



AAA Mediation.org™

**FN-1737732 MN-1737732 LN-1737732,
Esq.**

Aventura, Florida



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Current Employer-Title Lichter Law Firm, P.A. – Partner

Panelist Video <https://www.adr.org/videoresume?paramName=374157717>

Professional Summary Former litigator and mediator now serving as a full time arbitrator and court-appointed neutral. Arbitrated and mediated more than 2000 matters. Fellow, College of Commercial Arbitrators. Experience in real estate, securities, breach of fiduciary duty/fraud, employment, healthcare, insurance coverage, legal & accounting professional liability, public and private financing, buy-sell agreements, trade secrets, trademark and copyright infringement, covenants not to compete, fraudulent transfers and claw-backs, class and collective actions, interference, civil forfeiture, franchises, dealer termination, antitrust, FLSA, FCA, Title VII, etc. and ESI disputes. Best Lawyers 2025 (Lawyer of the Year, 2024, Arbitration; Mediation).

Profession Arbitrator, and Special Master/Court-Appointed Neutral

Work History Partner, Lichter Law Firm P.A., 2015 - Present; Partner, Higer Lichter & Givner LLP, 2006 - 2014; Partner and Shareholder, David Lichter & Associates P.A., 2003 - 2006; Shareholder, Kenny Nachwalter, 1989 - 2003; Assistant U.S. Attorney, U.S. Attorney's Office (Miami), 1984 - 1989; Judicial Clerk, U.S. District Court, 1982 - 1984.

Experience As a former commercial and employment litigator, federal prosecutor and mediator (over 1900 mediations), and appointed as chair or wing in over 200 arbitrations, have substantial experience in a wide range of litigation, including class and collective actions, breach of contract, fraud, misrepresentation, negligence, non-compete agreements, trade secrets, legal malpractice and accounting professional liability, tortious interference, franchises, distributorships, dealer termination, antitrust, healthcare, civil rights, False Claims Act, RICO, ADA, TILA, RESPA, preference and claw back actions, fraudulent transfers, LLC and partnership disputes, computer related disputes, injunctions, TROs, fee disputes and a variety of common law business torts.

Clients over the years have included broker dealers, financial advisors, software publishers and

software trade associations, developers, manufacturers of luxury jewelry, clothing and accessories, law firms, lawyers, start-up medical ventures, TV stations, physicians and their practices, private equity firms, executives, employers as well as hourly and tipped employees. Have mediated scores of cases as an advocate.

CORPORATE / SECURITIES: For nearly two decades, was actively involved in securities matters in state and federal court and before FINRA. These involved a wide variety of broker dealers, RIAs, and private companies. These actions involved stocks, bonds, REITS, mutual funds, portfolio management, fees, commissions, structured products, life insurance, annuities, options, churning, promissory notes, forgivable loans, defamation, raiding, and The Protocol. Previously represented brokers before the SEC & FINRA.

INTELLECTUAL PROPERTY: Represented both plaintiffs and defendants in trademark and copyright infringement and counterfeiting cases involving federal and state law claims. Obtained ex-parte injunctive relief on behalf of trademark and/or copyright owners in the clothing, jewelry and software publishing business, and for 20 years represented major software publishing trade association and handled its anti-piracy work. Practice also included the successful defense of people and businesses accused of copyright or trademark infringement.

EMPLOYMENT: Represented employers and employees in cases involving violations of employment, non-solicitation and consulting agreements, termination, retaliation, and trade secret issues, confidential and proprietary information, including emergency injunctive relief. Represented employers and tipped and hourly employees in federal court in individual and collective actions and in thousands of individual actions before the AAA in FLSA cases. Familiar with overtime, misclassification, independent contractors, and DOL's Field Operations Handbook. Appointed as Special Master by federal court overseeing all intake and court filings for ADA plaintiffs-side firm for one year and re-structured the firm's intake processes.

TECHNOLOGY: Successfully represented start-up medical company in dispute with a front-end and back-end web developer which bungled the development and rollout of the start-up's web site. Hired forensic computer expert and liaised with sophisticated computer consultant to extract a substantial settlement which included the cost of remediation, damages for the delayed launch and attorney's fees.

TECHNOLOGY EXPERIENCE: Very substantial experience (including numerous preliminary and final hearings) with Zoom. Experience managing ediscovery issues including rulings on ESI, custodians, search terms and protocols.

REAL ESTATE: Handled a large range of real estate related matters. Litigated cases involving leasing and commission disputes and return of condominium deposits.

INSURANCE: Tried one case to verdict in federal court regarding insurance coverage and litigated issues relating to insurance coverage.

Mediator Experience

Authored articles and lectured on the subject of mediation and arbitration at the local, state and national level and at law schools, professional associations and bar events.

Became a certified Florida Supreme Court Circuit Court in 1997, and began more actively mediating cases in 2000. Currently a full-time mediator, arbitrator and special master. Mediated more than 1900 cases covering an extremely broad range of matters.

