



AAA Mediation.org™

**FN-1426652 MN-1426652 LN-1426652,  
Esq.**

**New York, New York**

**Current Employer-Title** Cole Schotz Meisel Forman & Leonard P.A. - Shareholder

**Work History** Shareholder of Cole Schotz Meisel Forman & Leonard P.A. (2006-present); Shareholder of Angel & Frankel P.C. (1985-2006); Associate of Angel & Frankel P.C. (1981-1985); Private Practice and General Counsel to Ronko Sports, Inc, whose primary business was the ownership and operation of a ski, sports and recreation resort (1979-1981).

**Experience** Practice concentration is corporate restructuring and mediation. Corporate restructuring practice includes corporate reorganization, bankruptcy/ insolvency law related matters through the representation of debtors, debtors-in-possession, creditors, creditors' committees, asset purchasers, landlords, secured creditors, shareholders, class-action claimants, Chapter 11 trustees, liquidating trustees, plan administrators, and governmental units and agencies and other parties in interest in sophisticated Chapter 11 proceedings and in non-judicial corporate reorganization and restructurings. Frequently represents domestic and international businesses and individuals in a wide range of matters involving formal bankruptcy, out-of-court restructuring, and workouts of financially troubled companies, and involving employment and commercial disputes.

Provides mediation services and serves on the authorized panel of mediators maintained by (a) the U.S. Bankruptcy Courts for the Southern District of New York; (b) the U.S. Bankruptcy Courts for the District of Delaware; and (c) the United States District Court for the Southern District of New York.

Has an active mediation practice. Has mediated bankruptcy and non-bankruptcy related matters, including in connection with preference and fraudulent conveyance litigation, business and commercial disputes, and employment and landlord- tenant disputes. Recently served on the Bankruptcy Court (U.S.B.C. S.D.N.Y.) approved panel of mediators in Borders Group, Inc. to mediate preference claim avoidance actions. Has been appointed by the United States District Court for the Southern District of New York to serve as a mediator in a number of diverse matters, including employment disputes (matters based upon allegations of violations of state and federal statutes concerning discrimination based upon race, religion, age and/or national origin, violations of The Americans with Disabilities Act, retaliation and hostile work environment) and matters under 42. U.S.C § 1983 (actions alleging the use of excess force, false arrest, or malicious prosecution by employees of the New York Police Department). In addition, has served as a party-appointed neutral arbitrator under the American Arbitration Association rules for large complex commercial disputes.

**Mediator Experience** Mediated a variety of matters, including business bankruptcy, state-law debtor and creditor, landlord/tenant, employment and civil rights violation matters.

More specifically, the bankruptcy and state law debtor and creditor matters have involved preference avoidance actions, fraudulent transfer disputes and related issues. For those matters, mediator selection has been by the parties. The amounts in dispute have ranged from approximately \$150,000 to approximately \$25,000,000. The plaintiffs have included trustees in bankruptcy and estate representatives and the defendants have included individual and corporate entities. The corporate entities have included closely held and public companies, and private equity portfolio companies.

Industries have included an international confectionery manufacturer, national wholesalers and retailers of books, book publishers, manufacturers of games and hobby-related merchandise, a leading wholesaler and supplier of wristwatches, professional services businesses including law firms and accounting firms, linens and household product manufacturers and other manufacturing and supply entities. Some cases reached mediated settlements in the course of a single mediation while other matters required multi-day mediations. To date, all of such matters settled in mediation, or shortly following mediation. Where the matters settled following the formal mediation sessions, the parties advised that such settlements were achieved in significant part because of the progress achieved in mediation.

The employment-dispute and civil rights violation cases have been mediated in association with litigation pending in the United States District Court for the Southern District of New York.

In the employment related matters, parties have included employees of investment advisors and brokers, teachers and college professors for universities and not for profit institutions, and sales personnel for private companies providing vocational training. In addition, as of date hereof, pending employment dispute mediation matters include physicians with a not for profit institution and management personnel of a state agency.

The claims alleged in past and pending employment mediation matters include:

- (a) Civil rights violations under Title VII of the Civil Rights Act of 1964, as amended, including,
  - (i) 42 U.S.C § 2000e-2(a)(1) for discrimination based upon race, color, religion or national origin,
  - (ii) 42 U.S.C § 2000e-2(a)(2) discrimination based upon creating a hostile work environment or otherwise discriminating because of age, race, color and national origin, and
  - (iii) 42 U.S.C § 2000e-3) retaliation claims.
- (b) Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq. as amended (ADEA).
- (c) 42 U.S.C. §§ 1981 and 1210, et seq.- Retaliation and discrimination against individuals with disabilities, including hostile work environment
- (d) Retaliation and discrimination and interference with protected rights under the NYC Human Rights Law ( NYCHRL), The New York City Administrative Code Title 8, § 8-101, et seq.
- (e) Unlawful discrimination under the NYS Human Rights Law (NYSHRL), N.Y. Exec. Law 296

Civil rights violation matters were generally actions against police officers, municipalities and agencies for alleged unlawful arrest and use of excessive force in violation of 42 U.S.C. §§ 1983 and 1988.

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

In addition to the information provided above, examples of the specific issues in mediated matters have included the following:

- (a) In the context of bankruptcy- and state-law debtor and creditor matters in which the underlying litigation centered on preference avoidance, fraudulent transfer and related matters, the substantive issues generally involved questions of law and fact concerning whether the statutory elements of the asserted actions and defenses were applicable. The mediations also addressed how those statutory provisions were being applied and interpreted under relevant case law. Bankruptcy related mediations also included issues relating to the purchase and sale of assets and lease assignments and sale of leases and real property.
- (b) In the context of employment dispute mediations, the allegations and issues mediated have included the following:
  - (i) Discrimination based upon a health disability (cancer) in violation of the ADA, NYSHRL and NYCHRL, as well as retaliation in violation of the foregoing statutes and the FMLA, and interference with rights under the FMLA;
  - (ii) Discrimination, hostile work environment and retaliation based upon age and race in violation of 42 U.S.C. § 1981, and NYCHRL. Claims asserted against employer/owner and agents in their individual capacities.

