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Hartford, Connecticut



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Current Employer-Title Michelson, Kane, P.C., [f.k.a. Michelson, Kane, Royster & Barger, P.C.] - Partner
Central Connecticut State University - Adjunct Professor

Panelist Video <https://www.adr.org/videoresume?paramName=268406752>

Profession Attorney - Civil Litigation, Construction, Corporate

Work History Michelson, Kane, P.C., [f.k.a. Michelson, Kane, Royster & Barger, P.C.], 1982 - Present; Adjunct Professor, Central Connecticut State University, Graduate Program for Construction Management, 2004 - Present; Adjunct Professor, University of Connecticut School of Law, 1988 - 2001.

Experience Since 1982, legal practice has been devoted to litigating and arbitrating construction and surety disputes involving major public and private projects. Have participated as a practitioner in scores of construction and commercial arbitrations and mediations ranging in value from tens of thousands to millions of dollars representing contractors/subcontractors, private and public owners, and sureties in a wide range of commercial, building, highway, and industrial projects. As a neutral, have mediated or arbitrated approximately 100 commercial and construction cases over the last 30 years which have involved anywhere from two to a dozen parties and all manner and size of disputes and claims.

Associate Professor, Central Connecticut State University, Undergraduate and Graduate Program for Construction Management, teaching "Construction Law," "Construction Finance Management" and "Contract Documents" from 2004 to the Present; between 1988-2001 taught "Law of Public Construction Contracts" at the University of Connecticut School of Law.

Mediator Experience Member, AAA Master Mediator Panel (Construction--Northeast Region)

Acted as a mediator in about 40 construction cases, plus approximately 10 commercial cases. Various cases have involved private owners and design professionals; public owners, contractors, sureties, insurance carriers, and design professionals; construction sureties and their contractor principals; and private owners, contractors, sureties and/or subcontractors.

Representative Issues Handled as a Mediator	Construction cases handled as a mediator have involved the following issues: adequacy of plans and specifications; owner's claims of improper workmanship by contractors or subcontractors; delays and extra work claims by contractors; indemnification issues between sureties and their (contractor) principals, which also included as subsets various types of contractor claims (delays, extra work) against the owner; payment disputes as between subcontractors and general contractor which also included various subsets of typical claims of defective work, delays, and extra work.
Mediator Style & Process Preferences	<p>The sole objective of the mediator is to settle the case. Without any power or authority other than persuasion, logic and experience, the mediator has to identify the parties' true objectives - which oftentimes differ from their stated objectives at the beginning of the process - and bring these to the forefront of the discussions. Sometimes this is relatively simple; usually it is the key to achieving a settlement. The mediator must focus the parties on their fundamental requirements for settling a case and avoid getting hung up on less critical issues. Although in commercial cases, this usually comes down to money, it is not always limited to dollars. There may be performance questions, or other non-monetary considerations that are equally, or even more important than the monetary claims. The earlier in the process these "key" issues are identified, the more likely the chances of success.</p> <p>The parties must come into the process with a true willingness to resolve the case if they want mediation to succeed. The parties must be willing to at least listen to, if not fully accept, the other party's/parties' positions. The mediator must immediately gain the parties' trust if the process is going to work, and he must keep their trust throughout. The mediator must respect each party's views and positions, even if he believes they are weak or even illogical, and must not denigrate a party's position in the presence of the other party. (Private sessions oftentimes require a much different approach.) Sometimes the mediator has to separate the party's position from their lawyers' arguments, which can be difficult. Oftentimes, the mediator has to inform the parties, in private discussion, of his own evaluation of their position as a method of moving them toward settlement. This is probably the most difficult and sensitive part of the process, and it taxes the mediator's judgment, intuition, sense of timing, and powers of persuasion.</p> <p>Above all, the mediator must be tenacious to the concept of settling the case. All cases should settle; it is the mediator's job to convince the parties to accept this concept.</p>
Education	University of Connecticut (JD-1982); University of Massachusetts (MA-1978); Columbia University (BA-1974).
Professional Licenses	Admitted to the Bar: Connecticut (1982); U.S. District Court: District of Connecticut (1983); U.S. Court of Appeals, Second Circuit.
Professional Associations	Connecticut Bar Association (Executive Committee, Chairman & Founding Member, Construction Law Section); Hartford County Bar Association (Board of Directors); American Bar Association (Forum Committee on the Construction Industry; Fidelity and Surety Law Committee; Tort and Insurance Practice Section); Member, AAA Master Mediator Panel (Construction--Northeast Region).
Recent Publications & Speaking Engagements	<p>PUBLICATIONS:</p> <p>"Shouldering the Risk: The Growing Problem of Subcontractors Building the Projects While Taking on Most of the Risk," CONNstruction Winter 2023; "What Decisionmakers Should Know About Arbitrating Construction Disputes," August 11, 2023, Michelson, Kane, P.C., Blog (www.mkrb.com); "Connecticut's Set Aside Program: What Can—and Cannot—Be Dictated by Construction Managers On Municipal Projects," January 18, 2023 Michelson, Kane, P.C., Blog (www.mkrb.com); "'Slaughter Clauses'" Ruled Illegal for Listed Subcontracts on State of Connecticut Construction Projects," June 24, 2021, Michelson, Kane, P.C., Blog (www.mkrb.com); "New Contracting Requirements Will Pose Challenges," 39 Conn.L.Trib. No. 28, 7/15/13; "FUNDAMENTALS OF CONSTRUCTION CONTRACTS & CLAIMS (CT)," Lorman 2012; "Offers of Compromise Could Facilitate Settlements," 37Conn. L. Trib. No. 45,11/7/11; "Proposed Contractor Evaluation System Has Pitfalls," 36 Conn. L. Trib. No. 28, 7/12/10; "A Positive Change Regarding Change Directives," 35 Conn. L. Trib. No. 44, 11/2/09; NEW DEVELOPMENTS IN CONSTRUCTION CLAIMS IN CONNECTICUT, Lorman 2007; CONSTRUCTION DEFECTS IN CONNECTICUT: CLAIMS & INSURANCE ISSUES, Lorman, 2005; DAMAGE FOR DELAY AND OTHER CONSTRUCTION CLAIMS IN CONNECTICUT, Lorman, 2004 & 2005; PUBLIC CONSTRUCTION CONTRACTING IN CONNECTICUT, Lorman, 1997-07; LABOR &</p>

