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Friday, May 22, 2015



## Mediator encourages parties not to dwell on past wrongs

*Mediator Mari Frank emphasizes putting wrongs behind them*

By Deirdre Newman

Mediator Mari J. Frank likes to be near the water. The serene setting meshes well with her focus on the peaceful resolution of disputes. In fact, she has made the water a central part of her dispute resolution: She often brings embattled clients to the Dana Point Yacht Club to put their minds at ease in a tranquil setting before they even start the mediation process.



Although her logo is a dolphin between two sailboats, at first glance, it looks like the scales of justice. She chose this logo as a metaphor for the gentle, yet powerful mediation skills she uses to engage parties in what she calls "solutioneering." Her goal is to bring people on a collision course to a safe harbor of settlement, literally and figuratively.

Frank was a high school Spanish and English teacher, a professor at California State University, Fullerton, a school administrator and a Saddleback Valley Unified School District board member before she went to Western State College of Law in Fullerton. She was inspired to become a lawyer because of the perpetual legal conflicts she witnessed on the school board. She took mediation training at Harvard Law School and Pacific McGeorge School of Law to become a mediator because she did not see litigation as an enlightened or practical way of resolving disputes.

Frank started referring to herself a healer of conflict after hearing a speech by Chief Justice Warren E. Burger of the U.S. Supreme Court during her second year of law school in 1984. In this speech, Burger admonished lawyers for forgetting their role as healers of conflicts.

Mindfulness is another big part of her personal and professional practices.

"As a mediator, I want to be teaching my clients to be mindful about the present," she said. "I tell my clients 'I don't have a time machine. I can't go back and change how you perceive you were wronged. We all suffer when we don't accept what is.' That's part of mindfulness: accepting what happened, moving forward to look to making the present and the future workable for everyone. People involved in litigation stay focused on past wrongs and often want to punish what was done by getting revenge. That doesn't improve their future."

This is not to say she's not interested in honoring justice and the law. She just feels mediation is the best way to do this.

"I understand people want justice and I believe getting to mutually satisfying agreements through solutioneering gives them all justice," Frank said. "Blame and guilt are the root of conflict, which escalates to expensive court battles and even war. It's my job to sift out the blame, to bring people back to being mindful about the present, after letting them vent, and asking them, 'What do you want to do now? What's your

### California Supreme Court New state high court justices split, allowing death penalty to stand

For the second time, Gov. Jerry Brown's appointees to the state Supreme Court failed to present a united front as Justice Leondra R. Kruger voted with a 4-3 majority not to rehear a death appeal.

### Judges and Judiciary Backers of Orange County judge's recall do not have history on their side

The leaders of the campaign to recall Orange County Superior Court Judge M. Marc Kelly for lowering the sentence of a convicted child molester may feel their cause is driven by righteous fury, but it's not supported by California history.

### Administrative/Regulatory Fairness of SEC forum is dubious

The SEC has increasingly filed actions before its own administrative law judges - where it has a Harlem Globetrotters-like win-loss record - rather than in federal court. By **Thomas A. Zaccaro, Nicolas Morgan and Peter T. Brejcha**

### Alternative Dispute Resolution Mediator encourages parties not to dwell on past wrongs

Mediator Mari J. Frank focuses on what she calls 'mindfulness,' and encourages parties to find desired solutions.

### Litigation Judge cuts attorney fee request by more than half

U.S. District Judge William Alsup of San Francisco slashed an attorney fee request by more than half Thursday in a consumer class action against Wells Fargo Bank N.A.

### Discipline Disciplinary Actions

Among lawyers disciplined recently by the Supreme Court and State Bar Court are a prominent entertainment lawyer who used his client trust account to hide money from the IRS and one disbarred for his part in a criminal

proposal?"

In close to 30 years of doing various types of meditation, Frank says 21 of the divorcing couples who used her services have gotten back together.

"That would never happen with litigation," she said.

Frank does not practice family law exclusively; she also practices civil law. Her psychology studies during her master's degree at Hofstra University provided her with an arsenal of tools to use when mediating family law, employment law, estate disputes and business conflicts.

Privacy is another expertise Frank has acquired, which she says sets her apart from other mediators. She is a certified privacy expert and has been called upon to testify before Congress and in court cases. She has written several books on privacy and identity theft, and believes strongly that confidentiality is not enough to protect clients anymore and that as a result, attorneys and mediators must also protect information privacy.

