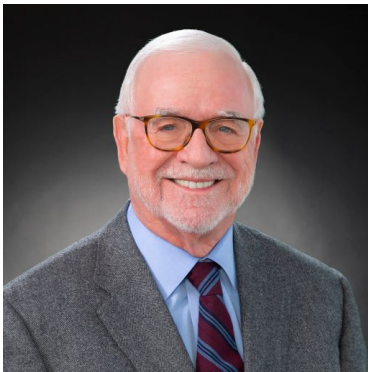




AAA Mediation.org™

**FN-2595749 MN-2595749 LN-2595749,
Esq.**

Tysons Corner, Virginia



Current Employer-Title Smith Pachter McWhorter, PLC – Counsel

Profession Attorney

Work History Founding Partner (1986 – 2013)/Of Counsel, Smith Pachter McWhorter PLC, 2014 – Present; Associate, Wickwire Gavin & Gibbs, 1986; Associate, King and King Chartered, 1980 – 1986; Assistant to the General Counsel, Department of Navy, 1979 – 1980; Navy Legal Member, Defense Acquisition Regulatory Council, 1979 – 1980; General Counsel, Renegotiation Board, 1977 – 1979; Associate, King and King Chartered, 1972 – 1977.

Experience Successfully served as a mediator and advocate in several AAA, and private mediations, litigation before state and federal courts and Boards.
Involved in claims analysis, preparation, presentation and resolution on major civil works projects. Disputes ranged from \$10 million to over \$100 million, and resolutions have exceeded over \$50 million on several matters. Nominated by Engineering News Record as Constructor of the Year (1991) for work in resolving large complex construction matters through mediation. Practice has been nationwide and Puerto Rico.

Representative projects representing contractors and architect-engineers include:

1) Dams, both earthen and concrete:

- * Grand Coulee Forebay Dam and Third Power Plant (defective concrete specifications; differing site conditions in foundation)
- * DeQueen Dam, Arkansas (differing site conditions)
- * St. Stephen Power Plant (differing site conditions, dam failure)
- * Brantley Dam, New Mexico (differing site conditions in foundation and quarry)
- * Navajo Dam (differing site conditions in rock)
- * Beaver Dam (termination for default; differing site condition in rock)
- * Coolidge Dam (repair and restoration)
- * Diamond Valley Lake Reservoir (West Dam) (differing site conditions in foundation and quarry)

2) Navigational Locks:

- * Gallipolis (now Robert Byrd) (differing site conditions, defective concrete specifications)
 - * Olmstead Lock (project flooding; dredging; differing site conditions in excavation)
 - * Marmet Lock (differing site conditions; dredging; payment provisions)
 - * Illinois Waterway Lock Restoration (concrete blasting changes)
- 3) Flood Control:
- * Richmond Flood Wall (differing site conditions; changes; contamination)
 - * James R. Olin Flood Control (differing site conditions in borrow area)
- 4) Bridges:
- * Jamestown Verrazanno (RI) (differing site conditions; defective specifications; defective design)
 - * Western Freeway (VA) (differing site conditions)
- 5) Tunnels:
- * George C. Wallace Tunnel, I-10, Mobile AL (sunken tube; differing site conditions; defective specifications)
 - * Pacheco Tunnel, Gilroy, CA (drill and shoot; tunnel failure)
 - * WMATA - Park Road (New Austrian Tunneling Method) (differing site condition in overbreak)
 - * Various cut and cover tunnel projects
- 6) Power Plants (Nuclear and Hydroelectric):
- * Grand Coulee Third Power Plant - hydroelectric (differing site conditions in rock excavation; defective concrete specifications, installation of penstocks, and furnishing of turbines)
 - * St. Stephen - hydroelectric (differing site conditions in slurry trench and tailrace areas; defective specifications)
 - * Arkansas Nuclear One - steam generator replacement (changes; acceleration)
- 7) Transit:
- * Washington Metropolitan Area Transit Authority - three different projects involving NATM and cut and cover tunnels; surface and rail construction issues including site availability, delays and changes; and fill-in station work
 - * New Jersey Transit - Southern New Jersey Light Rail Project (site availability, delays, numerous changes)
 - * Arch Street Station, Long Island Railroad (design issues)
 - * Tren Urbano (PR) (design issues)
- 8) Other Significant Projects:
- * LC-40 – space launch complex at Cape Canaveral (delays; design changes; acceleration)
 - * SLC-3 East – space launch complex at Vandenberg AFB (delays; design changes)
 - * Anniston Chemical Demilitarization Project (defective design)
 - * McKinley Test Chamber (changes)
 - * Indian Island Wharf (differing site conditions; dredging)

Mediator Style & Process Preferences	Mediation is a voluntary process and, as such, if properly structured and administered, has shown a high level of success. "Success" is viewed as resolution, and the mediator's energies and skill should be devoted to that end. The mediator plays a large role in working with the parties toward resolution through his/her understanding of the issues, and the likelihood of success, and cost for each party should the matter go unresolved. The mediator needs to be persuasive and proactive in searching for common ground. The mediator employs the methods that have proven successful and gets the parties involved in the process such that they take a vested interest in its success. The mediator must remain active in assisting with resolution until resolved by the parties, or sensing further effort is futile.
Education	Washington & Lee (JD-1969; BA-1966).
Professional Licenses	Admitted to the Bar: District of Columbia (1970), Virginia (1969); U.S. District Court: District of Columbia (1970), Eastern District of Virginia (1974); U.S. Court of Appeals: Federal Circuit (1982), District of Columbia (2006); U.S. Court of Federal Claims (1970); U.S. Supreme Court (2000).
Professional Associations	American Bar Association; Virginia Bar Association; American College of Construction Lawyers; American Society of Civil Engineers; The Beavers; The Moles.

Recent Publications & Speaking Engagements

PUBLICATIONS: Co-author, "Differing Site Conditions," CONSTRUCTION LAW, ABA Forum on Construction Industry, Allensworth, et al. ed., 2009; Second Edition 2019; co-author, "Prelitigation Discovery," CONSTRUCTION LITIGATION DESKBOOK, American Bar Assoc., Macpherson, et al. ed., 2006; co-author, CONSTRUCTION DISPUTES: REPRESENTING THE CONTRACTOR, Third Edition, Aspen Publishers, Inc., 2001; co-author, MEDIATION STRATEGIES, PROVING AND PRICING CONSTRUCTION CLAIMS, Third Edition, Aspen Publishers, Inc., 2000; chapter co-author, PROVING AND PRICING CLAIMS, Wiley Law, 1993.

SPEAKING ENGAGEMENTS: "Alternative Disputes Resolution Options," The Moles Presentation, 2007; "Effective Use of Dispute Review Boards: Strategies and Stories from DRB Members and Legal Counsel," 2005 Superconference; "Mediation Advocacy," ABA Disputes Resolution Section Presentation, 2004; "Working with Consultants and Outside counsel in Complex Construction Disputes," 2002 Superconference; "Remedy Granting Provisions and Efficient ADR Techniques in Public Works Contracts," 2001 Superconference; Public Works Contracting Issues: "What Owners and Contractors Really Think About Each Other's Claims," Associate General Contractors, 2000.

Mediation Rate

\$475 Per Hour

Languages

English

Citizenship

United States of America

Locale

Tysons Corner, VA

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.