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South Pasadena, California



Profession

Mediator, Arbitrator, Special Master

Work History

Neutral, Self-employed, 2000 – Present; Attorney, Max Factor III P.C., 1996 – 2000; Attorney, Factor & Agay Inc., 1994 – 1995; Attorney, Cooper Epstein & Hurwitz P.C., 1986 – 1994; Attorney, Kehr DeMeter Factor Siegel & Herman, 1980 – 1986; President, M.F. Capital Ltd., 1978 – 1986; Deputy City Attorney and Assistant City Attorney, Los Angeles City Attorney's Office, 1974 – 1978; Executive Director, California Law Center, 1971 – 1974; Law Clerk to Hon. Anthony J. Celebrezze, U.S. Court of Appeals for the Sixth Circuit, 1969 – 1971.

Experience

Over 25 years' experience handling business litigation, real estate, and employment in state and federal courts. Business cases include partnership and corporate shareholder dissolution/accounting actions, securities class action and broker/dealer litigation, accountant and expert witness malpractice claims, antitrust and other business torts in the transactional context, and a substantial number of sale of assets or of equity in small- to mid-sized businesses. Real estate matters include investor, owner, and contractor representation in commercial and residential disputes over sales, leasing, or marketing misrepresentations and "exit strategy" disputes; construction disputes representing developers and general contractors; land use issues before many planning commissions and city councils; and real estate partition and condemnation actions. In the transactional context, represented investors and developers in the purchase and sale of a large number of multimillion-dollar commercial buildings and multifamily residential apartments. Employment cases include class actions and individual actions for wrongful termination, sexual harassment, race/gender/sex discrimination primarily on behalf of employees, but also on behalf of some long-term clients who run businesses of less than 500 employees. Court-appointed Special Master in real estate cases. Member of the California Attorney General's Task Force on Women's Rights (Chairman of Committee on Employment, 1974 to 1975) and California Attorney General's Task Force on Consumer Protection (Southern California, 1973 to 1978). Adjunct Professor, Straus Institute for Dispute Resolution, Pepperdine University 2007 – 2019.

Mediator Experience

Following: a sample of matters mediated in the past 22 years:

REAL ESTATE - approximately more than 400 matters:

-Several partnership dissolutions between developers and investors, and between two or more

partners.

- Multi-party breaches of contract among general contractors, sub-contractors, property owners in residential and commercial developments.
- Land movement, soil erosion and drainage dispute, boundary lines, dog trespass, between adjacent property owners.
- Numerous restructuring of loans and equity in RE ventures in which erstwhile partners have filed breach of fiduciary duty, fraud & accounting claims.
- RE investors' claims re licensee misrepresenting material facts or failure to competently handle commercial and residential RE transactions.
- Easement disputes for property owners with limited or no reasonable public access. Purchasers and sellers of residential real estate seeking rescission and/or damages for allegedly misleading material disclosures and for concealment of material facts.

PROBATE - approximately more than 15:

- Contests involving complex RE, business partnership & successor liability issues, as well as elder abuse cases involving allegedly wrongful transfers of real property.

EMPLOYMENT - approximately more than 375 matters:

- Wage and hours claims in many service and retail industries particularly ethnic and specialty restaurants, clothing retailers and gasoline stations.
- Wrongful terminations based on sexual orientation, sexual harassment, medical disabilities, national origin and gender.
- Constructive discharge based on sexual harassment and hostile work environment.
- Defamation and public humiliation claims arising from workplace disputes.
- Sexual harassment and hostile work environment lawsuits with the EEOC as a party.
- ADA lawsuits against public and private entities, as well as several union matters dealing with ADA issues.

FRANCHISE - approximately 25:

- Disputes involving national and local franchisors in retail & fast food industries, and in which licensee or franchisee has copied product or service and is competing with original holder of protected business property rights, as well as landlord - tenant issues dealing with alleged breaches of franchise agreements for failure to make timely payments or for unauthorized transfer of franchise rights.