Frank encrypts all sensitive documents she sends to her clients and teaches them to do the same. She gives her clients one of her books, "Safeguard Your Identity: Protect Yourself with a Personal Privacy Audit."

Aside from her private practice, which she started in 1987, Frank serves on the Orange County Civil Mediation Panel, which is part of the superior court, and volunteers as a mediator for the Orange County Bar Mediation Fee Dispute Program. She also serves as an adviser and privacy chair of the executive committee of the Law Practice Management and Technology section of the State Bar, as well as serving on the board of the ADR Section of the Orange County Bar.

Peter A. Martin with Pivo, Halbreich, Martin & Wilson LLP, sent a high-profile client to Frank in a case involving complicated loans and claims relating to large tracts of commercial property. There was a lot of animosity among the involved parties before they got to mediation, he said.

Martin praised Frank's demeanor and mediation skills.

"With her disarming smile and accommodating style, [she] was able to get the parties to gather in the same room and become comfortable with the mediation process," he said. "Using her sharp analytical skills, she was able to quickly discern the issues at play, and she understood the difficulties presented in even getting our parties to talk, much less resolve the case."

Frank reached a settlement within a few hours.

Above all else, Frank considers herself a facilitator and educator, with empowerment as her goal.

"I know judges who have become mediators who hammer people. That's not my style," she said. "When you hammer someone, you're not empowering them. The way to empower them is to give them the education they need to make informed choices."

Terrence J. Moore, of Moore & Affiliates, has known Frank since the 1990s. He agrees that she handles parties delicately, with a focus on solutions, and that this elevates her above her peers.

"She is not the typical attorney that is concerned about her fee," Moore said. "She is more concerned about her clients receiving a desired result. I have seen her go over and above many times. I have complete confidence in her skills as a lawyer, mediator and a caring individual. I know of many attorneys in her field, but she is by far the best."

Another attorney who has sent clients to Frank is Violet P. Woodhouse, who has known Frank more than 20 years. Woodhouse has seen Frank resolve some of her most difficult cases through mediation.

"The fact is that she's successful but also able to maintain the impartial role that she has, which is very important," Woodhouse said.

*Here are some attorneys who have used Frank's alternative dispute resolution*

conspiracy that ended in murder

### **Solo and Small Firms Small San Diego firm specializes in suing lawyers**

Stanford and Associates in San Diego specializes exclusively in plaintiffs' legal malpractice cases. Nevertheless, most of the boutique's cases come in as referrals - from other attorneys.

### **Litigation Former Salesforce employee sues for wage and hour violations**

A former Salesforce.com Inc. employee has sued the cloud-based computing giant for a variety of wage and hour violations in San Francisco County Superior Court.

### **Ethics/Professional Responsibility Ensure lateral moves are a win-win**

In some situations, firms acquire other firms' problems without the reward, and with unforeseen conflicts - both legal and personal. By **J. Randolph Evans, Shari Klevens and Suzanne Y. Badawi**

### **Alternative Dispute Resolution Explore the benefits of judicial reference**

General judicial reference is an underutilized alternative to arbitration that avoids the unpredictability of an arbitration award that need not be based on the law. By **Charles L. Pernicka**

### **Ethics/Professional Responsibility Deliberations of judicial watchdog should be public**

The state's judicial watchdog agency, is made up of judges, lawyers and members of the public. Yet the its deliberations are conducted completely under the radar, with no public scrutiny. By **Tamir Sukkary**

### **Litigation GPS tracking devices on employees ignite privacy concerns**

The intrusion on employee privacy is the basis of a recent lawsuit magnifying the potential wrongful termination claims that could stem from employers using GPS devices.

*services:* Terrence J. Moore, Moore & Affiliates, Santa Ana; Violet P. Woodhouse, Laguna Hills; Robert P. Desjardins, DesJardins & Haapala ALC, Orange; Jeffrey C. Bloom, Glavis & Bloom PLC, San Diego; Peter A. Martin, Pivo, Halbreich, Martin and Wilson LLP, Santa Ana; Ivan Cisneros, The Cisneros Law Firm, Orange; Michelle A. Burr, Kolar & Associates ALC, Santa Ana; David E. Cane, Cane, Walker & Harkins LLP, Tustin; William M. Crosby, Tustin; Jordon P. Steinberg, Kaufman Steinberg LLP, Irvine.

[deirdre\\_newman@dailyjournal.com](mailto:deirdre_newman@dailyjournal.com)

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