



AAA Mediation.org™

**FN-1063913 MN-1063913 LN-1063913,  
Esq.**

New York, New York



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**Current Employer-Title** Abigail Pessen Dispute Resolution - Owner

**Panelist Video** <https://www.adr.org/videoresume?paramName=272766027>

**Profession** Attorney, Arbitrator, Mediator

**Work History** Arbitrator and Mediator, Self-employed, 2000-Present; Partner/Associate, Seiff Kretz & Maffeo (formerly Scoppetta & Seiff), 1982-2000; Assistant Professor of Law, New York Law School, 1977-1978; Associate, Levy Gutman Goldberg & Kaplan, 1974-1975; Law Clerk to Judge Whitman Knapp, U.S. District Court Southern District of New York, 1972-1974.

**Experience** Prior to becoming a full-time neutral, spent more than 20 years as a commercial and business litigator at litigation firm. Represented businesses and individuals in complex disputes relating to: breach of commercial contracts; professional and business partnership disputes; torts such as interference with contract, breach of fiduciary duty, intentional infliction of emotional distress; closely held corporations; fraud; insurance coverage disputes; fraudulent conveyances; ancillary proceedings in bankruptcy; contested probate matters; employment discrimination and wrongful termination; insider trading; civil RICO actions; restrictive covenants; unfair competition; defamation; co-op shareholder disputes; and civil rights (police excessive force, ADA, and ADEA claims). In all of these matters, assisted clients in negotiating resolutions, conducting litigation, and handling appeals.

**Mediator Experience** Commercial:  
Mediated 100's of disputes involving overtime; misclassification; wage theft; gender discrimination, race discrimination, age discrimination, sexual orientation; mezzanine loan foreclosure; physician's removal from HMO; termination of dealership in copier industry; insurance coverage dispute involving methane in home; sexual assault and sexually transmitted disease; Storm Sandy insurance disputes; oral agreement to co-own shares in intellectual property firm; dissolution of yoga instructors' corporation; contract partner at a law firm; alleged breach of contract between overseas

supplier and major domestic distributor of residential bath fixtures; intellectual property/trademark in women's clothing industry; insurance disputes including an insurer's rescission of a performer's tour-cancellation policy and refusal to pay \$10 million in claimed losses from the cancelled tour, late notice of a claim; commercial liability, errors and omissions in a real estate broker's policy, and professional malpractice coverage. Mediated distributorship disputes in toy, beverage, and pharmaceutical industries, contract dispute involving sports and technology businesses, numerous partnership/close corporation "business divorce" disputes, including a buy-out dispute between co-owners of an internet company, a dispute between pharmacists who were deadlocked with respect to terminating their jointly-owned pharmacy; one between co-owners of real estate worth \$5 million; and several among law partners/business partners/shareholders in close corporations. Mediated numerous disputes relating to alleged breaches of contracts, including an agreement between a major hospital and health insurance provider, a major U.S. toy company and its foreign distributor, a contract between a health care services provider and a nursing home, brokerage fee agreements, commercial real estate brokerage agreements, attorney's retainer agreements, contract between a vendor and a public transportation authority, publishing agreements, consulting agreements, franchise agreement in the consumer electronics industry, as well as non-payment disputes in various industries. Mediated numerous negligence/business tort disputes, including one involving a serious fire occurring at school under construction, alleged theft of proprietary information, and breach of fiduciary duty in broadcasting industry.

#### Employment:

Mediated disputes involving alleged FLSA violations; misclassification; sexual harassment; commissions allegedly due a terminated employee in financial services placement firm; non-compete covenant in modeling industry; bonus compensation; commissions; wrongful termination in pharmaceutical sales industry; wrongful termination from university coaching position; defamation; whistleblower retaliation at law firm; age, gender, race, ethnic origin, sexual orientation, and disability discrimination; retaliation; non-compete claims; restrictive covenants; severance; and workplace morale issues.

