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Houston, Texas



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Current Employer-Title Wilk ADR, LLC – Founder and Owner

Panelist Video <https://www.adr.org/videoresume?paramName=818437717>

Profession Attorney, Arbitrator, Mediator

Work History Founder/Owner, Wilk ADR LLC, 2020 – Present; Associate (1966 – 1970) and Partner and Associate/Shareholder, Hirsch & Westheimer PC, 1966 – 2020.

Experience

Commercial and Energy:
Representation of clients in commercial transactions and commercial litigation. Extensive experience in cases involving corporations and partnership disputes, breach of contracts and contract interpretation, lending and other banking disputes, secured transactions, real estate transactions, administration of trusts, estates and breach of fiduciary duty, oil, gas and mineral disputes, bankruptcy and creditor's rights. Transactional experience includes representing parties in a multitude of commercial contracts, including stock and asset purchase agreements in both public and private transactions, real estate acquisition, sale and leasing, joint ventures, and licensing. Cases including complex commercial disputes between domestic and multi-national companies, including oil and gas disputes between energy and chemical companies and equipment, engineers and service providers, gas transmission, real estate transactions and leasing disputes involving banks, secured transactions, wire transfers, breaches of representations and warranties, including price and accounting adjustments in mergers and acquisitions, interpretation and breach of contract, investments, shareholder oppression, breach of fiduciary duties, medical providers, employees, accounting malpractice and banking, letters of credit, securities, corporate squeeze out and shareholder oppression cases.

Financial Services:

Representation of clients who were borrowers and lenders in commercial and real estate financing transactions and disputes. Representation of clients in negotiating, reviewing, preparing and enforcing loan documents, working out and restructuring loans, and collecting and defending alleged defaults in financial transactions in arbitration and litigation, including bankruptcy and

reorganization cases. Representation of clients and served as a mediator and arbitrator in cases involving deposit agreements, letters of credit and other transfer of funds. Representation of borrowers and lenders in lender liability litigation in state and federal court. Arbitrated and mediated cases as a neutral in many cases involving the same type of disputes referenced above, as well as claims by or against depositors, alleged violation of funding commitments and a variety of other cases between lenders and borrowers.

Employment:

Representation of employers and employees in negotiating and preparing employment contracts and separation agreements. Employment cases include claims of wrongful termination (age and gender discrimination), breach of covenant not to compete, violation of confidentiality agreements (unlawfully taking trade secrets and other proprietary information), violation of non-solicitation provisions, compensation disputes, ERISA claims, and disputes of sex, age, racial and gender discrimination, harassment and retaliation.

Mediator Experience

Mediated over 1,750 complex energy, commercial, and bankruptcy disputes involving, breach of contracts for sale of goods and the sale of businesses, chemicals and other petroleum products, employment disputes, securities, corporate disputes, service providers of technology, patents, licensing, trademark disputes, breach of fiduciary duty in both partnership and legal entity context, trusts and estates, reorganization and bankruptcy, turnover actions, objections to and confirmation of plans of reorganizations, objections to discharge, construction disputes, environmental compliance, insurance disputes, real estate transactions, and will contests. International experience in mediation and arbitration: panel arbitrator in ICC administrated arbitration between drilling contractor and operator of offshore drilling rig involving breach of service contract for maintenance and repair of a blowout safety equipment; advocate in ICDR arbitration for foreign company to recover damages for breach of contract regarding a seismic data acquisition project in Africa; arbitrator in ICDR arbitration between two international energy companies for claims of breach of contract, conversion, violations of the Computer Fraud and Abuse Act and defamation; panel arbitrator in ICDR arbitration relating to the interpretation of contracts and court orders limiting the emissions of chemicals produced as a by-product resulting in refining; arbitrator in ICDR arbitration of termination of a franchise agreement involving international parties; arbitrator in ICDR arbitration for breach of contract for the design and construction of equipment for offshore drilling operation; arbitrator in ICDR arbitration for breach of contract under a service agreement between two parties, one in the Middle East and another in Houston, Texas and the evidentiary hearing was conducted by video conference using the ZOOM platform; mediator of various commercial disputes between foreign companies, including on involving a offshore drilling prospect in the Mediterranean.

