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FN-1013 MN-1013 LN-1013, Esq.

Phoenix, Arizona



Current Employer-Title Sherman D. Fogel, P.A. – President, Shareholder and Director

Profession Arbitrator, Mediator, Facilitator, Attorney

Work History President/Shareholder and Director, Sherman D. Fogel P.A. (formerly Fogel, Lamber & Bronnenkant, P.A.), 1973 – Present; Attorney, Brown & Bain, 1970 – 1973; Attorney, Arvey Hodes & Mantynband, 1965 – 1970.

Experience Over 45 years' experience representing both plaintiffs and defendants in commercial dispute resolution in federal and state trials, appeals, arbitrations, mediations, negotiations and settlements, and more than 40 years' experience serving as a neutral in complex commercial disputes; contract disputes; partnership, corporate, shareholder and employee disputes; misappropriation of corporate assets, misappropriation of corporate opportunities, interference with contract and prospective business advantage and unfair competition matters; non-competition covenants, trade secret and confidential business information matters; Uniform Commercial Code matters; lender liability matters; fraud in connection with the purchase and sale of real and personal property; fraud in connection with the purchase and sale of securities; health care industry matters; marijuana (cannabis) industry matters; real estate matters; employment matters; e-commerce matters; franchising matters; public and private sector land use matters; public sector political and managerial conflicts between public bodies, internally within the public body, and between public bodies and private individuals and entities; and construction disputes. Practice has included basic and complex transactional work in substantially all of the foregoing areas. Served as a Judge Pro Tem in the Arizona Court of Appeals, 1985, 1993, and 1995. Arizona Supreme Court Committee on Examinations and Admissions, 1975 – 1982 (Chairman, 1981 – 1982).

Mediator Experience Over 45 years' experience serving as a neutral, including more than 25 years as a mediator, in complex commercial disputes; contract disputes; partnership, corporate, shareholder and employee disputes; misappropriation of corporate assets, misappropriation of corporate opportunities, interference with contract and prospective business advantage and unfair competition matters; non-competition covenants, trade secret and confidential business information matters; Uniform Commercial Code matters; lender liability matters; fraud in connection with the purchase and sale of real and personal property; fraud in connection with the purchase and sale of securities; health care industry matters; marijuana (cannabis) industry matters; real estate matters; employment matters; e-commerce matters; franchising matters; public and private sector land use matters; public sector

political and managerial conflicts between public bodies, internally within the public body, and between public bodies and private individuals and entities; and construction disputes.

Representative Issues Handled as a Mediator

(i) dispute between state and city involving development of hundreds of acres with more than forty people representing school districts, citizen activist groups, private developers and government agencies; (ii) disputes involving dysfunctional commission appointed by the mayor and in conflict with political and managerial departments of the city; (iii) restructuring of a multi-million dollar family high-fashion retail business operating in several states, involving three factions of the family, and conducted in phases over two years; (iv) a dispute between a municipality and a religious organization involving the disposition of a historical building; (v) a dispute between the scientist/inventor/licensor and the licensee of patented scientific technology, resolved by an agreed allocation of rights to use the patented technology into industrial and medical applications; (vi) contest for control of a multi-million dollar family owed business operating out of fourteen locations in three states; (vii) dispute between securities broker/dealer and customer involving claims in excess of \$1 Million; (viii) disputes in condemnation proceedings; (ix) dispute between real estate purchaser, seller and title insurer involving allegations of misrepresentation in connection of the sale and issues of title insurance coverage and exclusions; (x) employment contract dispute, involving claims in excess of \$350,000 for wrongful termination, severance pay and bonuses, and counterclaims for breach of fiduciary duty; (xi) dispute between joint venture partners involving the development and marketing of computer software in the physical fitness industry; (xii) dispute involving the ownership and operation of the private athletic training facility utilized by Olympic athletes, which involved private contract issues, municipal zoning ordinances and special use permits, vigorous neighborhood opposition and public interests; (xiii) a dispute between beneficiaries of probate estate, involving allegations of fraud upon surviving spouse's community property interest and breach of fiduciary duty by personal representative and trustee; (xiv) dispute involving investment contract, construction contract and joint venture agreement, the resolution of which paved the way for the completion of a privately owned charter school; (xv) dispute involving the split up of a multi-office medical practice; (xvi) dispute between owner, contractor and subcontractor involving collapse of construction project and allocation of responsibility; (xvii) a contract dispute involving two international credit cards, the issuing national bank and a corporation engaged in the discounted acquisition of delinquent credit card debt; (xviii) a dispute between hotel, condominium, office and retail developers and the representatives of numerous neighborhood associations and activist groups involving an update to a plan for the development and preservation of a major urban core of a large city, the resolution of which took almost five months and was ultimately approved by the city planning department, adopted by the city council and avoided a city wide referendum election; (xix) 14 months of service on a national panel mediating and arbitrating more than 200 insurance policyholder disputes arising out of federal class action litigation; (xx) two years' service on a state panel mediating and arbitrating close to 300 State employee claims for on-call compensation arising out of class act; (xxi) disputes between investors, partners and outside consultants in the emerging medical and recreational marijuana (cannabis) industry; (xxii) disputes involving internal governance and/or split up of legal and medical firms; and (xxiii) a negotiation among multiple municipalities and public utilities involving the modification and extension of a forty year contract for effluent for cooling nuclear reactors.

