



AAA Mediation.org™

**FN-1238593 MN-1238593 LN-1238593,
Esq.**

Washington, District of Columbia



Current Employer-Title Law Office of Brian S. Harvey

Profession Attorney, Arbitrator and Mediator; Educator

Work History Law Office of Brian S. Harvey, 2009 - present; Professorial Lecturer in Law (adjunct professor), The George Washington University School of Law, 2013 - present; Partner, Baker & Hostetler, LLP, 1990 - 2009; Associate, Baker & Hostetler, LLP, 1981 - 1989; Judicial Law Clerk, U.S. Court of Appeals for the Fourth Circuit (Hon. James M. Sprouse), 1980 - 1981; Judicial Law Clerk, U.S. District Court for the Western District of Virginia (Hon. James C. Turk), 1979 - 1980; Law Clerk, Marshall & St. Clair (Huntington, WV), 1978; Law Clerk, Mentor County, Ohio, Public Defender's Office, 1977.

Experience Legal Practice: Partner in major law firm for 20 years. Served as Hiring Partner and manager of the summer associate program. Practice areas included litigation, business transactions, employment law and neutrals service. Clients included public corporations, small businesses and individuals.

Practice as advocate includes jury and bench trials, first chair; appeals; injunction proceedings; motions, discovery and all phases of civil litigation; arbitrations, mediations and administrative matters. Advocacy experience includes class and collective actions and other multi-party proceedings. Has represented numerous organizations and individuals in disputes involving contractual issues; statutory rights; libel, slander, defamation and privacy issues; wage-hour matters; discrimination, harassment and retaliation issues; executive compensation; pensions and employee benefits issues.

Experience as counsel includes advice, negotiation and drafting of contractual documents in corporate mergers and acquisitions; asset and stock purchase agreements; formative business documents including shareholder agreements, operating agreements and partnership agreements; employment and independent contractor agreements; employee benefit, incentive and pension plans; executive compensation; provisions for termination, severance, protection of trade secrets and other intellectual property; post-transaction and post-employment covenants, including non-compete, non-solicitation and non-disclosure provisions. Has served as employment counsel in international business transactions. Provides compliance counseling with laws addressing the workplace.

Commercial Arbitration: Has arbitrated approximately 80 commercial disputes in numerous industries. Representative claims arbitrated to conclusion include breach-of-contract claims under business agreements; payment, performance and termination disputes under services agreements, government contracts and subcontracts, independent contractor and commissions agreements, licensing and franchise agreements; claims involving e-commerce, software development, source code and other aspects of digital technology; disputes arising from shareholders' agreements, operating agreements and partnership agreements, including withdrawal, termination and retirement issues; trade-secret misappropriation; professional negligence; securities-related claims; defamation, libel, fraud, misrepresentation, fiduciary breach and other tort disputes; and FIFRA data compensation disputes.

Employment-Related Arbitration: Has arbitrated over 150 employment-related disputes, including numerous contractual disputes under executive employment agreements, "change-of-control" provisions; severance and termination issues; disputes concerning executive compensation and benefits, including stock options and other equity-based compensation; disputes under employee benefit and retirement plans (including ERISA claims); indemnification disputes; fiduciary duty disputes; cross-border and international employment disputes; non-compete covenants and other post-departure restrictions; wrongful discharge and whistleblower matters; disputes involving defamation, libel and slander; misrepresentation, fraud and other intentional tort claims; statutory disputes, including discrimination, retaliation, reprisal, harassment and hostile work environment claims under Title VII, 42 U.S.C. Section 1981, the Equal Pay Act, Americans With Disabilities Act, Age Discrimination in Employment Act Family and Medical Leave Act and state leave laws; disputes under the Employee Retirement Income Security Act; and numerous arbitrations involving collective and individual actions under the Fair Labor Standards Act and similar state laws (misclassification, overtime, minimum wage, wage-payment and terminal pay).

Extensive experience with virtual proceedings.

Mediator Experience

Approach to mediation draws upon over 25 years' experience as a partner and associate in a large law firm, representing clients in civil litigation, including class action litigation, collective actions and other multi-party matters, and in business transactions. Bring to mediation practice the highest standards of client service, tenacity and creativity in problem solving, and meticulous attention to detail.

