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Local attorney finds forte untangling legal disputes

San Antonio Business Journal - by [Donna J. Tuttle](#)

In the late 1980s and early 1990s, some of the best corner offices of One Riverwalk Place were filled by the law firm Smith, Barshop, Stoffer & Millsap Inc. Thomas "Tommy" J. Smith and his other name partners worked some of the largest real estate transactions and litigation issues in San Antonio. Smack in the middle of one of those cases -- when fax machines all over town were overheating from reams of discovery -- lawyer Smith received a "Motion to Compel Mediation" and rolled his eyes.

"I didn't know what that meant," Smith quips. "I thought we were going to have to burn candles and hum."

Smith opposed the motion. He lost and reluctantly showed up at the mediation.

"Turns out the opposing lawyer is a young litigator, who is probably a better trial lawyer than I. But he doesn't know much about leases, and I do," Smith says. "So through the mediation, we renegotiated the lease. And I thought: 'This is a good process.'"

Indeed, that legal technique proved to be the rabbit in Smith's legal hat as the local real estate market plunged into a S&L depression. As many local real estate lawyers turned to specialties in bankruptcy, restructurings or in representing the federal government in moving its real estate-owned assets, Smith turned to mediation and arbitration, obtaining certification in 1992. In alternative dispute resolution, Smith found a natural fit with his strengths as a quiet dealmaker. Slowly, his practice transformed from a large firm dealing in pure real estate, to a solo practice on the 30th floor of the Weston Centre that handles about 90 percent mediation and 10 percent transactions.

Today, Smith is one of the busiest mediators in the city of San Antonio, having completed more than 1,000 mediations to date. In 2007, he handled 151 cases and was scheduled with a case a day up until the Christmas holidays this year.

"My longtime real estate clients know that I'm only a lawyer between 7 a.m. and 9 a.m., after that, I'm usually in a mediation," Smith says.

His timing was fortuitous. During the last 20 years, mediation and arbitration has become more popular than civil jury trials, which were the resolution technique of choice two decades ago. To wit: During the fiscal year Sept. 1, 2006, through Aug. 31, 2007, there were 33,872 new cases filed in the Bexar County District Courts. During that time 77, or less than 1 percent, were tried to a verdict,



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Friends and colleagues describe Thomas "Tommy" J. Smith as a quiet negotiator.

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according to the latest figures from County Clerk Margaret G. Montemayor.

"There is not a better mediator on the planet than Tommy Smith," says former Bexar County District Attorney Sam Millsap Jr., a longtime friend and former law partner of Smith's. "Up until the collapse of real estate and the S&L market, if anyone had put together a list of top five real estate lawyers, Tommy would have been on that list. Anyone would agree with that. What Tommy did after the bottom fell out of that market was remake himself, and that is more difficult for lawyers than anyone else -- especially those who had achieved the level of success he had. In hindsight, though, he has achieved as much -- maybe even more -- success as a mediator."

"Any guy who can have the vision to redefine his practice the way Tommy has deserves recognition," says Fulbright & Jaworski real estate lawyer James M. "Jim" Summers, who has sat across the table from Smith representing Toyota in real estate transactions and recently participated in a mediation run by Smith. "I have recommended him as a mediator several times this year because he is so skilled. Many mediators expect the negotiations to start at 9 a.m. and end at 3 p.m. Not Tommy. He is not a clockwatcher. He is quiet, even-keeled and driven to make the negotiation happen. We didn't get out of our mediation until 8 p.m., but it was successful."

The beauty of mediation

Mediation first showed up in local lawyer lingo in the late 1980s. In Texas, the Alternative Dispute Resolution Procedures Act was enacted in 1987, opening the door to settling disputes outside of the courtroom. Arbitration and mediation are the most common forms of ADR. With mediation, parties -- often in concert with their attorneys -- meet with a neutral third party in an attempt to settle their differences. The parties split the cost of the mediation, which is usually charged on an hourly basis. With arbitration, the process is more like a non-jury trial, at which the third-party makes a final, binding decision.

"One of the beauties of mediation is this: I can't settle the case. The lawyers can't settle the case. Only the parties can settle the case," Smith says. "And when you see, at the end of the day, that people do, in fact, settle their cases, it gives you a real good feeling about humanity."