- (iii) Race discrimination, national origin discrimination, disparate treatment and hostile work environment in violation of Title VII and NYCHRL.
  - (iv) Discrimination on basis of gender and pregnancy in violation of Title VII and NYCHRL. Claims asserted against employer/ owner and supervisors.
  - (v) Discriminatory discharge based upon religious beliefs and mental disability in violation of Title VII, ADA, NYSHRL and NYCHRL, as well as claims for hostile work environment and disparate treatment.
  - (vi) Discrimination based upon a disability (cancer) in violation of the ADA, NYSHRL and NYCHRL, as well as retaliation in violation of the foregoing statutes and the FMLA, and interference with rights under the FMLA.
  - (vii) Discrimination, hostile work environment and retaliation based upon age and race in violation of 42 U.S.C. § 1981, and NYCHRL. Race discrimination, national origin discrimination, disparate treatment and hostile work environment in violation of Title VII and NYCHRL.
  - (ix) Discrimination on basis of gender and pregnancy in violation of Title VII and NYCHRL.
  - (x) Discriminatory discharge based upon religious beliefs and mental disability in violation of Title VII, ADA, NYSHRL and NYCHRL, as well as claims for hostile work environment and disparate treatment.
- (c) In the context of the mediation of actions asserting civil rights violations pursuant to 42 U.S.C. §§ 1983 and 1988, the allegations in most cases have been against police officers, municipalities and agencies alleging false arrest, violation of due process, malicious prosecution and excessive force. Other related matters mediated have included violation of rights under the First Amendment to the United States Constitution.

## **Mediator Style & Process Preferences**

Mediation is the journey to resolution, and, as a mediator, I am the guide. As every journey is different, so is every mediation. The exact role I play as mediator—be it facilitative, evaluative, or transformative, using a light touch, sledgehammer, or something in between-- is itself guided by the terrain. This includes the nature and substance of the dispute, the voluntary, contractual, or court-mandated origins of the process, the personalities and experience of the parties and their representatives, the twists and turns that arise in the joint sessions or individual caucuses, and the ability to read, create and seize upon opportunities. The path taken, proper preparation, and the ability to listen -- not to the noise, but to the message, and not to just the wants, but to the needs, of the parties-- can make all the difference.

Personality, together with skill sets honed through years of experience and training, enhance the ability to keep the mediation on track and to expedite, without hurrying, the process. Neutrality, impartiality and trust are essential. Parties must know, through assurances by and experience with the mediator, that they may fully disclose their strengths and weaknesses to the mediator with confidence that, absent their consent, such information will not be disclosed to or discussed with the opposing side. The mediator must be an attentive audience while keeping the process and the discussion on track and moving forward. What separates a mediator from a mere messenger is patience, perseverance, and creativity as well as the ability to keep the dialogue progressing in the direction of resolution, notwithstanding what may initially appear as an impasse, intransigence or even hostility of one or more parties.

My approach and the conduct of the mediation depend on the needs and circumstances of the particular matter, including the complexity of the matter, the number of parties, whether all parties are represented by counsel, the number and geographic circumstances of the parties and the stage of the litigation (e.g. whether discovery has started or been completed). I provide the parties with my mediation guidelines and my request for a pre-mediation statement, with which I include a list of the matters to be addressed in the pre-mediation statements. I request that the pre-mediation statements be provided for the “mediator’s eyes only,” so as to promote candid disclosure and discussion and to avoid grandstanding or posturing in the statement. I recommend, however, that the parties also exchange (and provide to me) position papers and supporting information, including case law and authorities they believe may support their positions. Joint in-person sessions, where appropriate, together with private caucuses are preferred, but I also have had success with mediations conducted by telephonic and video conference. Mediation, unlike litigation or arbitration, provides an opportunity for the parties to express their positions, arguments and feelings in their own voice and in their own way—not encumbered by the formality and often intimidating nature and trappings of a court room and a judge or arbitrator. The experienced mediator can keep the discussion on track and productive while permitting more flexibility than would likely otherwise be available, and will know when to listen, push, redirect or offer a different perspective. This is where the preparation by, and skills and personality of, the mediator may make the difference between impasse and resolution. I emphasize to the parties that mediation, properly conducted, is a process of negotiated resolution

that provides an opportunity for the parties themselves to be in control of the outcome and can provide them with cost effective finality as to the dispute. With guidance from an experienced mediator, the choices made and the journey's end become apparent, attractive, and the parties' own.

## Education

In addition to the following, in order to update and refresh alternative dispute resolution skills and knowledge, regularly participates in current court, CLE and bar association sponsored mediation and other alternative dispute resolution programs.

Certification:

(i) Received Certification from the Harvard Law School Program on Negotiation ("PON") Mediation Workshop October 22-26, 2007 (5-day intensive program).

(ii) Certificate of Mediation Skills Training issued by the Institute for Conflict Management, Inc., for two-day program sponsored in June 1995 by the U.S. Bankruptcy Court, S.D.N.Y.

## Professional Licenses

Admitted to the Bar: New York (1979);  
U.S. District Court: Eastern (1981), Southern (1983), Northern (1985) Districts of New York;  
U.S. Court of Appeals: Second (1989), Third (1990), Ninth (1998), Eleventh (1998) Circuits;  
U.S. Supreme Court (1989).

## Mediation Rate

\$630 Per Hour

## Languages

English

## Locale

New York, NY

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.