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Frederick Hertz

The Recorder

By **Dan Levine**

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SAN FRANCISCO -- It's not every lawyer who can start his career as a real estate litigator and wind up a neutral who specializes in gay and lesbian dissolutions.

But to hear Frederick Hertz tell it, the progression doesn't sound strange at all.

After plunging into real estate work as an associate at Rose & Kornhauser in the 1980s, Hertz eventually opened his own practice. By that time he had worked disputes between tenants in common, and out of that came matters representing partners in gay and lesbian relationships: The principal disputes in those dissolutions involved real estate, he said, and didn't come under the umbrella of family law.

Hertz built up his practice, establishing his expertise in the gay and lesbian community (though he always handled plenty of disputes between straight couples and siblings). But about five years ago, he decided he'd had enough of litigation because, as he put it, he was "making a living that was inconsistent with my values and personality."

Mediation seemed the better fit. It took a few years to wind down his ongoing client matters — not to mention to get some training as a neutral. But now Hertz says 50 percent of his practice is devoted to mediation, with the rest being consulting and representing clients who are committed to mediation themselves.

Hertz enthusiastically describes his practice in his downtown Oakland office, with a small Kafka in Prague ink sketch on the wall and a conference room that looks down on Lake Merritt. The mustached mediator has written books for same-sex couples looking to form or dissolve relationships.

Same-sex relationships have become much more complicated, legally speaking, over the years.

"There had been a sharp divide between marital and nonmarital practices, and you can't do that anymore [as a lawyer]," he said.

Mediating those dissolutions also requires a unique emotional understanding, Hertz said, because those relationships aren't tethered to a static set of legal markers.

For instance, one gay couple may decide to register as domestic partners, while another may not. The difference doesn't mean that one couple loves each other more than another, he said. The one that registered may have done it for a narrow reason, like health insurance.

But when there is a breakup, the registered couple enters the rubric of family law, where the higher earner may be obligated to pay support. That individual very well could feel like the lesser earner is taking advantage of a benefit to which they are not truly entitled.

The same thing can happen in family situations, where one sibling takes him or herself off a property title because of, say, a credit concern. When there is a dispute, that sibling may be at a legal disadvantage for not being on the title, even though they were always treated as an equal owner.

"You may have a real disconnect between what the law would say and what the family would say if they paid no attention to the law," Hertz said.

As a mediator, then, the first task is not a legal one. Rather, it is to show respect for the family structure and discern what circumstances went into the sibling not being on the title. That legally disadvantaged



Frederick Hertz, Oakland solo
Image: Jason Doily/The Recorder

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family member may feel like the law is being used unfairly.

"They feel like for legal advantage, [the other sibling] is going to deny what the truth was for 20 years. That just drives people crazy," Hertz said.

If those emotions can be confronted, resolving the dispute becomes much easier.

Brooke Oliver, of the San Francisco firm Oliver, Kattwinkel & Sabec, has used Hertz both for a same-sex dissolution, and to consult on issues within nonprofits she represents.

"He's thorough. He's calm. He fully apprises himself of the relevant law and facts. He listens carefully and he's astute at finding areas where agreement can be reached," Oliver said.

Hertz charges \$340 an hour for mediation, with no administrative fee. If they're done early, he refunds whatever extra might have been prepaid.

Born in Minnesota, Hertz has a love of architecture, gardening and travel with his partner. He's trying to decide whether to become a full-time mediator, which would expand his business possibilities by cutting down on conflicts. But it's a tough choice, he said.

"As soon as I started mediating, I became a much better advocate," he said.

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