



AAA Mediation.org™

**FN-1245681 MN-1245681 LN-1245681,  
Esq.**

Atlanta, Georgia



<b>Current Employer-Title</b>	<p>Penn Payne, LLC</p> <p>Available for arbitrations and mediations conducted in person or by videoconference or for hybrid hearings (some parties are in person and others participate by videoconference). Available to conduct fully in-person arbitrations and mediations based on the then-current Covid-19 status and the wishes of parties and counsel.</p>
<b>Profession</b>	<p>Attorney, Mediator, Arbitrator, Independent Investigator of Employee Complaints and Workplace Disputes</p>
<b>Work History</b>	<p>Penn Payne LLC, 2004 – Present; Partner, Kirkley &amp; Payne LLP, 1998 – 2004; Of Counsel, Nations Yates &amp; Toman, 1989 – 1998; Partner/Associate, Vaughan Roach Davis Birch &amp; Murphy (and predecessor firms), 1979 – 1988; Teacher, Seoul (Korea) Foreign School, 1973 – 1974; Teacher, Ewha Women's University (Seoul, Korea), 1973; Admissions Director, The Harley School (Rochester, NY), 1968 – 1972; Teacher and Admissions Secretary, The Barstow School (Kansas City, MO), 1966 – 1967.</p>
<b>Experience</b>	<p>For 28 years, represented parties in employment, general business and commercial litigation (discrimination, retaliation, restrictive covenant, employment contract, civil rights, antitrust, securities, trade secrets, business fraud and other business torts, partnership and fiduciary duty, creditors' rights and bankruptcy, general contract, Computer Fraud and Abuse Act, Computer Systems Protection Act, and business dissolution disputes), with a heavy concentration in employment and restrictive covenant disputes. Has represented both employees and management in litigation, negotiation, mediation, and arbitration, in cases involving: discrimination on the basis of race (including reverse race discrimination and affirmative action), sex (including pregnancy), age, disability, national origin, ethnicity, and religion; retaliation; sexual and racial harassment; independent contractor disputes; employee classification and wage and hour claims under the FLSA (Fair Labor Standards Act); issues unique to governmental employees; the Family and Medical Leave Act; the Equal Pay Act; employment contracts and change of control agreements; restrictive covenants (non-compete, non-solicit, trade secrets and confidentiality agreements); and executive compensation.</p>
<b>Mediator Experience</b>	<p>Has served as a mediator since 1998. Many of the mediations have involved an employment relationship. The claimed amount of money in controversy ranged from several million dollars to as</p>

little as a few thousand dollars. Mediated across a wide range of industries, businesses and professions, including healthcare, financial services, hospitality and restaurant, insurance, retail chain store, staffing, and technology industries, as well as a wide range of other industries, with employers having anywhere from a few hundred local employees to several hundred thousand world-wide employees. Approximately two-thirds of the cases were settled at or shortly after the mediation. Employment mediations have involved:

- sexual and racial harassment
- discrimination on the basis of sex, age, race, national origin, ethnicity, pregnancy, religion and disability
- retaliation
- employee classification and wage and hour disputes under the FLSA (Fair Labor Standards Act)
- restrictive covenants (non-compete, non-solicit, trade secrets and confidentiality agreements)
- employment contracts and change of control agreements
- stock options and other forms of executive compensation
- the Family and Medical Leave Act
- the Equal Pay Act
- intentional infliction of emotional distress
- invasion of privacy
- negligent hiring and retention
- civil assault and battery

Commercial mediations have involved:

- complex contractual disputes relating to business acquisitions and dissolutions, purchase and sale agreements, and hotly disputed contract interpretation in various contexts and various industries
- business torts such as claims between competitors for tortious interference with business relationships and computer fraud and abuse
- complex disputes between a business and a member of its executive team involving change of control agreements, executive bonuses, stock options and other compensation, termination, restrictive covenants and trade secrets, ERISA, and breach of fiduciary duty claims
- disputes in the healthcare, financial services, hospitality and restaurant, insurance, retail chain store, staffing, and technology industries, as well as a wide range of other industries.

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

Has mediated cases involving all forms of employment discrimination and retaliation, based on race, sex (including pregnancy), racial and sexual harassment, age, disability, religion, ethnicity, national origin, and family and medical leave. The single largest group of cases has involved claims of sexual harassment or sex discrimination. The employees in the cases mediated have claimed discriminatory or retaliatory discipline, termination, constructive discharge, failure to promote, failure to train, physical and emotional harassment, and being set up to fail. Has also mediated FLSA (Fair Labor Standards Act) claims, including a collective action, employment contract claims and state law claims of intentional infliction of emotional distress, invasion of privacy, negligent hiring and retention, and civil assault and battery.

## **Mediator Style & Process Preferences**

Not surprisingly, the mediation process is most likely to be successful in employment cases if the right conditions are in place. The following factors help to create the "right conditions" for settlement: (1) the parties have exchanged a substantial amount of factual information, either through discovery or informally; (2) the parties have experienced the unpleasant realities of litigation, especially protracted litigation--attorneys' fees and costs, loss of productivity, lost time from work, burdensome discovery, anger, frustration and anxiety--and are worn down by the process; and (3) the lawyers for the parties have maintained a reasonably civil relationship, even if their clients are hostile toward each other. As a mediator, I therefore take steps to create or accentuate these conditions. In advance of the mediation, I urge the parties to exchange information informally if discovery has not already revealed the key facts. I ask the parties during the mediation to focus on all the events and costs that will occur if they do not settle. And I create and enforce an atmosphere of civility, allowing the parties to "vent" but without personal attacks on one another.

