

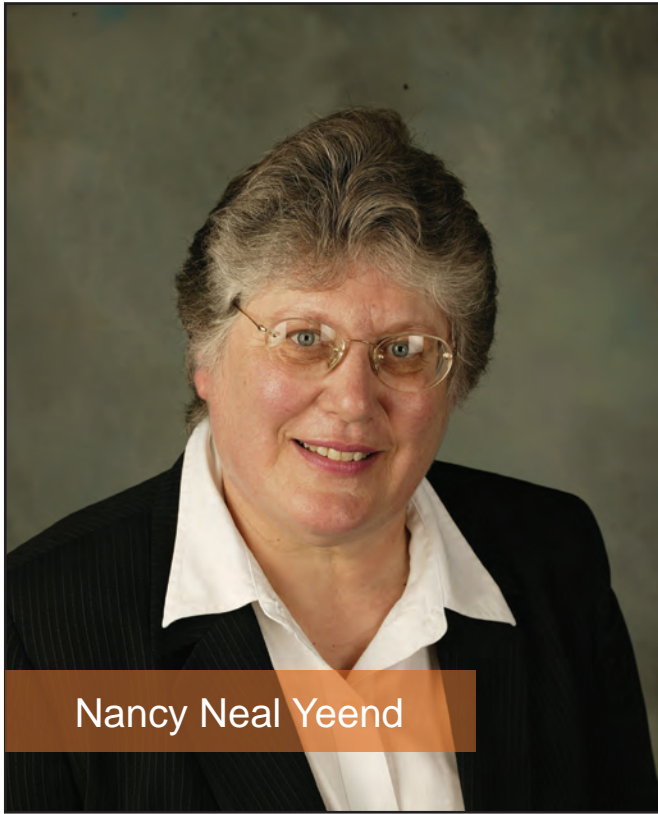
TURNING NEUTRAL—

OPPORTUNITIES IN *MEDIATION* AND *ARBITRATION*

Matthew Hirsch

nothing is black and white





Nancy Neal Yeend

Nancy Neal Yeend is an unlikely pioneer in conflict resolution. She entered the profession with a geology degree and a background in real estate, but no law degree. She went on to build a successful, full-time mediation and arbitration practice, then joined the faculty at the National Judicial College. To date, she has also trained more than five thousand mediators across the country.

“I can’t think of ten people who are still around from when I started,” says Yeend, a member of the Silicon Valley Mediation Group in Los Altos. “It’s not that I was a better mediator. I figured out how to create a business and look at myself as a product.”

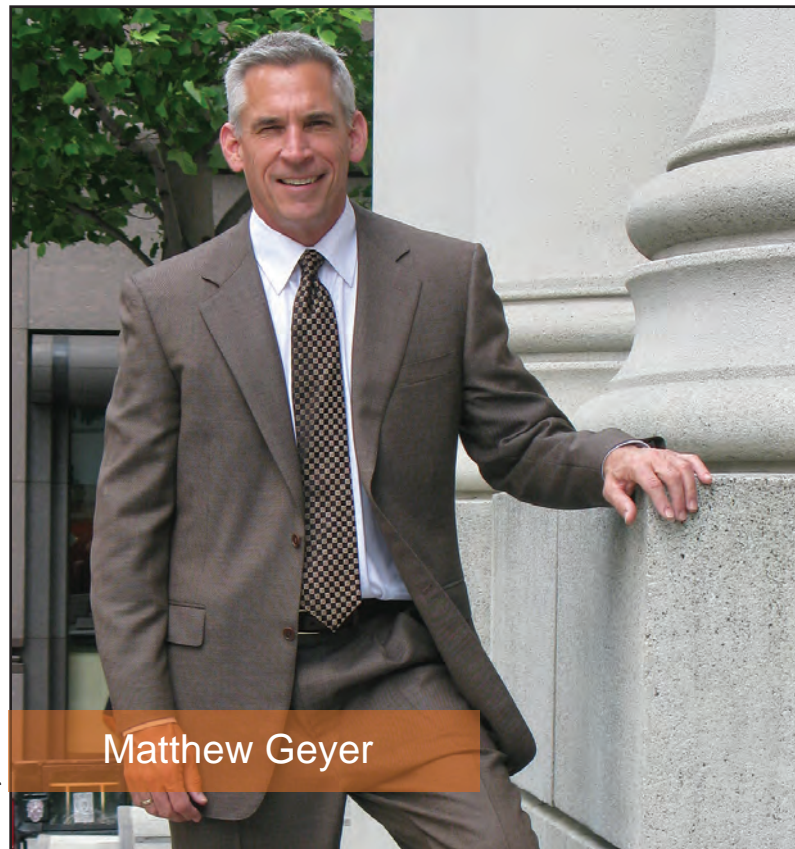
With interest in mediation on the rise, you might think Yeend is working overtime to meet the demand for her services as a trainer. But she stopped offering public trainings ten years ago, focusing instead on the National Judicial College and trainings for court mediation panels. (Yeend also offers private advanced training for experienced mediators.)

