





Matching the Hatch

For master mediator and avid fly fisherman Paul Bardacke, timing and preparation are everything

BY JIMMY MAGAHERN
PHOTOGRAPHY BY KIP MALONE

Every great fly fisherman knows the first rule of tying flies to lure the big fish: You've got to match the hatch.

You've got to get a good look at what's already hatching on the surface of the water—be it mayfly, caterpillar, scud or leech. Observe what the trout are eating, and what they want more of. Then tie a fly sure to get a bite: a lure that offers exactly what they're hungry for, but with a hook to catch and reel them in.

Paul Bardacke, co-founder of Bardacke Allison in Santa Fe, is both an expert fly fisherman and one of the nation's top mediators, with more than 2,000 tried or mediated cases under his belt. He served as New Mexico's attorney general from 1983 to 1986, successfully argued two cases before the United States Supreme Court, and once traveled to North Korea to talk civil rights with the nation's leadership.

Bardacke says he enjoys fly-fishing in northern New Mexico—"the best in the world, after New Zealand"—as his favorite form of relaxation. "It's the one time, when I've been standing in a stream trying to catch a fish, when I don't have to be thinking about my work," he says.

Not that they don't have anything in common. In the stream, as in the courtroom, you have to match what the parties are hatching. See what's in the water, and see what they're chasing. Then wait for the perfect time to snap the rod.

Paul Bardacke

**Bardacke Allison
Alternative Dispute Resolution
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“No case is too complex or large,” says litigator Bruce Hall of Rodey Law, “for Paul Bardacke to simplify and suggest a workable solution for the parties.”

BARDACKE, 74, HAS BEEN TYING WINNING lures in mediation and arbitration for most of his 50 years in law.

The son of two school teachers, he studied law in the late 1960s at Berkeley. But he first learned how to make a deal from his father, the son of a Russian Jewish immigrant who made a yearly family event of snatching up abandoned Christmas trees from lots right before the holiday and selling them at half price to last-minute shoppers.

“As a young lawyer,” Bardacke says, “I tried a lot of cases and enjoyed that very much. But as I grew older, I thought that courtroom was probably for younger people, and I started mediating cases.”

He turned out to have a knack for it, mediating cases in some 15 states, including many in Colorado, Nevada and Arizona, as well as his native New Mexico. He’s served as chief negotiator for the state of New Mexico in gaming negotiations with 13 New Mexico Indian tribes and pueblos, and handled New Mexico’s part in the 46-state litigation against major tobacco companies in 1998 for deceptive and fraudulent marketing, targeting minors and conspiracy to conceal the health effects of smoking. He wound up recovering \$1.12 billion for the state.

“We were one of the only states that decided to do the tobacco litigation on our own,” Bardacke says. “We didn’t join one of the national firms, and that worked out well for New Mexico.” Indeed, the state’s share of the windfall went to fund a 25-year program to deter smoking, promote research and treat tobacco-related illness in the state. Other states have since used similar models.

“The mediations that I find are the most challenging are the ones with governmental agencies, or governments and organizations, and individuals who believe their rights have been violated—the constitutional questions of due process,” says Bardacke. “For instance, I was involved in a case brought by the ACLU versus the New Mexico Children, Youth, and Families Department. It was a number of years ago. They were claiming that the CYFD was not adequately protecting or taking care of the children within its custody. The resolution is ongoing. I think the situation is getting better, but the quality of care tends to come and go with a new administration.

“I mean, that kind of mediation is very difficult and the stakes are huge. And they tend to go on for a long time. Now I’m doing a mediation between an Indian tribe and the United States Department of the Interior over the quality of education that their children are receiving from the federal government, and whether it’s constitutionally adequate. Those are the kinds of cases that are most challenging.”

Bardacke has mediated several cases between the state and the tribes. As for the gaming negotiations, he says, “It lasted over a year, and I gained a tremendous amount of respect for both the tribes and their counsel, because we were able to work out an agreement that has for the most part brought certainty and uniformity to the gaming issues in New Mexico, which are complicated. It’s an important part of our revenue and at the same time, it allows the tribes independence and a lot of freedom in their operations.”