BUSINESS CONTRACT, CONSUMER TORT, PARTNERSHIP DISSOLUTION & INTELLECTUAL PROPERTY DISPUTES - approximately more than 350 matters:

- Bankruptcy of a major national retailer & successor liability issues.
- Breach of fiduciary duty and accounting claims when founding law firm partner split to join another firm.
- Countless commercial disputes in garment industry, diamond trade, construction, transportation - generally over failure to pay contracted rates and/or failure to deliver timely and/or accurately goods ordered.
- Multi-party accounting claims arising from several partnership dissolutions of physicians in specialty groups that held hospital contracts.
- Million dollar+ attorneys' fees dispute for defense of a class action.
- Commercial contract disputes involving development of computer hardware and computer software systems.
- Reorganization of business partnership assets involving millions of dollars of commercial contracts in the travel industry.
- Shareholder/directors' suit involving medical technology in rapidly developing international markets.
- Patent infringement dispute involving high-tech imaging company and hardware developer.

PROFESSIONAL MALPRACTICE - approximately more than 25:

- Legal malpractice dispute surrounding the advice offered in post-mortem tax planning of a family business, real estate planning and business buy-outs.
- Accounting malpractice on handling of various business accounts and the failure to file proper returns.
- Broker malpractice in the sale of real estate and in sale of business.

Representative Issues

Served as a mediator in a wide variety of litigated cases in which plaintiffs or defendants were

Handled as a Mediator

multinational corporations; securities firms; national defense contractors; real estate developers and/or partners; health care providers and HMOs; municipalities and government-related entities in a number of tort, civil rights, and Americans with Disabilities Act claims; local business or professional partnerships; real estate buyers, sellers and licensees; internet business development companies; and key employees in alleged wrongful termination; as well as basic distributional bargaining with insurance counsel in cases involving alleged personal and/or professional negligence.

Mediator Style & Process Preferences

As a mediator, my goal is to assist the parties to a principled and reasonable resolution. We discuss the real long-term interests, the management of risk, and the potential rewards which each of the parties can achieve. In appropriate situations, compassion, candor and encouraging mutual respect and understanding are necessary ingredients of successful resolution.

My basic strategy as a mediator is to respect counsel and clients by using disciplined approaches to conflict resolution; I exercise common sense and practical knowledge developed from years of litigating and resolving business, real estate and partnership disputes; and I am delighted and determined to explore and assist in creating options to facilitate resolution. Without undermining the parties' right to self-determination or the clients' relationship to their attorneys, I will be evaluative in analyzing the realistic costs, the probable risks, and the potential rewards of "a litigated result".

Upon request of counsel, I am prepared, once properly informed, to be evaluative, rather than simply facilitative of the settlement process. I have been fortunate to have a remarkably high success rate by working diligently and collaboratively to foster "win-win" solutions tailored to the business, community and/or personal needs of the clients. Were there just one sentence to describe my belief as to why mediation works with an experienced mediator who is a good listener and has a tenacious desire to assist counsel in obtaining a settlement it is:

"Since people act in their perceived self-interest, a sensible resolution is one that is structured to give each litigant and counsel results that are more likely than not, risk adjusted, to be better than the litigated result."

My mediation style is a personal adaptation of the strategies for principled conflict resolution developed initially in the negotiation workshops of 1980 and 1981 at Harvard Negotiation Project in a very readable best-seller entitled, GETTING TO YES: Negotiating Agreement Without Giving In.

An additional book which I have found very helpful as a step-by-step guide to conflict resolution is Beyond Winning: Negotiating to Create Value in Deals and Disputes by Robert H. Mnookin, Director of the Harvard Negotiation Research Project. This work provides a fine analytical framework for both principled resolution of conflict and collaborative techniques which enhance the value to the parties of settlements when a business, partnership or employment relationship existed at the time of the inception of the dispute.

Participants in the Mediation Process may find the strategies and techniques of bargaining developed at the Harvard Negotiation Research Project to be useful in turning "disputes into deals" and "good deals into better deals" through practical, tough-minded problem solving techniques, as more fully explained in Beyond Winning.

A more recent work which is designed to serve as part of a law school curriculum on teaching law students how to become more successful negotiators and peace-makers, is Peacemaking, by Douglas E. Noll. This latter work contains an excellent historical analysis of conflict resolution, as handled by many different cultures and expressed in their myths. It also views conflict resolution models from a number of different theoretical approaches: philosophical, psychological, sociological and neurological. The concept of conflict resolution is further seen from the perspective of religion, classical theories of justice and mathematical models of "game theory."

Each of these three books contain many fine articles and other studies as reference material, so that reading the three really provides an excellent opportunity to develop one's approach to effective and principled conflict resolution.

Education

Yale University (JD, Law Journal-1969); Harvard University (BA, Economics, magna cum laude-1966).