Smith's business is generated almost entirely by lawyer referrals, but he occasionally will receive cases from the probate courts and other local judges. Although he won't admit it, Smith's colleagues say he often handles some of the most high-profile cases that either never make it to the front-page headlines or are spinoffs from those very public disputes.

Upon acceptance of a case, Smith requires all parties to submit reports detailing the core issues of the case, which Smith reads and researches before the mediation. When parties first arrive, Smith invites everyone into a conference room, where all parties get a chance to state their case.

"Sometimes, you can tell from the minute the parties walk in the door that they're ready to settle," Smith says. "More often, though, they need time to vent. I've done enough of these to know by 10 a.m. whether we're going to need to vent and argue until 4 p.m. before we even contemplate settling. Most mediations have their own tempo, and you've got to go with the flow."

Smith's quiet, calm demeanor, legal knowledge and creative mind are three traits almost every person contacted for this article mentioned as his professional fortes.

"He has a calm quiet manner, yet he's also sharp-witted and insightful. I would go so far as to call him a legal scholar," says justice of the Fourth Court of Appeals Phyllis Speedlin. "When I was in private

practice and I had multimillion-dollar cases that fell anywhere in his area of expertise, I would send the mediation his way."

U.S. District Judge Fred Biery agrees.

"He's got that intangible ability to see both sides of the issue," he says. "I sent him a mediation that was a little over the top, and he handled it beautifully. Let me tell you, he earned every single penny. We sure appreciated it."

Lawyers say Smith is adept at isolating a few key issues from the complicated and tangled disputes, placing the dueling parties alone together without their attorneys in a room, forcing them to address the core of their emotional turmoil. For Smith, who handles many highly volatile family probate issues, seeing siblings shaking hands after years of non-communication is poignant. While he'd love to take credit, Smith admits there is some serendipity in the process, of which he is reminded every day as he watches parties exit his office into the lobby elevators.

"One day bitter enemies are hugging, and I think, damn, I'm good. The next day family members are hurling expletives at each other as they're leaving, and I think, oh, maybe I'm not so good," he laughs. "What I like about all this is that I get to deal with people stories every day. And no story is the same."

Quiet influence

Mediation expertise aside, Smith is still one of the go-to real estate lawyers in town. When Toyota was negotiating to buy land in San Antonio, Smith was called in as the second or third lawyer to represent the Small family, one of the previous owners of the land at the Toyota site. After weeks of negotiation, the parties were close to closing the sale when an old family wound surfaced and threatened to kill the deal. Time was of the essence. The next day, a cadre of county and city officials were flying to Japan to announce the deal and forge economic ties with the manufacturer.

"We called Nelson Wolff (Bexar County Judge) at home that night, and he told me to meet him at the conference room at the airport the next morning at 7 a.m. before the flight," Smith says. "We lawyers and our clients are sitting in there waiting, and in walks Wolff, former Mayor Henry Cisneros, Chamber of Commerce CEO Joe Krier and anybody whose anybody on that flight. Nelson really was the hero of the day. He mediated that deal to a close by reminding all of us how important this deal was to the community."

"Tommy has always been a trusted source of advice and counsel to a host of community leaders," says newly retired Chamber of Commerce CEO Krier.

Smith takes on this same quiet role in the community, where he long has been known as a mentor to young up-and-coming leaders in San Antonio. The first Wednesday of every month, he facilitates a 50-member breakfast group at Cappy's restaurant in Alamo Heights, at which a speaker is brought in to educate.

"There are a lot of dinosaurs in that group, but Tommy is constantly tapping young, new people on the shoulder to participate," says Millsap, from whom Smith inherited the breakfast group.

Justice Speedlin agrees.

"I was just a new, young lawyer at a different law firm when he started to mentor me. He took an interest and cheered me on. He is one of the people with whom I credit my judicial career," she says.

Indeed, part of Smith's new mission is to inspire law students and young lawyers to consider mediation.

"I tell young lawyers that they will decide 50 mediations for every one case they'll try in the courthouse," Smith says. "I think being a mediator makes you a better a lawyer and vice versa. I think this is an important tool for our future.

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