



AAA Mediation.org™

## **FN-2310386 MN-2310386 LN-2310386, Esq.**

Metuchen, New Jersey

**Current Employer-Title** Harriet Derman, Esq. LLC

**Profession** Retired Judge, Arbitrator, Mediator, Special Master

**Work History** Harriet Derman, Esq. LLC, 2022-Present; Of Counsel, DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, P.C., 2009-2022; Presiding Judge of the Chancery Division, Superior Court, State of New Jersey 2006-2009; Presiding Judge of the Civil Division, 2003-2006; Judge of the Superior Court, State of New Jersey, 1998-2009; Chief of Staff to Gov. Christine Todd Whitman, State of New Jersey, 1996-1998; Chief Counsel to Governor Christine Todd Whitman, 1996; Commissioner of Department of Community Affairs, 1994-1996; Principal, Weiner Hendler and Derman P.A. (New Brunswick, New Jersey), 1982-1994.

**Experience** Offers mediation arbitration, and special master services.  
Frequently serves as court-appointed Special Master and Discovery Master. Has reviewed attorney's fees in federal shareholder derivative suit, served as an auctioneer to sell ambulatory care center in deadlock shareholder situation, and has reviewed over 9,000 documents in a multi-million dollar contract dispute. Currently, serving as Compliance Monitor for a Residential Service Contractor previously sued by New Jersey Attorney General.

As a trial judge, managed and settled multimillion dollar EIFS/stucco construction defect cases; multi-party wrongful death actions and assault & battery and Dram Shop liability cases; multi-party insurance coverage matters; complex commercial litigation; wrongful death malpractice actions; and automobile and other personal injury matters.

Conducted trials, settlement hearings, and motions in contract disputes, unjust enrichment, breach of fiduciary duty, employment discrimination, personal injury, products liability, malpractice, construction defect and injury and insurance coverage; and commercial lending.

Settled thousands of cases of every variety on the Civil Docket.

As Chancellor, served as the arbiter of corporate and securities law disputes. Supervised and adjudicated significant business and corporate issues, including shareholder derivative suits, claims of breach of the business judgment rule and fiduciary duty by members of the Boards of Directors; allegations of misrepresentations in securities filings, including proxy documents; trade secrets and confidential information; as well as restrictive covenants, including insurance businesses, medical and dental practices, brokers and engineers; shareholder, partnership, and limited liability company matters and dissolution matters; real estates, such as quiet title actions and reformation of recorded instruments.

Served as Probate Judge, trying and settling hundreds of Will contests and matters dealing with estates of decedents and incompetents and Inter-vivos testamentary trusts, including undue influence and elective share.

Practiced (1982-1994) as a name partner in a boutique law firm specializing in tax, securities, corporate operations and governance, contract drafting and negotiation, real estate, estate planning and administration, and commercial litigation.

Oversaw financial reporting for clients, including security filings with Securities and Exchange Commission and New Jersey Division of Securities.

Counseled clients on corporate governance. Counseled clients on legally minimizing and deferring payment of federal and state taxes, including the use of offshore entities.

Advised privately and publicly held corporations on transactions, process, and planning. Significant legal experience in Deferred compensation; pension, profit sharing and stock option plans and recommending and implementing appropriate employee benefit plans.

Knowledgeable in real estate law, including preparation and implementation of Planned Real Estate Development projects; tax and securities law, oil and gas partnerships and medical equipment partnerships; estate planning and succession planning for family businesses and estate administration; operation and termination of medical and dental practices.

LLM in Taxation from New York University and Member of the American College of Trust and Estate Counsel. This background has been helpful in commercial litigation, employee benefits disputes, and limited liability, partnership, and shareholder disputes, as well as Probate and Trust Disputes.

Former N.J. Commissioner of the Department of Community Affairs and head of Planned Real Estate Development Division and experience as a lawyer in such developments.

## **Mediator Experience**

Often handles shareholder oppression, deadlock cases and allegations of breach of fiduciary duty in partnerships and limited liability companies including RICO allegations. Businesses included real estate, airport ownership, and operations, hearing aid provider, engineering firms, medical and surgical practices with related real estate issues, ambulatory care center, dialysis and MRI centers, franchises. Resolution of two of these matters required auctions.

Experienced in employment discrimination, including sexual harassment, age, racial, religious, disability, and gender discrimination and “whistleblower” actions. Settled an age discrimination suit for \$900,000 by a 55-year-old male and a recent settlement for \$2,000,000 for disability discrimination; settled a sexual harassment suit by a male. Plaintiffs include executives, sales employees, and secretaries; cases dealing with “donning and doffing” and whether the employee was an individual contractor.

Experienced in enforcement of restrictive covenants including covenants not to compete or solicit, both as a trial judge and as a mediator, and, in trying to find a reasonable solution, protecting the employers’ interests and the employees’ right to earn a living in a global economy. Affected employees include physicians, oral surgeons, insurance agents, salespersons, chemists, software designers, and engineers.