Professional Licenses	Admitted to the Bar: California (1970-inactive); U.S. District Court: Central (1971) and Southern (1985) Districts of California; U.S. Court of Appeals, Sixth Circuit (1971).
Professional Associations	International Academy of Mediators (Distinguished Fellow); Los Angeles Superior Court (ADR Committee & Sub-Committee on Operations); Los Angeles County Bar Association, (Executive Committee, Litigation Section); 4th through 8th Annual Robert I Weil Lecture (Chair) and Chair again in 2017; California State Bar (Working Group on Litigation, ADR Committee; Southern Section, Committee on Administration of Justice); Southern California Mediation Association (Board of Directors; Membership Committee; Courts Committee); Los Angeles County Bar Association (President of Inn of Court, Litigation Section, Trial Practice); Employment Section; Real Estate Section); American Bar Association (Dispute Resolution Section; Litigation Section); Jewish Community Foundation of Greater Los Angeles (Real Estate Committee, Past Chair; Board of Trustees); Southern California Mediation Association (Past President); California Academy of Distinguished Neutrals; CalTech (Chair's Council for the Division of Humanities & Social Services).
Recent Publications & Speaking Engagements	Co-Presenter: "Advanced Negotiating Techniques Every Attorney Should Know" at 85th Annual Cal State Bar Conference, 2012; Panelist: "Beyond Mediation: The New Frontier of Dispute Resolution", Women Lawyers Assoc of L.A. ADR Section, 2012; Moderator: "The Neuroscience & Neuroeconomics of Decision-Making: Implications for Mediation" at the 7th Annual Robert I. Weil Lecture, 2012; Co-Presenter, "Highly Effective Strategies & Techniques in Employment Mediation," SCMA, May 2012; Presenter, "Sharpening your Mediation & Negotiation Skills," Pepperdine, May 2012; Co-Presenter, "Building an ADR Practice," American Bar Association's 14th Annual ADR Conference, April 2012; Presenter, American Bar Association's Section of Dispute Resolution 13th Annual Conference, April 2011; "Hardball Tactics: When to Use and How to Defend when Negotiating (or Mediating) the Litigated Case"; Presenter, California Judges Association of Retired Judges Conference, March 2011: "Mediation Confidentiality: Issues & Current Cases;" International Academy of Mediators Conference, "Emerging Ethical Issues: Are Mediations Really Confidential?" May 2008, "Excellence in Mediation Advocacy: How to Best Represent Your Client in Mediation," October 2007 and "Beyond Yes: An Exploration of the Mind and Decision-Making," 2005; Distinguished Visitor Lecturer, "On Understanding the Effects of Fear and Anger on Negotiating Outcomes," Case Western Reserve University School of Law, September 2007; Conference Chair, SCMA Annual Conference (President), 2005; "Ethical Minefields and Better Practices in Business, Employment, and Real Estate Mediations," SCMA Annual Conference, November 2003; "Navigating Conflict in the Family Foundation," Family Foundation Resource Center, December 2002; Southern California Mediation Association, Annual Employment Law Conference, May 2002; "Proven Negotiating Techniques in Business Environments," California Institute of Technology and Art Center College of Design of Pasadena, March 2002; "Q & A: Using Mediation to Resolve Conflict in Divorce," Guest on Irene Kaserla, M.D. Show, Liberty Mutual Network (Nationally Syndicated Radio), 2001; "Voir Dire & Opening Statements in Business Litigation," Inn of Court, Downtown Los Angeles, 1999-2000; "Law as a Care Giving Profession," John Hopkins University: Gifted and Talented Youth Programs: Career Education Day, 1985, 1986; Adjunct Professor, University of Southern California Law School, Commercial Law Seminar: Study of Ambiguities in the Uniform Commercial Code, 1977-78; Clinical Law Program: City Attorney Internship Program on Consumer Healthcare & Law Enforcement, UCLA, 1974, 1975, 1976, 1977; Evening Extension Courses on Dispute Resolution: "Protecting Your Consumer & Financial Interests through Effective Negotiation," UCLA, 1974, 1975, 1978; Consumer Rights Panel: "The Three 'R's: Restitution, Rehabilitation or Retaliation - Is Achieving All Three Realistic?," Constitutional Rights Foundation, 1974, 1976, 1977; California Department of Consumer Affairs Consumer Agency Conference, 1976; various others.
Mediation Rate	\$750 Per Hour
Languages	English
Citizenship	United States of America
Locale	South Pasadena, CA

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.