I view my mediation style as a combination of the facilitative and evaluative methods. I usually begin the mediation in the facilitative mode, allowing the parties to tell their story in as much detail as they wish, asking questions and seeking clarification of issues. As the day wears on, I find that the parties usually want evaluative input from the mediator in the private caucuses and will take the input seriously if they have asked for it, rather than if the mediator imposes her opinions on them. There is always the danger that the parties will think the mediator is not truly neutral when she tells them the weaknesses that she perceives in their respective cases, and I have found that I can

minimize that risk by holding back on evaluative content until a party is ready to hear it, as well as by emphasizing that, in my own practice, I have represented both employers and employees, so that I can empathize with both plaintiff and defendant perspectives. Toward the end of the mediation day, I do not hesitate to push parties toward settlement, if that seems to be a productive approach under the circumstances. Cases will sometimes settle a few days or weeks after the actual mediation if the mediator is persistent, without being obnoxious, in keeping the attorneys talking settlement, and I often will suggest a follow-up phone conference to keep the dialogue going, if the case appears to be one that could settle after the parties have a few days' distance from the mediation.

I ask parties to submit pre-mediation statements and often have a pre-mediation telephone call with counsel for each party separately. I start the mediation with a short joint session for my preliminary remarks and for any questions that the parties or counsel may have. I hold a substantive joint session if counsel ask to do so. We then break up into separate caucus rooms (in person or virtual), and I meet with each party, going back and forth until the parties reach a resolution. I urge parties and counsel to sign a settlement agreement at the time of the mediation, but they often negotiate the agreement after the end of the mediation session. I am available to assist with that process if necessary.

<b>Technology Proficiency</b>	Experienced in conducting, hosting and recording (as necessary) arbitrations and mediations using the Zoom platform, including screen sharing functions for display of exhibits and/or other methods of displaying exhibits electronically.
<b>Education</b>	Emory University (JD, With Honors, Order of the Coif-1978); Stanford University (AB, History, Dean's List-1966).
<b>Professional Licenses</b>	Admitted to the Bar: Georgia (1978); admitted to practice before state and federal courts in Georgia. Registered Neutral, Georgia Office of Dispute Resolution.
<b>Professional Associations</b>	Fellow, College of Commercial Arbitrators; National Academy of Distinguished Neutrals; Georgia Academy of Mediators and Arbitrators; Georgia Arbitrators Forum; State Bar of Georgia (Labor and Employment Section; Dispute Resolution Section); Atlanta Bar Association (Labor and Employment Section; Dispute Resolution Section); Lamar Inn of Court (Past member; Past Executive Committee); Federal Defender Program (Past President of Board of Directors); Emory Law School Council (Past member).
<b>Recent Publications &amp; Speaking Engagements</b>	SPEAKING ENGAGEMENTS: International Centre for Dispute Resolution, 14th and 16th Annual International Practice Moot and Lecture Series, arbitrator for Willem C. Vis International Commercial Arbitration practice moot; Atlanta Bar Association Dispute Resolution Section, "Techniques for Breaking Through a Mediation Impasse"; 8th Annual Conference of the Atlanta International Arbitration Society, "Award Writing Panel Discussion"; AAA/ICDR Council, New York Law School, Cornell Scheinman Institute Conference: Arbitration, Justice, and the Individual in the Workplace, panel discussion: "Innovations in ADR: The Role of the Special Master in Employment Dispute Large-Group Case Filings"; Georgia ICLE Annual Arbitration Institute, "Recent Developments in the Law of Arbitration"; Georgia ICLE Annual Arbitration Institute, "Making Arbitration Work: Effective Management Skills for Advocates and Arbitrators"; "The Good, the Bad and the Ugly," American Arbitration Association mediation panel discussion; "The Employment and Labor Arbitrator's Code of Ethics," American Arbitration Association panel discussion; "Negotiate, Mediate, Settle," conducted mock mediation, Atlanta Bar Association Advanced Employment Law Seminar; "Mediation of Employment Claims," The Seminar Group's 2nd Annual Labor and Employment Law Seminar; "The Ten Most Common Employment Law Mistakes," 9th Annual Advanced Employment Issues Seminar; "Selected Developments in Georgia Restrictive Covenants Law," 34th Annual Labor and Employment Law Institute; "Analyzing an Age Discrimination Mediation: Termination Tempest," 11th Annual ADR Institute and 2004 Neutrals' Conference; "Facilitating Early Settlement of Litigation," American Corporate Counsel Association, Georgia Chapter; "Mediating at an Early Stage of a Dispute: Techniques to Increase the Likelihood of Settlement," Atlanta Bar Association, ADR Section; speaker and publication, "Disputes Management: Facilitating Early Settlement of Litigation - An Outside Counsel's View," Corporate Counsel Institute, 2003; "Managing an Employee Who Has Filed a Discrimination Complaint Against Your Company," Society for Human Resource Management, Southeastern Annual Conference, 2003; "Trial Tactics" in EEO Basics," American Bar Association Section of Labor and Employment Law, 2001; "What's Hot and What's Not in Employment Law: An Ounce of Prevention Is Worth a Pound of Cure," American Corporate Counsel Association, Georgia Chapter, 2000;

"Emerging Issues in Employment Discrimination Litigation, Recent ADA Cases from the Supreme Court," Institute of Continuing Legal Education in Georgia, 1999; "The Family and Medical Leave Act," The Layman's Lawyer, weekly program on public television, 1999; "Psychiatric Disabilities Under the Americans with Disabilities Act," Matthew Bender Continuing Legal Education and the Atlanta Bar Association, 1998.

**Locations Where Parties Will Not be Charged for Travel Expenses** Metro Atlanta, GA area.

**Mediation Rate** \$450 Per Hour

**Languages** English

**Citizenship** United States of America

**Locale** Atlanta, GA

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.