



AAA Mediation.org™

**FN-1208533 MN-1208533 LN-1208533,  
Esq.**

**Southfield, Michigan**

**Current Employer-Title** Foster, Swift, Collins & Smith, P.C. - Shareholder

**Profession** Attorney, Arbitrator, Mediator

**Work History** Shareholder, Foster, Swift, Collins & Smith, P.C. 2008 - present; Partner, Abbott, Nicholson, P.C., 1990-2008; Trial Attorney/Field Examiner, National Labor Relations Board, 1979-1990.

**Experience** Over 30 years' experience in labor and employment relations matters; initially as a field examiner and trial attorney with the National Labor Relations Board, and 27 years as an attorney in private practice. Experienced with claims of wrongful discharge, discipline, and employment discrimination, including matters arising under Title VI of the Civil Rights Act (Title VI), Title VII of the Civil Rights Act (Title VII), Elliott-Larsen Civil Rights Act (ELCRA), National Labor Relations Act (NLRA), Public Employment Relations Act (PERA), Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Michigan Persons with Disabilities Civil Rights Act, (MPWDCRA) Age Discrimination in Employment Act (ADEA), Whistleblower Protection Act (WPA), and other federal, state, and local statutes or ordinances.

Recognitions: AV Preeminent, Martindale-Hubbell; Best Lawyers in America (Employment Law) (Management and Labor Law) (Management); Michigan Super Lawyers; (Employment and Labor); Business Magazine, Top Lawyer.

**Mediator Experience** Extensive involvement in various facets of ADR for over 20 years. Served as counsel in numerous facilitations in connection with court cases or through the Equal Employment Opportunity Commission/Michigan Department of Civil Rights dispute resolution programs, and as a neutral mediator in circuit court litigation and through the AAA. Substantive issues in mediated cases include unfair evaluation, wrongful termination, FMLA (retaliation and interference), disability discrimination, age discrimination, ERISA issues, wage payment issues, non-competition and confidentiality agreement violations, claims for insurance proceeds, and tortious interference with employment. Parties to mediation were involved in various industries, including automotive manufacturers, automotive suppliers, automobile dealerships, retail, banking, transportation, insurance and public utilities.

**Representative Issues Handled as a Mediator** Mediated disputes include Family and Medical Leave Act (FMLA) claims (retaliation and interference), disability discrimination claims under the Americans with Disabilities Act (ADA) and Michigan Persons with Disabilities Civil Rights Act (PWDCRA), wrongful discharge claims, claims of non-compete and confidentiality agreement violations, transportation and truth-in-leasing issues, and third-party negligence claims. In a case of first impression under the FMLA, the right to waive statutory rights was a critical issue because the employee had signed an employment application agreeing to a shortened statute of limitations. Discrimination claims involved both direct evidence and circumstantial (McDonnell-Douglas) proofs, as well as disparate impact claims. The non-compete case has included both requests from injunctive relief to prohibit an individual from

working for a new employer, as well as monetary claims against both the former employee and the new employer. In many if not most of the cases, confidentiality was also an important factor.

<b>Mediator Style &amp; Process Preferences</b>	Mediation can be extremely valuable, especially to parties who will have a continuing relationship such as those involved in business or employment relationships. In mediation, a neutral assists the parties and their counsel to reach a mutually acceptable agreement. In so doing, the parties retain control of the desired outcome. Because of the confidential nature of the process, negotiations involve a frank discussion of all the pertinent facts, exploring the interest of the parties, conducting a candid examination of the strengths and weaknesses of each party's case, and generating creative solutions that would not be available from a jury verdict or an arbitrator's decision. A mediator should not impose personal views or attempt to impose a decision or opinion on the parties. Rather, the mediator should assist the parties to persuade their clients, who are the real decision-makers in the process. For this reason, facilitative mediation is preferred. However, for those interested in mediation-arbitration style ADR processes, my experience as an AAA arbitrator allows for a comfortable transition from facilitative to evaluative mediation and, if necessary, to arbitration.
<b>Education</b>	Michigan State University (BA, Personnel Administration, with High Honors (1978); Wayne State University (JD, cum laude-1986).
<b>Professional Licenses</b>	Admitted to the Bar: Michigan, 1997; U.S. District Court, Eastern District of Michigan, 1990; U.S. Court of Appeals, Sixth Circuit, 1991; United States Supreme Court, 2012.
<b>Professional Associations</b>	American Bar Association; Macomb County Bar Association; Society of Human Resource Management; Labor and Employment Relations Association (Detroit Chapter).
<b>Recent Publications &amp; Speaking Engagements</b>	Hiring and Firing Employees in an At-Will Employment World, Foster Swift Automotive Management News, February 2013; How Michigan's New Right-to-Work Legislation Will Affect Municipalities, Foster Swift Municipal Law News, January 2013; Discussion of Freedom-to-Work Legislation, Foster Swift Employment, Labor & Benefits E-News, December 13, 2012; Webinar, An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities, June 6, 2012; Court of Appeals Finds NLRB's Newly Implemented Election Rule Invalid, Foster Swift Employment, Labor & Benefits E-News, May 24, 2012; Problem Patrons: Addressing and Responding to Patron Behavior, 2012 Loleta Fyan Small & Rural Libraries Conference, May 2, 2012; Ask the Library and Labor Lawyer, 2011 Michigan Library Association Annual Conference, October 26-28, 2012; "Common Situs Picketing," State Bar of Michigan, Labor and Employment Law Section, Fall 1998; "Compliance with Federal and State Employment Laws," CLA ADVANTAGE, December 1997; "Recent Legislation Favors Michigan Employers," CLA ADVANTAGE, September 1996; "HR Question: On-Call Duty: When Is an Employer Required to Compensate Its Employees?," AMERICAN SOCIETY OF EMPLOYERS, June 1996; "HR Question: Reference Checking: How Does the New Law Affect Employers?," AMERICAN SOCIETY OF EMPLOYERS, April 1996; "HR Dilemma: Drafting an Effective E-Mail Policy," AMERICAN SOCIETY OF EMPLOYERS, March 1996; "Compensatory Time vs. Overtime," CLA ADVANTAGE, March 1996; "HR Question: Legalities of Compensatory Time," AMERICAN SOCIETY OF EMPLOYERS, February 1996; "Your Employee Tells You She's Pregnant-Now What?," AMERICAN SOCIETY OF EMPLOYERS, August 1994; "Downsizing: The Legal Perils," AMERICAN SOCIETY OF EMPLOYERS, November 1993; "Permanently Replaced Strikes May Still Be Ineligible for Unemployment Benefits," AMERICAN SOCIETY OF EMPLOYERS, October 1993; "Cafeteria Plans: The Employee Benefit Program that Benefits Employers Too," AMERICAN SOCIETY OF EMPLOYERS, June 1993.
<b>Mediation Rate</b>	\$350 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Southfield, MI

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.