Served as mediator in a broad array of complex commercial disputes and contract matters, including complex disputes involving multiple parties and national class-wide claims; multimillion dollar government contracts and matters concerning subcontractors; service contracts, supply contracts, and consulting agreements; shareholders', partnership and other business-entity agreements; executive employment agreements; restrictive covenants; statutory employment claims; "stock-drop" and other securities-related claims; serious personal injury claims; intentional tort claims in the business setting; estate distribution issues; reputational issues; and privacy concerns.

As of March 2016, have served as mediator in over 200 cases. Mediations have involved large, global firms, as well as small organizations, governmental entities, family-owned businesses, and individuals in a broad range of industries, including manufacturing firms; government contractors and subcontractors; construction firms; law firms, accounting firms and other personal services firms; hospitals and medical practice groups; pharmaceuticals; universities, schools and colleges; trade and professional organizations; non-profits; software companies; rail, truck and air transportation companies; financial services firms; food service and restaurant companies; automobile dealers; retail concerns; hotel companies; insurance companies; energy firms; security and guard services; public relations firms; entertainment businesses; and a range of governmental parties. Work comfortably and effectively with individuals at every level of an organization. Mediated or arbitrated several cases involving partnership transitions in professional services firms and departures of "C level" officers from public and private companies (chief executive officer, chief operating officer, chief ethics officer, chief financial officer level, general counsel, executive vice president). Parties have also included medical doctors, psychologists, nurses, law firm partners and firm personnel at every level, sales persons, journalists, truck drivers, teachers and college faculty members, food servers, law enforcement personnel and security guards.

Member of the American Arbitration Association Northeast Master Mediation Panel, as well as the mediation panels of the U.S. District Court for the District of Columbia and Circuit Court for

Baltimore County, Maryland.

Teach a course on mediation as an Adjunct Professor at George Washington University Law School and have served as faculty for the AAA Continuing Education 40-Hour Course, "Essential Mediation Skills for the New Mediator" (October 2014, November 2013).

Representative Issues Handled as a Mediator

Representative issues handled as mediator include multimillion dollar claims arising from performance, payment and termination issues under complex commercial contracts, government contracts and subcontracts; class action settlements, including resolution of plan-of-allocation issues and other issues concerning class-wide relief; claims arising from services contracts, consulting agreements, franchise agreements and commission arrangements; commercial disputes and employment-related disputes arising in international settings, including issues concerning enforceability of mediated settlement agreements in the cross-border context; claims for broker's fees and finder's fees; claims of fraud and breach of fiduciary duty; shareholder disputes; matters arising from business ownership transitions; disputes under "buy-sell" agreements; business torts, including misrepresentation, fraud, and other torts in the business setting; matters concerning departures of partners or other principals from personal services firms and issues under partnership agreements; unfair competition; matters arising from covenants not to compete and other restrictive covenants; and probate and testamentary disputes concerning disposition of estate property among heirs.

In the employment setting, have mediated numerous collective actions and individual claims under wage-hour laws; complex employee benefits issues, including certified class-action litigation under ERISA involving "stock-drop" claims; a wide variety of contractual disputes, including matters under executive employment agreements involving compensation issues, stock options and other forms of equity-based compensation, disputes under change-in-control provisions, and the full range of practical and legal considerations raised by termination of employment at the "C" level; whistleblower claims under the False Claims Act, Sarbanes-Oxley Act, Dodd-Frank Act and other retaliation and reprisal issues; the full range of statutory discrimination claims and wrongful termination claims; serious personal injury claims; civil rights and constitutional claims; defamation (libel and slander), privacy issues, and other issues bearing on reputational interests; and attorney fee disputes in fee-shifting matters.

Mediator Style & Process Preferences

Most legal disputes call for a combination of mediation techniques. Of course, all mediations require tenacity, patience, imagination and an indefatigable optimism that resolution is within reach. Often, through the early phases of a mediation, I use a facilitative approach. If and as appropriate, I will resort to more evaluative methods.

Typically, early events in the mediation process can be tailored as appropriate to fit the parties' stated needs and preferences, consistent with the goals of self-determination and voluntariness. Promoting the parties' sense of mutual control at the start of the mediation process, with my guidance as neutral, can help gain "buy-in" to the mediation process and cement the parties' commitment to keep working toward a satisfactory conclusion.