Representative Issues Handled as a Mediator

Representative issues in energy matters include: an exploration agreement and a joint operating agreement and failure to comply with COPAS accounting procedures; insurance coverage for loss of an offshore sub-sea well in the North Sea under an Energy Package Policy issued by various London insurers and alleged damages to the assembly supporting the sub-sea well casing and other drilling equipment caused by a severe windstorm; alleged failure to competently control water flow and pay for work order services and bad squeeze job; alleged failure of a wireless drift indicator to accurately monitor the angle of the drill bit during operations; dispute between two developers and suppliers of resin coated sands used in fracking over allegations of breach of contract, violation of trade dress, and unfair competition; alleged faulty design and construction of a special use drilling platform and unfair pricing for the completed rig; claim for recovery of property damages allegedly caused by release of salt water and flaring of gas; claims for personal injury and property damage caused by a super-fund site between 2000 individuals and a refinery accused of dumping toxic waste; claims by well service company of damage to a well bore; title to oil and gas interests, offset wells, and directional drilling and allocation of revenue between different oil wells; specific performance of delivery of assignment of overriding royalty interest allegedly due for finding an operator of an offshore oil and gas concession in the Mediterranean.

Representative issues in commercial matters include: an exclusive license agreement for sale and distribution of hardware and software tools that determine environmental compliance through the measure of emissions in refineries and chemical plants; over 20 personal injury claims from a refinery explosion against an energy company; dispute between buyer and seller of a condominium unit for breach of purchase and sale agreement; alleged breach of fiduciary duty and willful violation of agreements between stockholders/family members of several equipment rental companies; claims between minority investor-shareholders of a medical technology company alleging fraud, interference with business relationships, and breach of fiduciary in operations and

management; claims between owners of undeveloped office condominiums of misuse and misappropriation of funds by operator of real property; securities cases involving alleged statutory and common law fraud, unsuitability, and breach of fiduciary duty; claims between the FTC and a technology advertising company for allegedly participating in deceptive and unfair acts and practices in the course of transmitting unsolicited commercial electronic text messaging; and will contest lawsuits involving allegations of incompetency and undue influence.

Representative issues in bankruptcy matters include: trust litigation involving breach of fiduciary duties and failure to properly account to beneficiaries; recovery of alleged preferences, fraudulent conveyances; and objections to discharge of the debtor and to the plan of reorganization.

Mediator Style & Process Preferences

Mediation provides disputing parties a safe environment to rationally evaluate and resolve their dispute. As mediator, I emphasize the risk and expense, both out-of-pocket and lost opportunity, to continuing litigation. I generally have an opening joint session followed by separate caucuses. During the joint session, I review the ground rules, establish that we have parties in attendance with settlement authority, determine if there are any time constraints, emphasize my impartiality and permit the parties an opportunity to discuss the dispute. During the caucuses I ask the lawyers to review the strength and weaknesses of the case (reminding them that caucuses are private and I will not disclose the weaknesses to the other party), the attorney's estimate of the chance of success, what success means and the costs in dollars and cents of completing the litigation and possible appeals. while the attorney is thinking about his responses to the questions, I talk to the party about the dispute and attempt to obtain what they want and need to resolve the matter. During subsequent caucuses, I play devil's advocate, and help the parties in case evaluation and explore options to settlement. I encourage settlement and am proactive with the parties. A mediator's role requires patience, persistence and being pushy. If an agreement is reached, I help the parties to enter into a term sheet or settlement agreement that is executed by the parties.

Education

University of Texas (JD, with honors, Editor of Texas Law Review-1966; BA-1964).

Professional Licenses

Admitted to the Bar: Texas, 1966; U.S. District Court: Eastern, Southern, Northern, and Western Districts of Texas; U.S. Court of Appeals, Fifth Circuit; U.S. Supreme Court.

Professional Associations

College of Commercial Arbitrators (Fellow); International Mediator Institute (Certified Mediator); Texas Mediator Credentialing Association (Credentialed Distinguished Mediator); State Bar of Texas (Fellow, Dispute Resolution Section, Past Chair); Association of Attorney Mediators, Inc. (Director-National; President-National 1996); State Bar of Texas Grievance Committee (Member and Past Chairman 4B); Harris County Dispute Resolution Center (Director, Pro Bono arbitrator, mediator, moderated settlement conference panelist); Houston Bar Association (Chairman Peer Mediation in Schools Task Force 1993-1994); Houston Bar Association (Fellow, Past Council Member Alternative Dispute Resolution Section); American Bar Association (Alternative Dispute Resolution Section); Texas Bar Foundation (Fellow); Houston Bar Foundation (Fellow); National Association of Distinguished Neutrals; Texas Association of Distinguished Neutrals.