Types of cases mediated include real estate related matters, copyright and trademark infringement and counterfeiting, securities, contracts, common law breach of fiduciary duty and fraud, legal and accounting malpractice and professional liability, health care, trade secrets, covenants not to compete, tortious interference, civil forfeiture, employment disputes, class and collective actions, multi-party cases, franchises, employment, fraudulent transfers, clawbacks and preference actions, derivative actions, dealer termination, antitrust, civil rights, insurance coverage, aviation, False Claims Act, probate, corporate board disputes, construction, FLSA, TCPA, FDCPA, FCRA, RICO, ADA, Title VII, FMLA, TILA, RESPA, class and collective actions, and other common law business torts. The forums in which these matters have been pending include state, federal and bankruptcy courts, the AAA, NASD, NYSE and FINRA, as well as pre-suit matters.

Parties in these mediations have included a wide variety of individuals, class representatives and institutions, including but not limited to developers, banks, mortgage lenders, realtors, contractors, broker dealers, financial planners, software companies, recording artists, record labels, professional athletes, insurance companies, automobile dealerships, oil companies, engineering firms, law firms, CPA firms, medical practices, international exporters and importers, pharmaceutical companies, aviation concerns, hospitals, teacher's unions, produce companies, utilities, tobacco companies, various municipalities, hotels, religious institutions, international retailers, strip clubs an Indian tribe and the SEC, CFTC, FTC, CFPB, Department of Labor, U.S. Department of Justice, U.S. Department of Agriculture, the Federal Bureau of Prisons and the State of Florida.

The amounts of money in dispute in the cases mediated have ranged from very small to \$2 billion. Settled what was at the time the second largest case ever filed with what was then known as the National Association of Securities Dealers. Regularly mediate disputes in excess of \$1 million and have mediated a number of disputes well in excess of \$10 million.

A rough estimate of some of the more than 1900 cases mediated over the last 20+ years includes: 55+ leasing disputes between landlords and various commercial tenants; 5+ construction design/defect disputes; 20+ developer/land use disputes; 70+ banking/lending disputes; 40+ trademark/copyright/trade secrets disputes; 50+ employment disputes; 90+ insurance coverage disputes; 15 international Import/export disputes; 40+ business breakups between partners or practices; 15 franchise disputes; 150+ preference actions in bankruptcy; 600+ securities related disputes (customer/broker dealer, broker-dealer v. employee, broker dealer v. broker dealer, financial representative v. financial representative, SEC v. broker dealer and broker, CFTC v. securities firm and brokers), 20+ legal/accounting malpractice actions; scores of class action disputes; 30+ FDCPA, FCRA, RESPA, TILA disputes; 20+ TCPA disputes; 5+ aviation matters.

Representative Issues Handled as a Mediator

Some representative areas and issues include: (1) real estate cases: items ranging from developer financing problems, construction delays, lease interpretation, remediation, payment of broker commissions, return of purchaser deposits, boundary disputes, property damage, commercial and complex residential foreclosures; (2) trademark/copyright cases: infringement, trade dress, dilution and likelihood of confusion between different trademarks, priority of competing trademarks, counterfeiting, false designation of origin, similarity of copyrighted music to alleged infringing sampling, royalty payments from copyright and trademark infringers to trademark/copyright holders; type and amount of available statutory and common law damages, federal versus state claims; (3) employment cases: breach of covenants not to compete, theft of trade secrets, breach of employment agreements, wage/hour FLSA violations; classification issues; potential class and collective certification issues; Title VII and ADA (4) franchise cases: breach of franchise agreement, franchisor support disputes, royalty payments, territorial boundary disputes; (5) banking/lending cases: violation of state banking laws; breach of lending agreements, failure to honor payment, payment on forged documents, complex foreclosure issues, RESPA & TILA violations; (6) securities: violation of state and federal blue sky laws; raiding, breach of fiduciary duty, churning, failure to supervise, fraud, margin calls, bond defaults, suitability, options, employment disputes, limited partnerships; (7) bankruptcy: participated in over 150 mediations involving preference, adversary and clawback actions; (8) ERISA and Non-ERISA matters: substantial experience mediating long-term disability and life insurance coverage issues; (9) Professional Liability: mediated numerous legal and accounting malpractice cases; (10) TCPA: mediated scores of TCPA cases and issues related to prior administrative interpretations of the TCPA, issues relating to what constitutes an autodialer, etc.; (11) Healthcare: wide variety of physician-practice employment issues; payor/payee and billing issues between providers and insurers; disputes between large groups of providers and TPAs; coding disputes.