### **Representative Issues Handled as a Mediator**

Issues have included executive compensation; alleged breaches of distributorship agreement in pharmaceutical industry; breach of life insurance policy; insurer's refusal to consent to assignment of policy; insurer's liability for judgment against bankrupt insured; alleged breaches of agreement between major toy company and foreign distributor and whether the parties' relationship constituted an agency relationship; Fair Labor Standards Act; New York Labor Law; misclassification; termination of perpetual software license agreement; which party bore responsibility for inaccurate invoices; dispute involving alleged overbilling in nursing home industry; excessiveness of law firm's fees and attorney malpractice; whether computer software met contract specifications; reasonableness of geographical/temporal limits in non-compete agreement; applicability of broker's new fee arrangement to already-signed real estate contracts that had not yet closed; whether conduct in sex-harassment case was unwelcome; whether insured performer's conduct breached her obligations under her tour-cancellation policy and whether the insurer was justified in rescinding policy; author's obligations under publishing contract; whether producer breached contract with "talent" by altering schedule; franchisee's obligations under agreement; whether contractor and architect were liable for fire on school construction site; real estate broker's liability to carrier for homeowner's representations; whether partner in real estate venture was obligated to sell his interest in the property; whether pharmacist terminating partnership was bound by value of business set forth in shareholder's agreement; whether police officers were justified in detaining youngsters after subway station melee; whether mother was entitled to move child from Israel to New York under international law; Issues of age, race, gender, harassment, and disability discrimination.

### **Mediator Style & Process Preferences**

I believe that mediation's enormous power comes from the parties' participation in the process, which allows them to hear a different version of the underlying dispute directly from their adversaries and causes them to focus on their realistic alternatives. I see my role as helping the parties to grasp the realities of their situation, coaching them in the negotiations, helping them to appreciate clearly the risks of not settling the dispute, and helping them to understand their own needs and interests and equally important, the needs and interests of their adversaries. The process is very flexible and depending on the circumstances, I may be more or less vocal regarding vulnerabilities in the parties' respective positions. In my experience when parties agree to mediate they want above all to resolve the case and want the mediator to discount their own posturing to achieve resolution. I encourage the parties themselves to participate fully in the process, including the joint session, because once they have expressed their concerns and feel that they have been listened to, they become more receptive to opposing views and are able to find common ground. It is

critical to have the right parties at the table (sometimes a complex issue in itself), and accordingly I spend a fair amount of time conferring with each side separately prior to the mediation, to ensure that the actual decision-maker attends the mediation, and to begin to establish a rapport with them.

<b>Technology Proficiency</b>	Comfortable and highly experienced with conducting mediations and arbitrations via Zoom. Prefer electronic versions of exhibits and other documents.
<b>Education</b>	University of Chicago (JD-1972); Barnard College (BA-1969).
<b>Professional Licenses</b>	Admitted to the Bar: New York (1973); U.S. District Court: Southern (1974) and Eastern (1974) Districts of New York.
<b>Professional Associations</b>	College of Commercial Arbitrators (Fellow); New York State Bar Association ( Past Chair, Dispute Resolution Section); International Mediation Institute (IMI) Certified Mediator; American Bar Foundation (Fellow); New York State Bar Foundation (Fellow).
<b>Recent Publications &amp; Speaking Engagements</b>	<p>Publications:</p> <p>Author of chapter, "Confirmation and Vacatur of Awards" for 2019 PLI Treatise, "Arbitrating Commercial Disputes in the United States;" Author, "Notes from the Field: Has #MeToo Changed ADR?", NYSBA New York Dispute Resolution Lawyer, Spring 2019, vol. 12, no. 1; "The Bespoke Clause: Tailoring Federal Rule 68 to Arbitration for a Better Fit," New York Dispute Resolution Lawyer, Fall 2013, vol. 6, no. 2; Co-Editor, Arbitration Primer for Litigators (NYSBA publication): "Employment Mediation: Key Issues and Considerations," Practical Law.com; "Federal Rule 68," NYC Bar Association, primary author, Federal Courts Committee Report, posted at <a href="http://abcny.org/Reports">abcny.org/Reports</a>. "Alternative Dispute Resolution Law," survey chapter, DEVELOPMENTS IN BUSINESS AND CORPORATE LITIGATION, ABA Press, 2001, 2002, 2003, 2004.</p> <p>Speaking Engagements:</p> <p>Presenter, "Arbitration Ethics," ABA/AAA Arbitration Training Institute, March 2023; Facilitator, "Arbitration Awards," ABA/AAA Arbitration Training Institute, June 2021, Presenter, May 2019; Faculty, "ADR Ethics," NYSBA/AAA annual Arbitration Training, 2014 - present; Adjunct Professor of Arbitration Law, Cardozo Law School, Spring 2006; "Arbitration Awards, Tips and Traps - Reduce or Minimize Challenges When the Case is Over," American Arbitration Association, September 2004; frequent presenter for numerous bar association, law school, and CLE programs relating to ADR.</p>
<b>Locations Where Parties Will Not be Charged for Travel Expenses</b>	New York metropolitan area.
<b>Mediation Rate</b>	\$700 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	New York, NY

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.