REGULATORY ISSUES IN CONNECTICUT CONSTRUCTION, Lorman 2004; PAYMENT FOR CONSTRUCTION CLAIMS IN CONNECTICUT: MECHANIC'S LIENS, BONDS, AND OTHER REMEDIES, Lorman, 1996-04; "Union Project Labor Agreements: Are they 'Favoritism' under SPINIELLO, ADMORE and UNYSIS?," Connecticut Bar Association Annual Meeting, Construction Law Section, June 3, 1996; "Bid Disputes: Fighting For the Job that Should Have Gone to Your Client But Didn't," CBA LATEST DEVELOPMENT IN CONSTRUCTION LAW, May 2, 1996; Co-editor, CONNECTICUT BAR ASSOCIATION CONSTRUCTION CASE LAW SUMMARY AND LEGISLATIVE REVIEW, 1995-07; "Getting Paid: Payment Bond Claims," CONSTRUCTION MAGAZINE, Fall 1992; "Performance Bond Claims: The Surety's Defenses - An Update," American Bar Association, TIPS Mid-Winter Conference, 1991; "Construction Problems in Connecticut," PESI, 1991; "Construction Claims in Connecticut," Lorman, 1990; "Connecticut Construction Claims and Collections," PESI, 1988; co-author, "Connecticut Mechanic's Liens and Payment Bonds," PESI, 1987; Editor-in-Chief, CONNECTICUT LAW REVIEW, 1981-82; "The CIA Responds to Its Black Sheep: Censorship and Passport Revocation - The Case of Philip Agee," CONNECTICUT LAW REVIEW, vol. 13, p. 317, 1981.

SPEAKING ENGAGEMENTS:

Speaker, CT Bar Association, Construction Law Section, "No More 'Slaughter Clauses'--Subcontract Provisions Under Conn. Gen. Stat. section 4b-96," November 10, 2021; Speaker, CT Construction Managers Association, "Design Build Contracts-- the Relationship Between the CM/Contractor and the Designer," October 19, 2021; Co-Presenter: "Avoiding The Worst Subcontract 'Slaughter Clauses'," Connecticut Subcontractors Association, December 14, 2020; Recovering Extra Job Costs Resulting From The Covid-19 Pandemic," Connecticut Subcontractors Association, September 10, 2020; "Panelist: "A Practical Guide to Arbitration in Connecticut," CT Bar Association, February 26, 2019; Co-Presenter, "Connecticut's New Uniform Arbitration Act," Construction Law & ADR Sections, Connecticut Bar Association, September 26, 2018; "The Language of Mediating Construction and Commercial Disputes," ABA Section of Dispute Resolution Spring Conference, April 2010.

Adjunct Professor, "Construction Law" & "Construction Finance Management" (graduate courses) and "Construction Contracts" (undergraduate course), Central Connecticut State University, Construction Management Program, 2004-present. Adjunct Professor, "Law of Public Contracts," University of Connecticut School of Law, 1990-2000.

Locations Where Parties Will Not be Charged for Travel Expenses	Hartford, CT area
Mediation Rate	\$3,400 Per Day
Languages	English
Citizenship	United States of America
Locale	Hartford, CT

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.