



AAA Mediation.org™

**FN-1312591 MN-1312591 LN-1312591,  
Esq.**

**Manchester, New Hampshire**



**Current Employer-Title** Bernstein, Shur, Sawyer & Nelson, P.A. - Shareholder

**Profession** Attorney

**Work History** Shareholder, Bernstein, Shur, Sawyer & Nelson, P.A., November 2018-Present; Shareholder, Gagliuso & Gagliuso P.A., 1995-2018; Shareholder, Deasy & Dwyer, P.A., 1989-95; Partner/Associate, Hamblett & Kerrigan, P.A., 1979-88.

**Experience** Over 75% of current law practice is devoted to the representation of contractors, owners, and occasionally design professionals or sureties, among other participants in the construction process. Construction practice involves both public and private commercial, industrial, and institutional projects ranging in value from \$100,000 to \$10 million. Commercial practice has been devoted largely to the representation of individuals and entities in business disputes and transactions. Clients have spanned a range that includes substantial local/regional/national construction firms, developers, media organizations, banks, professional practices, manufacturers, brokerages, retailers and consulting firms, among others. Has extensive litigation experience including hundreds of cases in New Hampshire's courts, both state and federal, as well as numerous arbitration hearings and mediations. Has been responsible for substantial and complex litigation in all phases, including preliminary proceedings, trials and appeals. Has advised clients over a wide spectrum of legal issues facing business entities and their owners, from entity formation to acquisitions.

**Mediator Experience** Has mediated two-party and multi-party construction disputes involving various combinations of general contractors and construction managers, subcontractors, suppliers, owners, design professionals and sureties. Disputes have arisen out of commercial, industrial and residential construction, both public and private, and all project delivery methods. Mediation experience has also involved all stages of construction, including design, bidding, contract formation, performance, scope changes, delay, unforeseen conditions, suspension, termination, payment and mechanic's liens. Has also mediated commercial disputes arising out of many other business relationships and arrangements, such as lending relationships, covenants not to compete and shareholder disagreements. Amounts in dispute have ranged from tens of thousands to millions of dollars.

**Representative Issues** Issues have included construction defect claims; delay claims; payment claims by contractors and

<b>Handled as a Mediator</b>	subcontractors, including claims for unpaid contract balances and claims for additional compensation for extra work. These cases have often involved cross allegations of inadequate or delayed performance by the contractor. Claims against performance and payment bond sureties have also been involved. Issues have also included claims for payment for services rendered by design professionals. Such cases have involved claims of inadequate or delayed performance and have raised issues such as the contracted scope of work, the effect of pre-design construction cost estimates, the basis of the fee, and entitlement to the instruments of service.
<b>Mediator Style &amp; Process Preferences</b>	<p>I believe strongly in mediation as a productive approach to settlement in most cases. The timing of mediation is key, however, and it is important for the parties and their counsel to determine when they have sufficient information, and when other conditions exist, to make mediation most productive.</p> <p>I consider it important to work cooperatively with counsel (or the parties if unrepresented) in advance of the mediation to customize the mediation process to the parties and the dispute. Success in mediation often demands creative approaches and solutions, and the process of crafting them begins with the initial pre-mediation conference.</p> <p>I appreciate thorough pre-mediation written submissions and I review them carefully. Although I normally expect the parties to exchange their submissions, I often invite parties and counsel to submit separate, confidential statements to me if they wish to do so, and to speak with my privately in advance of the mediation conference.</p> <p>Although there is not a single mediation technique or approach that fits all cases, my approach tends to be a blend of facilitative and evaluative mediation. I will often start with facilitative mediation and begin to share my assessment of the issues only later in the mediation conference, after all parties have had an opportunity to express their views and positions, and only if it appears appropriate. I generally will not provide an evaluation if any party objects to my doing so.</p> <p>Although I am persistent and determined as a mediator, I respect the importance of self-determination in arriving at a negotiated resolution, and I will not coerce or manipulate the parties in order to achieve a settlement.</p>
<b>Education</b>	Harvard University (AB, cum laude-1976); Boston University (JD, cum laude-1979).
<b>Professional Licenses</b>	Admitted to the Bar: New Hampshire, 1979; U.S. District Court, District of New Hampshire; U.S. Court of Appeals, First Circuit; U.S. Supreme Court.
<b>Professional Associations</b>	New Hampshire Bar Association; American Bar Association (Litigation Section; Forum on the Construction Industry; Communications Law Forum); Fellow, Construction Lawyers Society of America; Associated Builders and Contractors (New Hampshire-Vermont Chapter; Past Member of Board of Directors and Board Chair); New England First Amendment Coalition (Board Member); New Hampshire Press Association (Board Member); New Hampshire Judicial Council (Past Chair).
<b>Recent Publications &amp; Speaking Engagements</b>	Several seminars and conferences, including "Construction Law: Beyond Hammer and Nails," NH Bar Ass'n, September 2010; "The Basics of Arbitration in New Hampshire," NH Conflict Resolution Ass'n, June 2010; "Dealing with the Media and Other Uninvited Visitors to the Jobsite," ABC, April 2010; "Doing Business in NH and MA - Understanding the Differences," ABC, March 2010; "Managing Online Reader Contributions and Comments," NE Media Law Group, November 2008; "Residential and Commercial Construction Law Essentials," NH Bar Ass'n, November 2006; "Fundamentals of Libel, Defamation and Privacy," NH Bar Ass'n, February 2001; "Advanced Construction Law in New Hampshire," National Business Institute, 2000.
<b>Locations Where Parties Will Not be Charged for Travel Expenses</b>	Southern New Hampshire
<b>Mediation Rate</b>	\$350 Per Hour
<b>Languages</b>	English

**Citizenship**

United States of America

**Locale**

Manchester, NH

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.