

Wild Card: Mediation

Thomas J. Smith
Law Office of Tommy Smith

Favorite Quote:

“Stand up,
Scout, your
father is
passing.”

~from Harper Lee’s “To
Kill a Mockingbird”

University of Texas School of Law
Years in practice: 43

BY DAN GODDARD

When less than 1 percent of the new cases filed in the Bexar County District Courts actually wind up being tried to a verdict, mediation is often the best way to settle a legal dispute. And there’s no question who’s the “go-to guy” when it comes to designing creative deals to resolve protracted litigation – Tommy Smith.

Among the city’s most respected real estate lawyers in the 1980s, Smith changed his focus to mediation as a result of the savings and loan crisis that forced many local real estate lawyers to turn to other specialties.

Obtaining his certification in mediation and arbitration in 1992, Smith slowly transformed his practice from a large firm dealing purely in real estate to a solo practice that handles about 90 percent mediation and 10 percent transactions. Now he has mediated or arbitrated more than 1,500 cases and has participated in many mediations and arbitrations as an attorney for one of the parties.

“The real estate crunch of the ‘80s really sent my life in a new direction,” Smith says. “But I don’t regret it. Mediation is a powerful tool for the legal system. It’s the only time in the legal process where you’ll find both parties sitting down at a table and actually talking to each other.”

But Smith says that doesn’t mean everyone is 100 percent happy with the process.

“Basically, there’s usually one side saying they’re paying too much and the other side is saying they aren’t getting enough,” Smith says. “It’s not over until everyone goes away equally grumpy. But we usually manage to settle things without the cost of a trial by jury, which saves everyone a lot of time and money.”

Texas Monthly magazine has named Smith a “Super Lawyer” every year since 2003, and he has

been named one of the Best Lawyers in America by Woodward/White Publishers.

Last year, the San Antonio Bar Association at its Peacemaker Awards ceremony gave Smith the Carolyn Thurmond Community Service Award for his consistent encouragement of peace on a daily basis as a mediator and also as a mentor to young leaders in San Antonio through a monthly 50-member breakfast group that meets on the first Wednesday of every month at Cappy’s restaurant in Alamo Heights.

“Tommy is a super lawyer, but you’d never know it until you see him work,” says Don Philbin, who followed Smith’s example to become a “dispute resolution expert,” or mediator. “But he’s not just an accomplished practitioner. He gave me advice during my mediation training at Pepperdine. He allowed me to shadow his mediations. What makes him an outstanding lawyer is that he’s made so many others outstanding by the time he’s taken with them and by the example he set for them.”

Smith is a past member of the board of directors of the national Association of Attorney-Mediators, a past president of the San Antonio chapter of the Association of Attorney-Mediators and a member of the Texas Association of Mediators. He also has served as the chairman of the Alternative Dispute Resolution (ADR) Section of the San Antonio Bar Association.

“Tommy has developed a thriving mediation practice and a reputation for being singularly capable of helping opposing parties move from seemingly intractable positions to mutually acceptable compromises,” J. Cary Barton of Barton, East & Caldwell says. “His success in negotiating such resolutions reflects, I believe, both his innate skills and the high esteem in which he is held by his fellow lawyers.”

Smith attended the University of Texas where he received both his B.A. and LL.B degrees. Though his focus has been mainly business and real estate, he also has completed his certification for family law mediation.

“A deep, dark secret about my past is that for the first five years out of law school I did mostly litigation,” Smith says. “I didn’t like it. But it was because of this litigation background that I started assisting my firm’s litigation section in the late 1980s when real estate matters moved from the closing table to the court room.”

During one of those cases, Smith received a “Motion to Compel Mediation,” which, at first, he thought was frivolous. But once he experienced the mediation process, he realized its effectiveness.

“Every lawyer in this community knows what a great lawyer Tommy Smith has been throughout his long and very successful career,” Sam D. Millsap Jr., a former law partner of Smith’s and a former Bexar County DA, says. “Tommy is the kind of lawyer that drew me to the practice. He is the complete lawyer; he has incredible skill, but has always been more than just a great technician; he is the counselor that we idealize when we sum up the best the legal community has to offer.”

Smith is a frequent speaker about the merits of mediation. “Many people choose mediation because it can resolve a conflict in one day,” Smith says. “Out of the 1,500 mediation cases I’ve been involved in, maybe a dozen have wound up going to trial. I think one of the keys to my success is the trust that both parties have in my ability to keep secrets. I follow the Las Vegas rule, whatever happens in mediation stays in mediation.”

DAN R. GODDARD is a San Antonio freelance writer.