As a Member of the American College of Probate and Trust Counsel, experienced in substantial Probate matters with assets exceeding \$100 million dollars. Issues include accounting demands and retention or removal of named Executors and Trustees; distributions to multi-state beneficiaries in kind or cash; personal property issues involving objects of art and jewelry; allegations of undue influence (Inter Vivos and testamentary) and incompetency; issues with Powers of Attorney; charitable contributions.

Often business and probate experience merge effectively: business partners in a contracting company divorce and retain their 50% interests in the business and other assets. Upon the death of the former husband, the new wife becomes Executrix and sues the former wife, still active in the business, in a shareholder action. The mediation required sales of the partial interests to the different parties in a re-alignment and a buyout of the new wife and Executrix from the business by the former wife and 50% shareholder.

Mediation of suit by the operator of the dialysis centers against nephrologists for breach of contract and breach of operating agreement with a strong counterclaim for breach of fiduciary duty. The

successful buyout of doctors achieved.

Suit by disgruntled health care provider against State organization for defamation and counterclaim and third party claims for defamation, sexual harassment, invasion of privacy and false light. The suit involving owners of ambulatory care center and public auction of assets.

Suit by doctors/ lessees and limited partners against General Partner of a limited partnership owning office building for breach of fiduciary duty and oppression. Successful buyout achieved. Building worth more than \$15 million. Shareholder oppression matters for companies such as podiatry, hearing aid company, gastroenterology, MRIs, airport operation, engineering, oral surgery, manufacturing, and biotech.

Probate action on business dispute wherein it was alleged that decedent had been the victim of fraud in business by the Executor, a co-shareholder.

Pre-Mediation dispute among professors in which mediator was able to resolve interests and professional and personal needs of parties without the need for litigation.

Multiple malpractice actions against attorneys, accountants, insurance agents, physicians and oral surgeons.

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

As a mediator, has substantial experience, both as a trial judge for twelve (12) years, and as a private mediator for thirteen (13) years in a wide and deep range of matters, such as employment litigation, including the law against discrimination, sexual harassment, “whistleblower” protection, wage and hour issues, independent contractors versus employees, workers compensation issues, and “donning and doffing”.

Experience also includes construction defects, including stucco and EIFS; partnership and limited liability company disputes; shareholder oppression; dissolution of businesses; dissociation of members; RICO allegations; breach of fiduciary duty; deferred compensation issues; insurance coverage disputes; consumer and common law fraud; personal injury and probate disputes.

Additional experience includes Will contests, undue influence, competency and inter-Vivos Trust disputes. Real estate matters included easements of all sorts, such as conservation, leases, condominium disputes, as to fees and disassociation and Board elections; insurance coverage for all matters including time on the risk; cases involving environmental matters by responsible parties; professional malpractice matters for doctors and lawyers, accountants, insurance agents; foreclosure matters including construction, commercial and residential mortgages and guarantee issues.

Consumer fraud, common law fraud; medical and dental practice disputes and break-ups. Municipal services and prerogative writ actions; eminent domain; personal injury; personal guarantees; indemnification and contribution issues; trademark disputes over the logo, intellectual property, and domain names; franchise issues; contract disputes, including distribution and supply agreements and UCC matters; restrictive covenants.

## **Mediator Style & Process Preferences**

My mediation philosophy acknowledges that mediation is a successful tool in resolving disputes in an expeditious and expedited matter for all kinds of matters, whether “big” or “small.” So that the parties can arrive at a mutually agreeable resolution. I become in the words of Justice Brandeis, “Counsel for the Situation.”

I believe that preparation is essential; I work hard to understand the facts, law, and positions of all parties before the mediation begins.

I believe I can facilitate a resolution with the parties retaining their autonomy, by reaching a conclusion, which is practical and pragmatic under the circumstances. I stress this autonomy to the parties, reminding them that the settlement is volitional. I believe it is my responsibility to listen attentively to the interests which the parties assert and seek to vindicate while reminding them of the importance of a reasonable settlement. I strive to be sympathetic where appropriate and respectful of positions. I encourage the parties to be candid with me, reminding them of the confidentiality involved in mediation, explaining that I respect at all costs the sanctity of the revelations disclosed to me.

I understand that if litigants lose trust in me, I shall be ineffectual. I understand that litigants, although mediating, want to have “a day in court” and they should be able to “vent” as much as they want and as much is reasonable. I also strive to defuse difficult situations, and I am sensitive to not communicating anything disclosed that might be incendiary and counter-productive. I try not to be too assertive and to allow the parties to reach a compromise with which they are comfortable, but I understand that I can provide a realistic risk analysis. I can also provide a “big picture” assessment of the matter and a “small picture,” i.e. how their assigned trial judge might view the case.

I understand that mediation is both physically and mentally challenging for all parties, including myself as I go back and forth, tirelessly, caucusing with the parties in person or on Zoom. It is my job to process the information I receive and to facilitate the negotiation by identifying the issues and exploring various options. I also must help manage expectations, for both parties and counsel, and explain the limitations of demands. I use the benefit of my experience as a former judge and experienced mediator in a not heavy-handed manner.

