



AAA Mediation.org™

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Houston, Texas



Current Employer-Title Richard P. Flake, PLLC – Owner

Profession Attorney, Arbitrator, Mediator, Adjunct Professor

Work History Richard P. Flake PLLC, 2017 – Present; Shareholder, Cokinos & Young, 1991 – 2016; Vice President/General Counsel, Spaw-Glass Construction Inc., 1985 – 1991; Assistant County Attorney, Montgomery County, 1984 – 1985; Attorney, Walsh Flake & Stovall, 1982 – 1984.

Experience Over 40 years experience exclusively engaged in mediation and arbitration of construction and business disputes. One hundred percent (100%) of ADR practice concerns development and construction, petrochemical processes and commercial business law, primarily involving disputes between general contractors, owners, sub and specialty contractors, sureties/insurers, suppliers/manufacturers, project managers, project design professionals, joint venture partners and lenders. Public, private and international projects include commercial, heavy/highway, industrial plants and processes, infrastructure, energy, petrochemical, pipelines, power, educational, medical, institutional, marine facilities and residential structures, both onshore and offshore. Alternative energy experience includes wind, solar, nuclear, hydro-power and natural gas. Claims handled in excess of \$1 billion on projects in excess of \$1.5 billion. Experience in all typical claims and defenses presented in construction matters, including design-build, component construction, BIM, CPM scheduling, delay, sequencing, inefficiency, acceleration and disruption claims among others. Adjunct Professor in Construction Law and Ethics for construction management degree program at the University of Houston central campus. Board Certified in Construction Law by the Texas Board of Legal Specialization.

Mediator Experience Of the over 1200 cases mediated, 85% have involved construction, development or real estate issues. These have included disputes between all players in the industry (owner-contractor; contractor-subcontractor; subcontractor-supplier or manufacturer; owner-architect; contractor-architect; architect-sub consultant) etc. Many of the cases have involved insurance coverage issues. Has also mediated approximately 150 employment cases.

Representative Issues Handled as a Mediator Construction cases mediated have involved the following issues: termination for cause and for convenience, delays and calculation of delay damages, payment, contingent payment issues, bankruptcy, liquidated damages, performance issues (concrete, foundation, roofing, curtain wall, MEP, drywall, painting, finishes, etc.), scope of work disputes, claims for concealed and differing

site conditions, submittal delays, environmental impacts, force majeure, indemnity and insurance coverage issues, builder's risk claims, design scope and error, standard of care, and project close-out and punch list issues, among others.

Employment cases have included issues related to Title VII, issues, age, race and sex discrimination, sexual harassment, wrongful discharge, hostile work environment, and Fair Labor Standards Act issues.

Mediator Style & Process Preferences

I firmly subscribe to the "whatever works" philosophy of mediation. I generally prefer to be a facilitator, helping the parties fashion their own resolution to the dispute. I have also been more "directive", when circumstances dictate or when parties seem to need or want that style as a tool to help them resolve the dispute. I believe it is important that parties are allowed to air their grievances and to discuss the relevant issues, without being instructed by the mediator as to what the case is about. Sufficient time needs to be given for this part of the process, although the vast majority of cases take no more than a day. I expect the parties to be prepared, to act professionally toward the process and to the opposition, and I expect them to bargain in good faith. That is really all a mediator can ask.

Education

University of Houston (JD-1981); University of Texas (BA, Phi Beta Kappa-1979).

Professional Licenses

Admitted to the Bar: Texas (1982); U.S. District Court: Southern District of Texas (1982). Board Certified in Construction Law by the Texas Board of Legal Specialization.

Professional Associations

State Bar of Texas (Construction Law Section, Past Chair; ADR Section, Real Estate Section). Houston Bar Association (Construction Law Section, Past Chair, ADR Section, Past Chair). American College of Construction Lawyers (2020-present).

Recent Publications & Speaking Engagements

PUBLICATIONS: "Hot-Tubbing Makes a Splash in Construction Cases - The Water's Warm. Come on In?" DISPUTE RESOLUTION JOURNAL, Vol. 26, No. 3, September 2020, American Bar Association. "An Introduction to Construction Arbitration" - Basics Course Manual for the Construction Foundation of Texas, Fall 2020. "Mediating Construction Disputes: What Works and What Doesn't " HANDBOOK ON MEDIATION, 3D EDITION, JurisNet, 2016, "Nuances of Med/Arb, A Neutral's Perspective, HANDBOOK ON CONSTRUCTION ARBITRATION & ADR, 3D EDITION, JurisNet 2016, "Construction Delivery Systems", 22d Annual Construction Law Conference" State Bar of Texas Construction Law Section 2009, "Curtailling Litigation Costs: Effective Use of Arbitration," BUILDING PROFITS (CFMA), March 2006; "Mediating Construction Disputes What Works And What Doesn't," DISPUTE RESOLUTION JOURNAL, May-July 2003; "Arbitration 101 - What Every Advocate Should Know," video ONLINE CLE, 2003; "From the Neutral's Perspective: What Arbitrators Want From the Process," State Bar Association of Texas, Arbitration Law Course, 1998; "Construction Liens and Bond Claims in Texas," Lorman Educational Services, 1996; "Indemnity Revisited: The Duty to Defend," STATE BAR CONSTRUCTION LAW SECTION NEWSLETTER, vol. 1, no.3, 1991.

SPEAKING ENGAGEMENTS: "Can You Take Me Higher - New Trends in Truncated ADR" State Bar of Texas Construction Law Section conference 2024. "Mock Arbitration" Co-Panelist at American College of Construction Lawyers Annual Meeting 2024. "Relying on Technology in the Age of Covid-19. A Practitioner's Guide to Remote Depositions and Proceedings" - Webinar for the Construction Law Section of the Houston Bar Association, September 2020. "ZOOM Mediations and Arbitrations: The New Normal" - Webinar for the Construction Law Section of the State Bar of Texas, October, 2020. "Discussion on Caucusing and Eliciting Disputant Suggestions," 17th Annual Mediation and Advocacy Skills Institute, American Bar Association, 2019; "Advanced Mediator Training: Mediating Construction Disputes" A.A. White Dispute Resolution Center at the University of Houston 2012-2016; "Practical Arbitration Tips," Houston Bar Construction Law Section 2016, "Construction Industry Disputes: The Good, the Bad and the Ugly," 26th Annual Construction Law Conference, 2013; "Construction Delivery Systems", 22nd Annual Construction Law Conference" State Bar of Texas Construction Law Section 2009; "Construction Mediation Advocacy," 19th Annual Construction Law Conference, 2006; "Construction Mediation, What Works and What Doesn't," 15th Annual Construction Law Conference, 2002; "Construction Manager at Risk: What's in a Name?" 14th Annual Construction Law Conference, 2001; "Construction Law/Alternative Dispute Resolution," Texas A&M Construction Executive Program, 1996-02; "Residential Construction Update," University of Texas, 7th Annual Construction Law Conference, 1993; "Risk Shifting in Contract Documents," University of Texas, Fourth Annual Construction Law

Conference, 1991.

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| Mediation Rate | \$5,500 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.