



AAA Mediation.org™

**FN-25630 MN-25630 LN-25630, Esq.**

Scottsdale, Arizona



**Current Employer-Title** Sacks Tierney, P.A. - Emeritus

Experienced in using online platforms including Zoom. Willing to conduct arbitration and mediation via videoconference or telephone conference.

**Profession** Attorney - Construction, Real Estate, General Litigation

**Work History** Vice President/Partner, Sacks Tierney P.A. (and predecessor firms), 1974-Present; Associate, Dushoff Sacks & Corcoran, 1969-1974; Regional Director, Peace Corps in Venezuela, 1968-1969; Peace Corps Volunteer, Municipal Management Group serving as Assistant to the City Manager (Barquisimeto, Venezuela), 1966-1968; Research Director, Elliot Richardson for Attorney General Campaign, 1966; Law Clerk to Justice Paul C. Reardon, Supreme Judicial Court of Massachusetts, 1965-1966.

**Experience** Engaged in a construction and real estate litigation practice for over 50 years. Seventy percent (70%) of practice was in construction, representing owners, developers, public agencies, architects, engineers, designers, general contractors, sureties, insurers, and some sub and specialty contractors involving private commercial industrial projects. Handled cases involving highway construction, sewer construction, stucco delamination, glass curtainwall defects, floor deflection, subcontractor disputes, mold problem cases, scheduling/extension problem cases. Experience in large "fraud in real estate deal" cases, as well as lender liability cases, partnership dissolution matters, and health care problems. Past member of the Risk Management Board of Trustees for Maricopa County from 1992 - 2008. Chairman of 501(3)(c) Boards of Directors involving neighborhoods, probationers, and the Irish-American community. Formerly an Adjunct Professor at ASU Law School, teaching Construction Law. Teacher / Presenter in numerous CLE courses. American Bar Association Fellows since 2006.

**Mediator Experience** Since 1997, has mediated approximately 100 cases. Most cases have been construction-related disputes, while some have been business disputes having nothing to do with construction. Approximately 50% of the construction cases have involved more than two parties. There have been as many as 28 parties appearing in a single mediation and one with 68. Many of the mediations have involved substantial claims related to water treatment plants, underground construction, schools, parks, cotton gins, large commercial buildings, or apartment/office complexes. Recently completed a mediation in which counterclaims were filed for \$750,000. Case involved a local Indian tribe and

was related to the mining, processing and sale of decorative rock and the operation of a quarry.

References include Michael Holden, Esq., (602) 508-6220, mholden@holdenbrodman.com; Thomas Maraz, Esq., (602) 530-8411, tam@gknet.com; Jay Mann, Esq., (602) 258-6200, jmann@mbwlaw.com.

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

Construction issues include:

- appropriate costing of change orders
- damages for delays and impacts
- quality of work performed
- quantities disputed
- specific architectural or engineering design errors
- contract administration failures
- safety and personnel policy issues
- loss of use valuation
- business impact estimates
- testing and test results
- owner created interference with operations
- termination of contract
- prompt pay issues
- attorney's fees, etc.

Other issues include roofing, concrete, steel, electric and plumbing problems; underground construction job-site requirements; schedule analysis; quality control programs; apartment construction and operation; jail, school, and cotton gin operation questions; and the interpretation of approximately 10 basic AIA construction documents regarding many of their essential clauses.

## **Mediator Style & Process Preferences**

I believe that mediation should not be "directive" and that I would fall on the "non-directive" end of the continuum on that question. I believe that persistence, inventiveness, patience, and listening ability are among the mediator's best assets. I believe that the mediator's demonstration of his good understanding of the dynamics in the case to date, and of the strategy likely to be followed in the future, will make the mediator's predictions of cost and estimates of a party's likelihood of success believable.

Mediation is an exchange of information coupled with readjustment of attitude and sharpening of awareness of cost-benefit ratios and the likelihood of success.

The process is "owned" by the parties, but the mediator is their tour guide to the process. The attitude of the mediator toward the possibility of success in the mediation is infectious and is quickly assumed by the parties. Expecting something perceptive and sober from the participants helps calm the most volatile emotions of the parties.

## **Education**

Harvard University (JD-1965); Brandeis University (BA, Psychology-1962).

## **Professional Licenses**

Admitted to the Bar: Arizona (1969), Massachusetts (1965); U.S. Court of Appeals, Ninth Circuit, (1969); U.S. Supreme Court (1971).

## **Professional Associations**

State Bar of Arizona (Construction Law Section, Past Chairman); State Bar of Arizona (ADR Section, Past Chairman); Maricopa County Bar Association; American Bar Association (Fellow)

## **Recent Publications & Speaking Engagements**

"Limitations on Closing Arguments, Ethical & Evidentiary," ARIZONA ATTORNEY, 11/03; "Controlling the Means of Construction; New Exposure for Architects on Construction Jobs," SOUTHWEST CONTRACTOR MAGAZINE, January 1985; "Our Prisons, Upside Down & Backwards Priorities," TEMPE DAILY NEWS, July 15, 1984; "Alternatives to Incarceration," SCOTTSDALE PROGRESS SATURDAY MAGAZINE, January 22, 1980; "Prison Crisis, A Need for Rehabilitative Programs," WEEKLY GAZETTE, March 1, 1979; contributor and co-editor, all 3 editions (8 years apart) of LITIGATION MANUAL, Maricopa County Bar Association; co-editor, CONSTRUCTION LAW SECTION PRACTICE MANUAL, Arizona State Bar; various articles on arbitration in ADR Section Newsletters.

## **Mediation Rate**

\$400 Per Hour

<b>Languages</b>	English, Spanish
<b>Citizenship</b>	United States of America
<b>Locale</b>	Scottsdale, AZ

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.