Michael Harbour, a mediator with Doughty Alcaraz in Albuquerque who has both faced Bardacke as a litigator and employed his services as a mediator, says Bardacke’s gift is making each party at the table feel like the winner.

“When Paul was one of the first mediators in New Mexico, he was my go-to guy when I knew I would have to pay more than my



client wanted at a mediation,” Harbour says. “Somehow, Paul always made them feel like *they* were getting the bargain and they were lucky to have me as their lawyer. Paul possesses the rare skill of making a complex high-dollar mediation positive for everyone.”

IT'S DAY 18 IN WHAT WILL SOON GO

down in the books as the longest federal government shutdown in U.S. history, and Bardacke is lacing up his shoes for a tennis match.

“It’s a shame that everybody has sort of taken sides and is unwilling to compromise,” he says, lamenting the lack of civility in political discourse. “You know, a long time ago, politics was defined as the art of compromise, and that’s a lost art in this day and age. Good mediators know the art of compromise and can communicate it to the parties who have been fighting in the courtroom. But first, they have to learn how to listen to each other.”

A self-proclaimed “dyed-in-the-wool Democrat,” Bardacke chaired Bill Richardson’s winning 2002 gubernatorial campaign, and was appointed by President Obama in 2009 to the National Park System Advisory Board, where he served for eight years. He is deeply critical of the effect the shutdown has had on the national parks system’s staffing. “I hate to see the trouble that we’re in presently—on so many fronts,” he says.

As a mediator, Bardacke has become a master at knowing when parties are ready to deal, and at this juncture in this particular impasse, he knows a long-term solution isn’t likely.

“Timing is everything in mediation,” says litigator Bruce Hall, director and shareholder of the Albuquerque office of Rodey Law. Hall has known Bardacke since the late ‘60s.

“What sets him apart is his level of preparation, his experience, his analytical abilities and persuasive skills,” Hall says. “Also, his willingness to confront parties with the weaknesses of their positions and risk exposures to trial. He understands timing as an element of success in mediation. When Paul has mastered the seven binders of exhibits that parties have sent in a complex case—and he will master them—the parties will be provided, by a first-class trial lawyer, the most likely road map to a mediation result that all sides can accept. He has mediated all over the

country. No case is too complex or large for Paul Bardacke to simplify and suggest a workable solution for the parties.”

Bardacke’s preparation and sense of timing have served him well. The father of four, stepfather of two—he’s married to fellow attorney Lisa Enfield—and grandfather of five always enjoys what’s next.


“I’m really excited about this present lawsuit that I just filed challenging the closed primary system of New Mexico,” Bardacke says, adding that the suit was just dismissed by the state supreme court and he’s considering his next move, “and I just like the challenge of continuing to practice law at a high level.”

A cofounder of the bipartisan think tank Think New Mexico, Bardacke remains politically active, and cites his 2005 trip to Pyongyang as a member of a small U.S. delegation headed by Richardson to negotiate civil rights issues as an “eye opener” into our current political climate.

“When I got to go to North Korea, it was like a science-fiction movie to see all of these people, in a country where many of them were struggling with getting enough food to eat, remaining totally dedicated to their leader,” he says.

Nevertheless, Bardacke remains hopeful about the future.

“I have five grandchildren at this point and I enjoy watching them grow up and confront the challenges that society places on them these days,” he says.

“We’ve got a lot of good people working in their communities and nationally,” he adds. “You know, we’ve got a lot of obstacles that we need to deal with. But I am optimistic that we can deal with them.” 



Bardacke and his late fishing companion, Meg, pose for the camera before getting to work at one of their favorite spots.



Bardacke’s Tips for Attorneys Handling a Mediation

- **Be a good listener.**
- **You need to be in a mindset to want to compromise—and to realize that you won’t win in a mediation, although your client may very well benefit from resolving the case outside the courtroom.**
- **You can’t go into a mediation with the mindset that you’re going to win. You need to go in with the mindset that you’re going to get a fair result, and get it now.**