



AAA Mediation.org™

**FN-1227342 MN-1227342 LN-1227342,  
Esq.**

**Philadelphia, Pennsylvania**

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**Current Employer-Title** Kang Haggerty LLC Of Counsel

**Panelist Video** <https://www.adr.org/videoresume?paramName=941606141>

**Profession** Attorney

**Work History** Partner, Fineman Krekstein & Harris P.C., 2016-Present; Shareholder/Associate, Jacoby Donner P.C., 1981-2015; Associate, Wolf Block Schorr and Solis-Cohen, 1978-1981; Law Clerk to The Honorable Joseph F. Weis, Jr., United States Court of Appeals (Third Circuit), 1977-1978.

**Experience** Representation of clients in all segments of the construction industry since 1979, including general contractors, construction managers, specialty subcontractors, architects, engineers, owners, developers and suppliers in disputes ranging from mechanics liens to complex multi-party litigation arising from deficient construction and/or design, time-based claims (delay, acceleration, impact) to defense of major uninsured claims for property damage, wrongful death or personal injury arising from construction, with emphasis on complex, multi-party litigation. Practice is divided equally between state courts, federal courts, and arbitration.

Caseload has been consistently most heavily weighted toward contract-based disputes involving issues of scope and time-based claims on commercial, industrial and institutional projects, along with governmental buildings and infrastructure projects, including airports, wastewater treatment plants, water treatment plants, prisons and heavy highway work.

Green Advantage Certified since 2010 (Commercial Building).

**Mediator Experience** Judge Pro Tem—settlement master to mediate business disputes as appointed from time to time by the Commerce Program judges for the Court of Common Pleas of Philadelphia County from 2004 to present: since 2019, most of these cases have involved contract disputes among contractors and owners or contractors and subcontractors; have also served in that capacity within that court's Trial Division for non-commerce cases since mid-1990's.

Private mediation of disputes between contractor and subcontractor over scope.

**Mediator Style & Process Preferences** Most parties to construction disputes negotiate on a routine basis. But sometimes they get stuck and need help. Mediation allows "stuck" parties to continue seeking a resolution that they control, but with guidance by someone with no stake in the outcome: the mediator.

The mediator's role is to help the parties get negotiations back on track and then help the parties get to a resolution. Because each case differs in personalities and dynamics, the nature of that help

varies with each case. In most instances, I work by telephone in advance of the scheduled mediation to learn what impediments there have been to settlement, and what may be driving the dispute. These calls are usually with counsel. Where appropriate, I will work with counsel to narrow issues, and to seek agreement on technical issues so the parties are working from the same page, or to determine where they can't do so. In this sense, a fair amount of advance work sets the stage for "the mediation," where all participants come together at the same time. In some sense, this moves away from the traditional notion that the mediation is a big event and that everything will happen on the day of the mediation. At all times I keep in mind that mediation may present a better chance than the adversary system to preserve a business relationship that is salvageable.

The structure of the mediation session depends on a number of factors, which I discuss with counsel beforehand. **WRITTEN SUBMISSIONS:** Knowing that parties come into mediation in part to avoid unnecessary legal costs, the nature of written submissions is tailored to what appears necessary for an efficient mediation. Sometimes what's needed is already written in pleadings and briefs, and those may be sufficient along with a short additional written statement. Other cases may benefit from a full blown mediation submission, while others may not require a written submission at all. **THE MEDIATION SESSION:** Depending on (i) personalities, (ii) the need for the parties to the particular dispute that hear directly from the other parties, and (iii) a number of other factors, I start with either a session with all parties and break into caucuses, or I start with the parties separated. My work involves listening, challenging the parties (reality checking) in the private caucuses and looking for creative solutions that participants too close to the dispute may have overlooked. But I remain facilitative, becoming evaluative only if requested, and only very rarely sharing any analysis beyond the private caucus (and even then, only if requested by all parties). **POST-MEDIATION SESSION:** Just as the "main event" approach to the mediation has waned, I understand that many cases do not settle "at" the mediation, but that the mediation session can be a catalyst for settlement afterwards. Accordingly, I continue to follow up by telephone until settlement or until it's determined by the parties or me that the case cannot settle, or the parties aren't ready to settle.

## **Education**

The George Washington University (JD, Law Review-1977); Carnegie Mellon University (BS, Economics-1974).

## **Professional Licenses**

Admitted to the Bar: Pennsylvania (1977); US District Court: Eastern District of Pennsylvania (1978), Middle District of Pennsylvania (1980); US Court of Appeals: 3rd Circuit (1978).

## **Professional Associations**

American Bar Association (Forum Committee on the Construction Industry, Litigation Section, Dispute Resolution Section); Philadelphia Bar Association (Federal Courts Committee, Appellate Rules Committee, State Civil Committee - Chair - 1993).

## **Recent Publications & Speaking Engagements**

Since 2001 and through 2018 spoke at and prepared course materials about current developments for the Pennsylvania Bar Institute's biennial seminar on Pennsylvania Mechanics Liens, presented in Pittsburgh, Mechanicsburg and Philadelphia; Since 2012, have also served as Course Planner for that program.

The 2018 Changes to the Pennsylvania Contractor and Subcontractor Payment Act Seminar, General Building Contractors Association;

Changes to the Pennsylvania Mechanics Lien Law: The Pennsylvania State Construction Notice Directory—What it Means for Your Company, GBCA Today, 2017;

"Building Information Modeling in Litigation"--Speaker at AGC-AIA BIM Forum, Fall Meeting, 2014;

A Walk Through the Surety Claim Process, Construction Management Financial Association, Penn-Del-Jersey Chapter, 2014;

Getting Paid, General Building Contractors Association, 2011;

The "New" AIA Documents and The Consensus Docs, Seminar for the Construction Management Association of America, Mid-Atlantic Region, Course Planner and Presenter, 2009;

"Navigating the Wilderness--Some Proposals for the New World of Mechanics Liens", The Legal

Intelligencer--Construction Law Supplement, 2009;

"They're Back...And This Time It Looks Like They're Here to Stay--The "New" AIA Documents and The Consensus Documents,--Seminar for The Construction Management Association of America Mid-Atlantic Region, Course Planner and Presenter, 2009;

Construction Law Update--Construction Financial Management Association Philadelphia Chapter, 2008;

A First Look at the New AIA Documents and Consensus Documents Construction Financial Management Association, Penn-Del-Jersey Chapter, Speaker, 2008

A First Look at the New AIA Documents and Consensus Documents, November Full Membership Meeting of the Building Contractors Association of South Jersey, Speaker, 2007;

Pennsylvania Construction Law Start to Finish--Creative Strategies for Project Completion and Litigation Avoidance, Lorman Education Services, Course Planner and Speaker, 2000-2003 and 2004;

Public Construction Contracting in Pennsylvania, Lorman Education Service, Course Planner and Speaker, 1998-1999;

The Enforceability of "No Damages for Delay" Clauses in Pennsylvania, Fifty State Monograph on the Enforceability of "No Damages for Delay Clauses," American Bar Association, Section of Litigation, Committee on Construction Litigation, 1998.

**Mediation Rate**

\$400 Per Hour

**Languages**

English

**Citizenship**

United States of America

**Locale**

Philadelphia, PA

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.