Recent Publications & Speaking Engagements

PUBLICATIONS: "Review Awards for Mistakes of Law or Fact," Texas Lawyer, p.19 (April 2012 - Volume 28, No. 4); "Resolution of Domestic and International Bankruptcy Issues Through Mediation," Conflict Management, A Publication of the Committee on Alternative Dispute Resolution - American Bar Association, p. 19 (Summer 2005 - Volume 9, Issue 2); "ADR Basics," Conflict Management, A Publication of the Committee on Alternative Dispute Resolution - American Bar Association, p. 16 (Summer 2004 - Volume 8, Issue 3); "Mediation of a Bankruptcy Case," American Bankruptcy Institute Journal (May 2003) at 12; "Helping Attorneys See Beyond the Case: Return to Objectivity," Alternative Resolutions No. 2, p. 13 (November 2002); "Alternative Dispute Resolution with the Resolution Trust Corporation and the Federal Deposit Insurance Corporation," 9 The Practical Real Estate Lawyer (May 1993) at 27.

SPEAKING ENGAGEMENTS: Chair of AAA Roundtable for AAA panel of arbitrators on Virtual Hearing by Video Teleconferencing (Fall 2020); "AAA's ACE 14: Red Flags and Risk Areas: Challenges to Arbitrator Authority," Houston, Texas (October 25, 2017); "Emergency Arbitrations," 17th Annual Meeting of the College Commercial Arbitrators, Minneapolis, MN (October 13, 2017); "Handling Your First (or Next) Arbitration," State Bar of Texas CLE, Austin, Texas, December 2013; "Managing a Successful Arbitration," AAA, College of Commercial Arbitrators and JAMS, New Orleans, Louisiana, March 2013; "Managing the Arbitration Process for Efficiency and Economy Following the Preliminary Hearing," AAA University, August 2012; "Mediated

Settlement Agreements," Advanced Mediation Training, AA White Dispute Resolution Center, University of Houston Law School, December 2011; "The Award, Managing Your First Arbitration," AAA, CCA, JAMS and AA White Dispute Resolution Center, University of Houston Law School, November 2011; "The College of Commercial Arbitrator's Protocols for Expectations, and Cost Effective Commercial Arbitration: An Overview," ADR Section, State Bar of Texas Annual Meeting, June 2011; "Arbitration Roundtable," State Bar of Texas, ADR Counsel, February 28, 2010; "Everything You Wanted to Know About Being a Mediator But Were Afraid to Ask," AAM Annual Meeting, April, 2008; "Facilitative Mediation," Alternative Dispute Resolution Texas Style, Texas Bar CLE, October 15, 2007; "Mediation of Securities Fraud Disputes," Houston Bar Association, Securities Litigation and Arbitration Section, Houston, Texas, January 2007; "Delay Tactics in Arbitration," American Arbitration Association, ACE Program, Houston, Texas, August 2006, July 2005; "Arbitration Fundamentals," State Bar of Texas CLE Web Cast, October 2005; "Mediation of a Bankruptcy Case," Mediation for Litigators, South Texas College of Law, Houston, Texas, October 2002; "Mediation of Bankruptcy Disputes," Oklahoma State Bar Meeting, Alternative Dispute Resolution Section, November 2001; "Presentation of Mock Mediation," National Association of Certified Valuation Analysts, Houston, Texas, September 2000; "Helping Lawyers See Beyond the Case," Texas Association of Mediators Annual Conference Training Course, Houston, Texas, February 26, 2000; "Ethical Considerations in Mediation," 16th Annual Bankruptcy Conference, The University of Texas School of Law, Austin, Texas, November 1997; "Consensual Settlement," Association of Insolvency Accountants, 13th Annual Bankruptcy and Reorganization Conference, Dallas, Texas, May 1997; "Advocacy in Mediation," The CLE Institute, Houston, Texas, October 1996; "The CPA's Role in Alternative Dispute Resolution," AICPA National Advanced Litigation Services Conference, New Orleans, Louisiana, October 1996; "Evaluation Mediation: Why, When and How to Manage the Merits," American Bar Association Section of Dispute Resolution, Orlando, Florida, August 1996.

Locations Where Parties Will Not be Charged for Travel Expenses No travel costs within Harris County, Texas. No charge for travel time.

Mediation Rate \$4,400 Per Day

Languages English

Citizenship United States of America

Locale Houston, TX

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.