon Group
Richmond

by Donna C. Gregory

John H. O'Brien Jr. compares his work as a mediator to unfastening a lock. "You're looking for the right combination that will work for both parties," he says.

In 1996, O'Brien scaled back his law practice at Troutman Sanders to work with The McCammon Group as one of its first mediators. Since then, he's led more than 900 mediations, helping to settle civil disputes ranging from personal injury lawsuits to squabbles between soon-to-be ex-spouses. "[Mediation] is tough and it's emotional, and sometimes it's tedious and

time-consuming, but it works," says O'Brien. "It works 85 percent of the time. That is a phenomenal statistic in any business setting."

Those who know O'Brien credit his success rate to his experience and demeanor. A lawyer since 1968, O'Brien has tried thousands of cases representing plaintiffs and defendants. "With that broad experience, he can't be pigeonholed as having a bias one way or another," says John McCammon, president of The McCammon Group.

"He has a wonderful sense of humor and puts people who are otherwise in a stressful situation very much at ease," says John C. Shea, a lawyer with Marks & Harrison. "He has a good perspective from both sides of the fence. He enjoys the respect of both plaintiff lawyers as well as lawyers for insurance companies. I can't think of an occasion when anyone has refused to use John O'Brien. I think that says a lot about his reputation."

The key to any great mediator is neutrality, and O'Brien is able to remain in the middle while helping warring parties find common ground. "I'm like Switzerland," he jokes. "I'm neutral, but I'm an advocate for settlement."

O'Brien enjoys the flexibility that mediation allows when parties come to the table to negotiate a settlement. "When you go to court, your options are limited. In mediation, you're limited only by your imagination. You can talk about so many things that are not available in court," he says. "When you go to court, 90 percent of it is lawyers talking. [Mediation] is much more about the client."

Settlements can go well beyond hard dollars, and often include less tangible

matters, such as apologies and the preservation of business relationships. "No one on the planet cares more about your problem than you," he says. "Why would you want to turn your problem over to [a jury of] seven strangers who care the least and know the least, and have them settle your problem?"

Still, the process of mediation is difficult as both sides fire off demands. At times, O'Brien has been known to hand out popsicle sticks during talks, "so the others could chew on them while the other party was talking," he says. "The emotional content to some of these cases can be very overwhelming. People pour out their guts across the table to the person who might have been driving the truck that killed their son or daughter."

The most memorable cases for O'Brien are those where he's been able to bring plaintiff and defendant together in a room without their attorneys to talk openly about their case — often for the first time. "He's very good at trying to keep people talking," says Shea, "and working in the process."

O'Brien also understands the importance of nuance. During a recent liability case "the plaintiff was really shooting for an apology, but the one thing the defendant definitely would not do was apologize," he says. "Late in the mediation, we stumbled on the word 'regret.'"

The difference between an "apology" and "regret" was subtle, but it was enough to bring the case to resolution.

"He reads people. He listens to people. He watches people," says McCammon. "He empathizes, and understanding the litigants and the lawyers in mediation is the key to a good mediator."

After spending years arguing in courtrooms, O'Brien has found a new calling in mediation. "After being a trial lawyer for awhile, you get in a rut. All the cases look the same. All the judges look the same," he says. "I'm really glad I found [mediation]. As a trial lawyer, I told war stories, but as a mediator, I tell peace stories."