Mediator Style & Process Preferences

Mediation is, or at least should be, a collaborative process as opposed to an adversarial one. It should be less about who is right or wrong and about winning and losing, and more about finding a solution to a problem that all of the parties can live with. This is, in part, what distinguishes mediation from a settlement conference. A good mediator is not married to just the facilitative or transformative or evaluative school of mediation, but is able to draw upon all three, using all of the tools available to help the parties achieve an acceptable and enduring resolution. Although the techniques vary from case to case, I usually move down a continuum from facilitative to more evaluative and even directive as the process continues and if the parties so desire. While there is no arbitrary "right" formula for the conduct of mediation, I believe the likelihood of a successful and lasting resolution is greatly increased when the parties themselves participate actively in the process. As a result, in addition to counsel, I expect each party to have a representative present with full settlement authority, and I urge the lawyers to prepare the parties for the likelihood that they will often speak on their own behalf and participate fully in the discussions.

Education

University of Chicago (JD-1965); University of Pittsburgh (BA-1962).

Professional Licenses

Admitted to the Bar: Illinois (1965), Arizona (1971); U.S. District Court: Northern District of Illinois (1965), District of Arizona (1971); U.S. Tax Court (1973); U.S. Supreme Court (1972).

Professional Associations	Arizona, Maricopa County, Illinois and American Bar Associations; State Bar of Arizona Alternative Dispute Resolution Section Executive Council, Chair, 2008-2009; ABA DR Section Committee on Mediator Ethical Guidance; American College of Civil Trial Mediators; College of Commercial Arbitrators; American College of Civil Trial Mediators; National Academy of Distinguished Neutrals; Association for Conflict Resolution; Arizona Association for Conflict Resolution; Arizona Bar Foundation; American Arbitration Association (Arizona Advisory Council).
Recent Publications & Speaking Engagements	Faculty, State Bar of Arizona, "Mediation Dynamics: Managing the Different Expectations of the Parties, Their Lawyers and the Mediator," Chandler, 2018; Faculty, State Bar of Arizona, "Preparing for and Participating in the Arbitration Preliminary Hearing," Tucson, 2017; Faculty, State Bar of Arizona, "Technology No Nos and Blessings in Arbitration," Phoenix, 2016; Faculty, American Bar Association, "Advanced Mediation and Advocacy Skills Training," Phoenix, 2016; Faculty, State Bar of Arizona, "The Opening Joint Session: A Mediator's Best Tool or Worst Nightmare?," Phoenix, 2016; Faculty, State Bar of Arizona, "Ethical Dilemmas in Mediation," Phoenix, 2015; Faculty, College of Commercial Arbitrators and American Arbitration Association, "Managing a successful Arbitration – The Preliminary Conference and Discovery," Phoenix, 2013; Faculty, Intel Corporation Mediation Training by Insight Mediation, LLC, "Managing Conflict and Resolving Disputes – The Human Side," Phoenix, 2013; Keynote Speaker, Phoenix Rotary Club, "The Magic of Mediation – How to Manage Conflict, Resolve Disputes and Avoid Litigation," Phoenix, 2012; Faculty, Arizona Association for Conflict Resolution, "Facilitating Large Community Disputes," Scottsdale, 2012; Faculty, American Bar Association, "Advanced Mediation and Advocacy Skills Institute," San Diego, 2011; Faculty, American Arbitration Association, "Essential Mediation Skills for the New Mediator," Phoenix, 2011; Faculty, "Don't Let Arbitration Lose Its Luster: How the Stakeholders Reduce Cost and Delay by Taking Control of the Process," State Bar of Arizona, Phoenix, 2010; Faculty, "How to Build Your ADR Practice - Tips from Successful Practitioners," State Bar of Arizona, Phoenix, 2010; Faculty, "Mediating the Non-Litigated Case: Commercial, Political and Executive Disputes," American Bar Association, San Francisco, 2010; Faculty, "Mediating the Non-Litigated Case," State Bar of Arizona, Phoenix, 2010; Faculty, "Facilitating Business Partner Break-Ups and Resolving Break-Up Disputes through ADR," State Bar of Arizona, Phoenix, 2009; Faculty, "How To Solve A Business Dispute," State Bar of Arizona, CLE by the Sea, San Diego, 2008; Faculty, "Discovery In Arbitration: Let's Talk About It," State Bar of Arizona, Phoenix, 2008; Faculty, "Advanced Commercial Mediation Institute," Association for Conflict Resolution, Phoenix, 2007; Faculty, "Advanced Mediation and Advocacy Skills Training," American Bar Association, San Antonio, 2007; Instructor, "Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics," American Arbitration Association, Phoenix, 2005; "Differences Between Private Arbitration and Court Litigation," State Bar of Arizona, Tucson, 2005; "Private Arbitration vs. Court Litigation - an Arbitrator's Insights," Arizona Association of Defense Counsel Seminar, Phoenix, 2005; "The Magic of Mediation: A Better Approach To Land Use Disputes," CLE International Land Use Conference, Phoenix, 2003; "Mediating Business Disputes: Theory and Practice," Arizona Dispute Resolution Association workshop, Phoenix, 2000; "Legal Challenges to the Use of ADR and The Contractual Response," American Arbitration Association Seminar, Phoenix, 2000; Co-author, "Arbitration After Broemmer," State Bar of Arizona, Phoenix, 1993; "Feeling Good About Arbitration," State Bar of Arizona, Tucson, 1987; "How Arbitrators Decide Cases," American Arbitration Association Seminar, Phoenix, 1983; faculty for various other continuing education programs for the American Arbitration Association.
Mediation Rate	\$3,400 Per Day
Languages	English
Citizenship	United States of America
Locale	Phoenix, AZ

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete

recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.