Mediator Style & Process Preferences

I view mediation as a dynamic process which varies from case to case. While I bring an analytical approach to each mediation (reviewing in detail everything the parties send me and discussing the case with counsel in advance of each mediation to get a flavor of the dispute, the personalities and potential obstacles to settlement), I adjust myself according to the personalities of the parties, and attempt to discover the parties' real agenda. Part of this "discovery process" often involves an exploration of non-monetary means of resolving disputes. This might include the possibility of a future business relationship between the parties or even something as simple (but usually not-so-simple) as an apology or charitable contribution. I give the parties room to fully express their views and then challenge each side by playing the devil's advocate, pointing out both the procedural and substantive risks each party faces if they cannot resolve their dispute through mediation. This discussion almost always includes an analysis of the "opportunity" cost of litigation in the form of

time spent away from running a business and the costs involved in pursuing arbitration or litigation, as opposed to a consensual resolution. It may also involve a risk or "decision tree" analysis. The empowering of the parties by emphasizing their ownership over the process (as opposed to the control they give away by putting the decision in the hands of a third party) also helps get cases resolved. This dovetails well with a discussion of the benefits that "closure" can bring to the mediation participants.

Patience and empathetic listening are key to the successful mediation of most matters. Maintaining a highly optimistic view of the chances of settlement—even when it seems that the matter will not settle—greatly increases the possibility of resolution. Mediation participants need to know that their mediator is fully and tirelessly committed to the process and is not worried about what appointment the mediator may have later in the day.

Another important aspect is to allow everyone to vent. In addition to the cathartic effect of such outpourings, one learns what motivates the respective people around the table.

Sometimes just getting out of the way of the parties works best. I have found that when there are sophisticated parties at the table, occasionally bringing the parties together without their lawyers (but with the parties' and the lawyers' permission, of course) can be very effective in bringing a matter to closure. Stated another way, sometimes success in mediation is more about staying in the background and letting the parties find their way, even if it is to Starbucks. There is a lot to be said for breaking bread together.

In other cases, I have found that counsel needs particular assistance. It is easier for attorneys to throw the mediator on the sword than to fall on it themselves, and it is a role I am happy to play. Again, the point is that every mediation follows its own course. The good mediator closely watches and listens to the parties and their counsel throughout the day and identifies: a) those points in time when a more active intervention is necessary; b) the individuals who need to be dealt with in a specific manner; and c) which technique from the mediator's toolbox needs to be employed to help the parties achieve resolution.

Technology Proficiency

Have overseen the construction and implementation of ESI protocols as an arbitrator and court-appointed neutral. This includes working with parties addressing appropriate search terms, custodians and means of production. Considered and ruled upon motions addressing ESI protocols and production insufficiencies. More recently have considered and issued detailed spoliation orders in connection with the production (or lack thereof) of ESI, including conducting evidentiary hearings involving the review of lay and forensic expert testimony and reports.

Conducted arbitrations up to six weeks in length both in-person and over Zoom with thousands of exhibits deployed almost entirely electronically. Conduct all pre-hearing conferences via Zoom and such arbitrations as the parties desire via the platform. Conduct in-person hearings as the parties wish.

Prefer but do not require exhibits in electronic format.

Education

Georgetown University (JD, cum laude-1982); Brandeis University (BA, Politics, cum laude-1979).

Professional Licenses

Admitted to the Bar: Florida (1983).

Professional Associations

Fellow, College of Commercial Arbitrators; National Academy of Distinguished Neutrals; Florida Academy; Florida Bar (Federal Court Practice Committee, Past Chair); member, Standing Committee on Grievance Mediation and Fee Arbitration; Member, Business Law Section; Dade County Bar Association (Securities Litigation Committee, Past Vice-Chair).

Recent Publications & Speaking Engagements

PUBLICATIONS: "A Neutral's View of Preliminary Arbitration Issues," 39 Alternatives 59 (April 2021); "Speak Firmly and Carry a Native American Talking Stick: Calming Turbulent Waters Using an Ancient Tradition," AAA Dispute Resolution Journal, 2019; "A Practical Path Towards Better Mediations," Business Torts Newsletter, American Association for Justice, 2007; "Improving Your Mediation Experience: Practical Tips and Suggestions," Public Investors Arbitration Bar Association Bar Journal, 2006.

SPEAKING ENGAGEMENTS: Co-Panelist, "Tips for Effective Advocacy in Healthcare

Arbitration," 2020 Florida Arbitration Institute; Panelist, "Mediation," 2019 Federal Securities Institute; Facilitator, "Writing the Award and Post-Award Issues," 2018 ABA Arbitration Training Institute; 2013 Bankruptcy Bar Association of South Florida; RPPTL Committee Meeting, 2012; "The Mediation Within the Mediation," Florida Dispute Resolution Center Annual Conference, February 2009; "Ask the Experts," Florida Dispute Resolution Center, 2008; "Experts Roundtable/Mediation," Public Investor's Arbitration Bar Association, 2007; "Advanced Impasse Strategies Workshop," ABA, Section of Dispute Resolution, 2006; "Mediation," Securities Industry Association, Compliance and Legal Division, 2006; "Breaking Impasse," Florida Dispute Resolution Center, 2005. Has also lectured numerous times to law students on the subject of mediation.

Locations Where Parties Will Not be Charged for Travel Expenses No charge for travel within 25-mile radius of office.

Mediation Rate \$575 Per Hour

Languages English

Citizenship United States of America

Locale Aventura, FL

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.