



AAA Mediation.org™

FN-26540 MN-26540 LN-26540, Esq.

Henrico, Virginia



Current Employer-Title Retired from active practice of law.

Professional Summary Prior to retirement at the end of 2021, was engaged in the active practice of law after completion of legal education in 1957 following two years active duty as an officer in the United States Army and two years service as a law clerk to what was then known as the United States Court of claims.

Profession Retired attorney

Work History Shareholder/Director, Pender & Coward, P.C., 2007-2021; Partner, Rephan Lassiter, 2000-2007; Of Counsel, Hofheimer Nusbaum, 1993-2000; Partner, Sadur, Pelland & Rubinstein, 1986-1993; Partner, Braude, Margulies, Saks & Rephan, 1974-1986; Partner, Porter, Wright, Morris & Arthur, 1973-1974; Partner, Danzansky, Dickey, Tydings, Quint & Gordon, 1964-1973; Associate, Pierson, Ball & Dowd, 1962,-1964; Law Clerk, Hon. Samuel E. Whitaker, U.S. Court of Claims, 1960-1962; Associate, Kanter@Kanter, 1959-1960.

Experience Practice substantially related to construction and government contract matters. Represented prime contractors, subcontractors, suppliers and owners on public and private commercial, heavy/highway, and institutional projects. Experienced in litigating disputes in federal and state courts construction and government contract law matters and arbitrating and mediating disputes arising on both private and public construction projects. Experience includes appearances before federal courts, including U.S. Supreme Court, U.S. Court of Appeals for the Federal Circuit, U.S. Court of Federal Claims, and various agency contract appeals boards and courts of the Commonwealth of Virginia and District of Columbia. In addition to practice of law, served as arbitrator or mediator in construction and other types of disputes resolution addition to the representation of clients in arbitrations and mediations.

Mediator Experience Mediated various disputes among owners, designers, general contractors and subcontractors on various commercial construction projects. Several of these cases involved disputes between contractors, several of these cases involved disputes between prime contractors and subcontractors and two or three of them involved disputes between owners and designers. The amounts involved ranged from approximately \$25,000 to over \$1 million. Also mediated several cases involving disputes between homeowners and contractors. The amounts involved in these cases ranged from \$50,000 to \$250,000.

Representative Issues Handled as a Mediator	Issues and disputes in the mediated cases include claims for non-payment, pay when paid issues, change orders and extra work, Miller Act claims, delay and disruption damages, scheduling, differing site conditions, defective workmanship, default and wrongful terminations, termination for convenience claims, defective design, contract interpretation, warranties, insurance coverage issues, and other matters.
Mediator Style & Process Preferences	Mediation has proved itself to be an expeditious, economical and effective way to resolve construction disputes. In most all of the cases I have mediated, the parties and their counsel have come to the mediation fully prepared to participate in a frank discussion of the issues and a willingness to engage in good faith settlement negotiations. As mediator, I first try to determine what results each party seeks to achieve in the mediation and what areas of agreement or disagreement exist between the parties. I expect, of course, that the parties will take an active role in the mediation process and that they will be realistic in their respective positions. Because I feel that the evaluative approach can be an effective means of moving a case towards settlement, I normally like to get the agreement of the parties to use this approach. Hearing the views of a neutral third party on the relative strengths and weaknesses of a party's position is, in my view, a very effective way of moving towards a negotiated settlement, especially in a case where the parties have reached an impasse. Simply using what is sometimes referred to, as a "shuttle diplomacy" is not, in my opinion, the best way to mediate a construction dispute. The mediator needs to use his knowledge, experience and reputation to enhance the chances of a successful mediation. But it also must be remembered that in mediation, it is the parties, not the mediator who decides whether to settle or not. Litigation of any large construction dispute is extremely expensive and the result is unpredictable. Mediation offers a way to avoid much of the time and expense entailed in litigation or arbitration. The fact that the parties, rather than a judge, jury or arbitrator, make their own decisions with the help of the mediator plays a major role in any mediation and for this reason the parties are usually very pleased with the result.
Education	University of Virginia (JD-1959; BS, Commerce-1954)
Professional Licenses	Admitted to the Bar: District of Columbia (1961-inactive), Virginia (1959-inactive); U.S. District Court: Eastern and Western Districts of Virginia, District of Maryland; U.S. Court of Appeals: District of Columbia Circuit, Federal Circuit; U.S. Court of Federal Claims; U.S. Supreme Court (1966).
Professional Associations	Prior to retirement professional associations included Virginia State Bar (Construction Law and Public Contracts Section, Board of Governors, Secretary, Chairman; Lecturer, Joint Committee on Continuing Legal Education); Virginia Bar Association; Norfolk-Portsmouth Bar Association; Virginia Beach Bar Association; Bar Association of District of Columbia; American Bar Association (Forum Committee on the Construction Industry); Hampton Roads Utility and Heavy Contractors Association (General Counsel); Associated General Contractors of Virginia (Past Chair, Legal Affairs Committee); Associated Builders and Contractors (Virginia Chapter).
Recent Publications & Speaking Engagements	<p>PUBLICATIONS: Author, Ch. 12, pp. 115-126, "Differing Site Conditions, ABA Forum on the Construction Industry (2014); Ch. 11, pp.313-324, " Unforeseen Worksite Conditions and Related Matters," Virginia Construction Law Handbook, Virginia CLE Publications, (2008, 2011); " Construction Law in the Twenty-First Century: A Unique Challenge," VIRGINIA LAWYER, vol. 51, no. 7, 2003; "Implied Indemnity in Virginia and its Application to Claims for Economic Damages," VIRGINIA LAWYER, vol. 51, no. 7, 2003; co-author, "Construction Surety Bonds," CONSTRUCTION BRIEFINGS, 1986; "Arbitration of Construction Disputes," 30 VIRGINIA BAR NEWS, no. 837, 1982; "Right of Government Contractor to Suspend Operations or Abandon Performance," 29 FEDERAL BAR NEWS AND JOURNAL, no. 3121, 1982.</p> <p>SPEAKING ENGAGEMENTS: "Indemnity and Contribution," Norfolk-Portsmouth Bar Association, September 2005; "AIA Contracts in Virginia," Lorman Educational Services, September 2004, 2005; "Virginia Construction Law: What to Do When," National Business Institute, January 2005; "Construction Law for the General Practitioner," Norfolk-Portsmouth Bar Association, May 2004; Public Contracts and Procurement Regulations," Lorman Education Services (2014,2012); "Fundamentals of Construction Contracts, Understanding the Issues," Lorman Education Services (2013); "What To Do When Construction Projects Go Bad," Lorman Education Services (2007); "Legal Issues Facing the Construction Professional In Virginia," Lorman Education Services (2006); AIA Contracts In Virginia," Lorman Education Services (2004)</p>

Mediation Rate	\$325 Per Hour
Languages	English
Citizenship	United States of America
Locale	Henrico, 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.