The lack of credentialing and uniform standards for mediators has resulted in flooding the market in California, making it difficult for prospective clients to choose a qualified mediator and for well-trained mediators to make a living. “I saw the handwriting on the wall,” Yeend says. “And I don’t want to encourage something that is unrealistic.”

Still thinking about becoming a full-time mediator? Or building some mediation work into your practice as an attorney? Making the switch is no longer for the faint hearted, if it ever was. Lawyers who successfully manage the transition will tell you that work as a neutral can be incredibly satisfying. But it takes perseverance and discipline to establish yourself.

And as Yeend is quick to point out, it takes marketing skills that may not come naturally to lawyers: “What I tell people—and I’ve done this for years—is think of yourself as a box of cereal. How come [shoppers] are going to pick you? Are you cheap? Do you have a toy inside? Do you have some clever packaging? Do you have an endorsement? Until you know what you are as a product in the marketplace, you can’t distinguish yourself from anyone else.”

Matthew Geyer had distinguished himself as a partner and chair of the commercial litigation group at the firm now called Rogers Joseph O’Donnell before launching his own practice as a neutral.



Matthew Geyer

Photo by Lorraine Lee Nelsen

He started the transition in 1991 when a partner at his previous firm, Landels Ripley & Diamond, encouraged him to join the AAA arbitration panel.

For years, alternative dispute resolution (ADR) remained a small part of Geyer's practice. But as it grew, he had to choose between being a neutral and a rainmaker. "Law firms are set up to have leverage. The work that I could bring to a law firm is to run cases other people can work on. That's the only way a law firm can pay me the kind of money a law firm was paying me," he says.

Geyer also had family to consider before he could venture out on his own as a neutral. "I made this change when college bills for my children were still four or five years away, and it was difficult for that reason. But my wife said that we'd figure it out. I said we'd starve, and she said, no, we wouldn't. She went back to work to help make it work, and now we're two years into our first college bill (with a son at UC Berkeley)."

"It's like making any change. You have to be willing to take the leap," Geyer says. "They tell you that if you're thinking about writing novels or becoming a neutral. It may feel like you're jumping off a bridge. But it may be that there's water down there, and you can swim."

Patricia Prince had also distinguished herself as a litigator—with clients in the entertainment industry including Fox, Universal Studios, and Warner Brothers—before starting a mediation practice in 2001. The time had come for a different challenge. "I wanted to start a family. And in looking at litigation and the demands of trial work, I realized it just wasn't compatible with the way I wanted to be a mother," she says.

Trial work can be all-consuming. Depositions can take weeks, and trials even longer. "I just could not envision myself leaving a child behind and saying, 'Sorry. Mommy will be back in a month,'" Prince says.

Highly committed to her career in the law, Prince decided that mediation would be a perfect fit, combining her legal experience and analytical skills with her interest in people and dispute resolution, all within a more flexible work schedule. "Now that I have a seven-year-old



daughter, my mediation practice allows me to be more focused and fully engaged with the cases . . . while at the same time allowing me to protect time to be meaningfully present in my daughter's life," she says.

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As a new mediator, Geyer took a forty-hour training course with Steven Rosenberg, who offers basic and advanced courses, each twice a year. Then Geyer volunteered as a settlement panelist in the San Francisco Superior Court's Early Settlement Program, operated in conjunction with BASF, before moving on to advanced mediation training with Nancy Neal Yeend.

When BASF designed its Mediation Services program a few years ago, Geyer joined that panel, too. Parties in the BASF program can receive one hour of preparation and two hours of mediation for a \$250 administrative fee. The hourly fee after three hours varies based on each mediator's market rate.

Mediators have to meet strict educational and mediation experience requirements before they can serve in BASF's Mediation Services. They average 125 hours of experience. (Brand new mediators should contact California Lawyers for the Arts, Community Boards, East Bay Community Mediation, Mediation Services in Castro Valley, or Peninsula Conflict Resolution Center for volunteer opportunities.)

"I would say it took me probably five years to where I had a full-time, thriving practice of the kind I wanted, with as much work as I wanted. But each year the business built up 20 percent more than the last year. If I never made the change, I would be making more money now. But I don't mind the change. It's a much better life," Geyer says.

Prince, who is also a member of the BASF Mediation Services panel, faced an extra challenge in building a Bay Area mediation practice because so much of her client base was in the entertainment industry and based in Los

Angeles. She had to make an extra effort, volunteering on panels and meeting new people, to get the exposure she needed to get referrals.

But Prince found some pleasant surprises along the way as she built an ADR practice. "It turns out there's a big demand for Spanish-speaking mediators," she says, having discovered this fact after mentioning on her Web site that she is a fluent Spanish speaker. Prince estimates that she uses Spanish in about 10 percent of her mediation practice.

Prince knew she had made it as a full-time mediator about a year and a half ago, when her mediation practice didn't leave any more room for legal work. "You get to a point where calls just start coming in," she says, "where you can't trace every single one of them, and so you get a sense that word of mouth is spreading."

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