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PERSPECTIVE

Prepared for Trial

Neutral Max Factor III asks litigants for every paper they would file in court.

By Shane Nelson

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Neutral Max Factor III likes to prepare for a mediation as if he were readying himself for trial.

"I know that sounds extreme," acknowledged Factor, who spent two decades as a real estate and business litigator. "But I want every piece of paper that either counsel thinks they would rely on if they had a trial ... and I will read it all."

Factor decided he was ready to move away from trial work and focus solely on dispute resolution as a private neutral in 2000, after a number of cases in which he was able to settle matters by bringing parties together to talk.

"I just said, 'I'm going to stop this. I don't want to litigate when I can work with people, and they can listen to each other, and they'll both be better off,'" he recalled. "That's how I got started." He now works with Alternative Resolution Centers in Los Angeles.

Factor said employing a highly intensive approach to mediation preparation helps him better understand what litigants on both sides are going through.

"Even though I'm the most uninformed person, perhaps, in the room, I'll have a feel for how they've experienced this dispute," he explained. "I have a feel for what their buttons are that make them angry. ... Unless the lawyers provide me all the information and I can think about it the way I used to think about cross examination, I can't be in that place. I can't be as effective in ferreting out people's needs and interests and seeing if we can put a package together that meets most if not all of them."

Much of Factor's mediation work focuses on real estate, business and commercial disputes, but he also handles employment matters regularly as well as entertainment, insurance, construction and intellectual property cases.

He likes to receive briefs beforehand, of course, and prefers to speak with attorneys on both sides over the phone before the day of mediation. On those calls, Factor typically informs attorneys that he likes to work with litigants in a joint session,



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but he'll only do so with explicit permission first from both sides.

"If I had my druthers, I'd keep everybody together 75% or more of the time," Factor said. "I don't mind the conflict. I don't mind the name calling. I don't mind dealing with people when they behave as if they were children, or they act out because they simply have a need to express themselves. In the end, they're there to solve something, and it's better they have a sense of who they are. However, most attorneys don't like that."

Factor also employs mediator's proposals on a regular basis, but he won't make one unless certain preconditions – which he explains to both sides beforehand – are met, including that attorneys promise to take the suggestions to their clients and encourage them to seriously consider them.

Max Factor III

Alternative Resolution Centers
Los Angeles

Areas of Specialty:

Real Estate, Business,
Construction,
Employment, Insurance
Coverage, Entertainment,
Intellectual Property

“Then I will make a proposal because no one is surprised when they get it,” Factor said. “They may not like the numbers. They may choose to say no, but it’s a number that, at least before I wrote it all down, they had a heads-up. And they said it was OK for me to make the proposal. That generally results in a very high acceptance rate.”

The grandson of Hollywood makeup icon Max Factor – who worked closely with legendary actresses Marilyn Monroe, Katharine Hepburn and Bette Davis – the younger Factor said he knew early he wouldn’t be happy in the global business started by his grandfather and expanded by his father. Factor’s father was, in fact, very supportive of his decision to move away from litigation and into mediation.

“I’ll always remember my dad’s reaction, which was, ‘It’s about time,’” Factor recalled with a laugh. “He told me, ‘I always thought your personality was in working with people to get them to resolve their disputes and not one-upping them.’ I think he was right.”

Los Angeles trial attorney Philip W. Bartenetti, who has worked with Factor over the years on real estate and business disputes, said the mediator’s calm, optimistic demeanor sets him apart.

“Max removes some of the stress you run into in dispute resolutions because he’s always under control and positive,” Bartenetti said. “That’s something you don’t always get.”

Factor’s approach can also have an extraordinarily calming influence not only on emotionally

charged litigants but also their attorneys, according to Bartenetti, who pointed to lawyers-only caucus sessions as an example.

“Those conversations can sometimes get heated because of having the two advocates together who are jealously guarding their turf,” Bartenetti explained. “Max has a good way of keeping people in that moderate zone and defusing something if he sees it will move in a nonproductive way.”

Los Angeles attorney Nicholas T. Hariton met Factor for the first time in October and is working with the mediator on a contract dispute in which the opposing sides are far from friendly.

“Max has this great ability to be the voice of reason throughout the entire process,” Hariton said. “And he has helped both sides, I believe, to come together and understand the other’s situation in a way where I think we can get through this and reach a resolution.”

Hariton also described himself as “wildly pro Max,” and said Factor is “not ego involved.”

“It’s not about Max,” Hariton said of the mediator’s approach. “It’s about: ‘This is the problem, let’s talk about the problem, let’s understand the problem.’ ... And I really like that. He’s much more committed to the end result than most mediators I’ve met.”

Poway construction attorney Joyia Z. Greenfield, who worked recently with Factor to resolve a construction defect matter involving a condominium homeowners association, said the mediator is “one of the nicest men I have ever met.”

“He’s very, very nice, very personable, very respectful of all the litigants, but he’s very smart,” Greenfield explained. “He helped us out a lot.”

Greenfield said the matter involved some entrenched characters with opposing goals.

“Max’s personality was really good for this case, where we had some very different personalities and some divergent views,” she said. “He was really able to assist in bringing the parties together.”

Factor has known since junior high he wanted to be a lawyer, and he said the profession appealed to him then – and remains fulfilling today – because it allows him a chance to help people. But Factor was quick to say that doesn’t mean he has all the answers.

“I’m 75, so I have hundreds of disputes I’ve experienced with people,” he explained. “But I can’t tell you how many times I thought I knew just what someone should do, and it turned out there was a better thing for them to do, and they knew it. Sometimes, they didn’t even know what the better thing was, but when you talk with them, you realize it was there, and they figured it out.” ■

Here are some attorneys who have used Factor’s services: Joyia Z. Greenfield, Lorber, Greenfield & Polito LLP; Philip W. Bartenetti, Clark & Trevithick PLC; Nicholas T. Hariton, IPP Trial Consulting; Gordon Stuart, Buchalter; Eric L. Davis, Lara & Davis LLP