It is my job to keep communications open and to transmit positions with accuracy and clarity, avoiding miscommunications at all costs. I want parties to understand their adversaries’ positions.

I try to compliment counsel to their clients, reminding the parties that they have effective advocates. If an issue arises that reflects badly on an attorney, I have a private discussion with that attorney, if I believe it is appropriate. I must be a problem solver and manage the information given. I believe it is my responsibility to listen carefully to what I hear and to be observant as to what I see.

A successful mediation involves legal and factual issues, as well as an understanding that cultural inclinations and personal and psychological preferences are implicated. I am always impartial and try to convey empathy and firmness where required.

I almost never give up, and my experience supports this spirit of never quitting. I apply pressure with a “firm” hand or a “kid glove,” as I deem appropriate for the situation. I have seen mediation after mediation that seemed doomed after several hours suddenly “reset” and the parties focus and the matters settle. Once a resolution is achieved, I assist the attorneys in reducing the settlement to writing. If a settlement is not reached, which is unusual, I retain contact with counsel in the hope that positions soften, and a resolution can be achieved.

## **Education**

New York University School of Law, Graduate Division (LLM in Taxation-1981); Seton Hall Law Center (JD, cum laude-1978); New York University (B.A.-1965).

## **Professional Licenses**

Admitted to the Bar: New York (1987), New Jersey (1978).

## **Professional Associations**

American College of Estate and Trust Counsel  
New Jersey State Bar Association (Litigation, Taxation, Construction, Employment, Alternative Dispute Resolution Committees or Sections)  
Middlesex County Bar Association  
Somerset County Bar Association  
Trustee of Retired Judges Association of NJ  
Member of the Board of New Jersey Women Lawyers Association.

## **Recent Publications & Speaking Engagements**

Member of New Jersey Law Journal Editorial Board

Publication(s):

“Avoiding Problems in Calculating Hours for a Lodestar” - New Jersey Law Journal - June 25, 2014;

"Utility of a Special Master" - New Jersey Lawyer Magazine - June, 2018

Speaking Engagements:

Ethics for Alternative Dispute Resolution, NJ Institute for Continuing Legal Education, May 2024

Avoiding Charges of Undue Influence, American College of Trust and Estate Counsel, May, 2024

Advanced Mediation Course, Middlesex County Continuing Legal Education December 2023

Attorneys Serving as Fiduciaries - Do You really want to Double Dip? American College of Trust and Estate Counsel, September, 2023

Ethics in Construction Mediation, Construction Law Forum, June 2023

Resolving the Personal Injury Matter: What is the Secret Sauce? NJ Institute for Continuing Legal

Education, May 2023  
 Advanced Mediation Course, Middlesex County Continuing Legal Education, October 2022  
 A View from the Bench, NJ Institute for Continuing Legal Education, March 2021  
 19th Amendment Panel NJ Institute for Continuing Legal Education, February 2020  
 "The Limits of Presidential Power in a Crisis" - NJ Institute for Continuing Legal Education, May 2020  
 "Virtual Mediation and Arbitration" - NJ Institute for Continuing Legal Education, July 2020  
 "Labor Employment Forum - Where are we going?" - NJ Institute for Continuing Legal Education, January 2019  
 The Constitution, Elections and Leadership in the 21st Century, NJ Institute for Continuing Legal Education, October 2019  
 "Injunctions from Cape May to Via Condotti" - NJ Institute for Continuing Legal Education - November 2018  
 "Arbitration Advice from Rome to Red Bank" - NJ Institute for Continuing Legal Education - November 2018  
 "Annual Labor Forum" - NJ Institute for Continuing Legal Education - March 2017  
 "Anatomy and Ethics of a Construction Arbitration" - H. B. Litigation Conferences - September 2016  
 "Injunctions: Bourbon Street to Broad Street" – NJ Institute for Continuing Legal Education, November 2015  
 "Civil Mediation - Process, Perspectives and Plaintiff/Defense/Mediator Tips for Success" - Somerset County Bar Association, October 2015  
 "The Art of Mediation" - NJ Institute for Continuing Legal Education - 2015  
 "Collecting Your Legal Fees in Federal and State Court" - NJ Institute for Continuing Legal Education, 2015  
 "Getting to 'Yes' in Mediation--And Staying There" - NJ Institute for Continuing Legal Education May 2015  
 Webinar - "Mediation in Business Litigation"- NJ Institute for Continuing Legal Education, March 2015  
 "Viva La Difference: French and New Jersey Employment Law" - New Jersey State Bar Association , 2014  
 "Contested Guardianships" - NJ Institute for Continuing Legal Education - 2011  
 "Mediation and Settlement Techniques of a Business Dispute" - NJ Institute for Continuing Education, 2011  
 "Summary Judgment Practice for Employment Discrimination"- The Sidney Reitman Labor & Employment Inn of Court - 2011  
 "Chancery Practice" - New Jersey State Bar Association, Equity Section - 2008.

<b>Locations Where Parties Will Not be Charged for Travel Expenses</b>	New York City Boston, Massachusetts
<b>Mediation Rate</b>	\$650 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Metuchen, NJ

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.