Before meeting with the parties for our in-person mediation session, with the agreement of the parties, I often consult with counsel (or, if a party is unrepresented, with the party directly) to discuss mediation logistics and procedural details. At first we consult jointly, and then, after written pre-mediation statements have been submitted (or, occasionally, exchanged), I may confer with each side individually to explore the broader context of the dispute, to discuss expectations, in confidence, for our upcoming in-person session, and to consider with the parties mediation participants and the format and mediation techniques that will be most effective for our in-person session.

Conferring before we meet fosters preparedness by all and enables more efficient use of the limited time we all have together. Early discussion of procedural options can also serve, strategically, as a low-pressure entree for insights into the often-unstated needs and interests that underlie each party's early settlement requests. It can also smoke out, if not already apparent, the extent to which I may be called upon to perform a more evaluative function.

As the mediation progresses, caucuses provide opportunities to explore further the underlying interests and needs of the parties. Different approaches are called for at different phases, and with different participants. I draw on my three decades of experience with conflict resolution and my

ability to work comfortably with people at all levels of an organization to choose the mediation technique that I deem best for people involved in the current dynamic of the dispute. I ask questions. I may posit scenarios of possible alternative outcomes, in order to test the parties' respective perceptions of their own situation and that of their opponents. If and as appropriate, I may bring to bear my own assessments, subtly or directly. "Devil's advocacy," role-playing and humor when appropriate can foster fresh ways of looking at a problem and help parties identify common ground for achieving voluntary resolution on their own terms.

In-person mediation sessions provide invaluable opportunities to explore settlement options, since much meaningful communication is non-verbal. It is not unusual, however, for considerable mediation progress to be made through telephone consultations and other electronic communications. Often, with agreement of the parties, if settlement is not attained at the formal mediation session, I follow up tenaciously with the parties, after the session, to continue assisting the parties with settlement and closure.

Education

Case Western Reserve University (JD, Law Review-1979); Marshall University (BA, magna cum laude-1976).

Professional Licenses

Admitted to the Bar: District of Columbia (1981); District of Columbia Court of Appeals; Maryland Court of Appeals; Supreme Court of Ohio (not active); U.S. Courts of Appeals: Second, Third, Fourth, Fifth and District of Columbia Circuits; U.S. District Courts: District of Columbia and District of Maryland; U.S. Supreme Court.

Professional Associations

American Bar Association, active as Editor, Section of Litigation ADR Committee Quarterly Newsletter; District of Columbia Bar Association; Maryland State Bar Association; College of Labor and Employment Lawyers; Prettyman-Leventhal American Inn of Court (Past President); International Institute for Conflict Prevention and Resolution; Association for Conflict Resolution.

Recent Publications & Speaking Engagements

Speaking Engagements:

Presentation, "How to Make Arbitration Work for Your Clients," Metropolitan Washington Employment Lawyers Association, May 2018; Faculty, AAA Essential Mediation Skills for the New Mediator, October 2014; Faculty, AAA Essential Mediation Skills for the New Mediator, November 2013; Presentation, "Arbitration: Redefining the Landscape of Efficient Business Practices," University of Maryland Francis King Carey School of Law Business, November 2012; Faculty, AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012; Faculty, AAA Drafting Mediation Settlements that Stick, 2012; Faculty, AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012; Faculty Member, AAA Webinar, "Drafting Mediation Settlements that Stick," 2011; Faculty Member, AAA Program on Advanced Mediator Training, 2010.

Publications:

Service as Editor, ABA Section of Litigation, ADR Committee Quarterly Newsletter, 2021-present; "Making the Most of Your Arbitration Process," 8 Journal of Business & Technology Law 385, Spring 2013; "Wage and Hour Compliance," HR WATCH, January 2007; "Enforcement of Non-Compete Agreements," THE CYBERSPACE LAWYER, January 2006; "ADR: What Every HR Professional Needs to Know," PERSONNEL LAW UPDATE, January 2006; co-author, "'Creative Professionals' or Mere 'Legmen' - Are Journalists Entitled to Overtime Pay?" BAKER MEDIA REPORT, September 2004; "Why Your Credit Union May Want To Have Language Policy," CREDIT UNION JOURNAL, April 2004; co-author, "U.S. Supreme Court Issues Major Decision on the Enforceability of Employment Arbitration Agreements," BakerHostetler, April 2001.

Locations Where Parties Will Not be Charged for Travel Expenses

No charge for travel time under four hours or within 250 miles of Washington, DC.

Mediation Rate

\$510 Per Hour

Languages	English
Citizenship	United States of America
Locale	Washington, DC

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.