



AAA Mediation.org™

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St. Louis, Missouri



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Current Employer-Title Midwest Law LLC - Sole Member

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Profession Attorney, Arbitrator, Mediator

Work History Sole Member, Midwest Law LLC, 2020-Present; Counsel, Sandberg Phoenix & von Gontard P.C., 2018-2020; Partner, Herzog Crebs LLP, 1999-2018; Partner/Associate, Thompson Coburn, LLP, 1983-1999; Associate, Husch Blackwell (f/k/a Blackwell Sanders Matheny Weary & Lombardi), 1980-1983.

Experience Trial attorney since 1980 focusing primarily on construction disputes with considerable additional experience in business and real estate disputes and complex litigation. Tried more than 100 cases including dozens that lasted at least one week and a couple that lasted five and nine months. Briefed and argued more than 15 cases before various appellate courts. Represent a diverse clientele in the construction industry including owners, contractors, subcontractors, engineers, architects, lenders, title companies and suppliers. Negotiated and drafted complex construction contracts for various electric utility companies on both national and international matters involving power plants. Negotiated and prepared various contracts to create alliances between utility companies and large general contractors for environmental update work exceeding \$1,000,000,000.

Also tried a variety of cases involving breach of contract, condemnation, intellectual property, employment, environmental, health care, personal injury, trusts and estates, sale of business, consumer, computer and insurance issues, admiralty, franchise and distributor rights, and criminal.

Experienced in many cases through trial and appeal involving arbitrator immunity, subpoenas, panel orders and awards. Mediated a large number of cases throughout the Midwest involving more than two parties and many involving up to seven party participants. There have been as many as 50 or so party representatives and their counsel at these multi-party mediations.

Mediator Experience As an attorney advocate since 1980, has represented clients in more than 50 cases involving

mediation of construction contracts, insurance matters, environmental and business disputes. Cases/disputes have ranged in dollar value from less than \$100,000 to more than \$1,000,000,000.

Over 200 mediations as a mediator many involving multi-parties (up to 5-7) and claims in construction, business and franchise/distributor disputes, real estate, complex litigation, governmental bodies including federal agencies, municipalities, schools, private, consumer and publicly owned utilities. Almost all have taken at least one full day, and many required two or more days in formal mediation, sometimes consecutive days and sometimes there was/is a break to allow the parties and counsel to develop additional information, including additional discovery exchanges, before reconvening.

References include Bruce S. Bonczyk, bbonczyk@601w.com, (217) 525-0700 ext. 110 and (217) 725-4311; Matthew D. Menghini, mmenghini@mlklaw.com (314) 392-5200 and (314) 450-6668; and Robert J. Guinness, guinness@stclegal.com, (636) 947-7711. Additional references available upon request.

Representative Issues Handled as a Mediator

Mediated a wide range of construction disputes including public works contracts, construction of a new federal courthouse, airport, school facilities, substations for a light-rail mass transit system, a water district, a sewer district, surety bond coverage, delay damages, extra work, unforeseen conditions, contract documents, design-build responsibilities, long-span truss design, liquidated damages, failure to perform, design errors, scope of work, workmanship, critical path, scheduling, and equitable adjustment to contract. In addition, mediated numerous business disputes including breach of contract, non-competes, mergers and acquisitions, franchisors and franchisees, distributors and manufacturers, sale of businesses and partnerships, personal injury disputes involving automobile accidents.

Mediator Style & Process Preferences

Cases generally settle where there are motivated parties, or counsel, or both, and where the timing is ripe. As a mediator, I identify early if these conditions are in place. If so, the case should settle. If not, I explore the obstacles and timing.

Even though not all parties are ready to settle during the formal mediation, by exploring openly the differences between the parties, a bridge can be formed for later resolution, since 90% of all cases settle at some point.

I determine what the motivators are for the parties to move toward settlement, or to stay resolute in their positions. I seek avenues to break the impasse. Many construction contracts require mediation as a condition precedent to arbitration or mediation, and occasionally the parties are primarily mediating (at least at that point in time) because they are required to by contract. Those cases still can settle. I strongly support early exchanges of documents and related information before the formal mediation to avoid surprises, save time and allow everyone the opportunity to better evaluate the dispute and to measure more accurately the risks of not settling and the advantages to settling early.

Decision makers with full authority to settle need to participate in the mediation. I explore whether the parties have other business relationships that can affect the settlement value of the dispute at hand.

Most recent mediations have been through video conference (I use Zoom), and the process works surprising well. Most participants now understand the advantages of remote mediations and we have adapted to how to prepare in advance remotely. There never is a complete substitute for in-person mediations but they will be fewer going forward. Travel expenses and convenience are strong motivators to use Zoom. I am flexible and defer to the parties and counsel on venue, in person or Zoom. Each has obvious advantages.

I work hard to facilitate positive, open communication between the parties to fully explore the issues at hand. How this best occurs varies from case to case. That is what makes mediation challenging and rewarding. I believe in being flexible in approach and try to listen carefully to the concerns and requirements of the parties. Sometimes the settlement dividers are obvious and sometimes they require more exploration. That is why there is no time clock on making this process successful.

Education

Washington University (JD-1980); University of Missouri (BJ-1977).

Professional Licenses	Admitted to the Bar: Missouri (1980), Illinois (1984); U.S. District Court: Western (1980) and Eastern (1984) Districts of Missouri, Southern District of Illinois (1984); U.S. Court of Appeals: Eighth Circuit (1984).
Professional Associations	Fellow, Construction Lawyers Society of America (CLSA) (invitation only); Fellow, Society of Illinois Construction Attorneys (SOICA) (invitation only); Missouri Bar Association (ADR Committee, past Chair; Arbitration Subcommittee, Chair, Construction Law Committee; Eminent Domain Committee); Bar Association of Metropolitan St. Louis (ADR Committee, past chair; Construction Law Committee, chair, 2000 to present; and Past Chair, Business Law Section); American Bar Association (ADR, Construction and Litigation Sections); American Arbitration Association (St. Louis Region, Construction Advisory Committee, Chair); Fellow in the Missouri Bar Foundation (invitation only); and member Illinois State Bar Association.
Recent Publications & Speaking Engagements	Author of more than 150 articles on construction, alternative dispute resolution, trial and consumer fraud that have appeared in the ILLINOIS BAR JOURNAL, ST. LOUIS BAR JOURNAL, MISSOURI BAR WEB PAGE, MISSOURI BAR GUIDE BOOK ON ADR; MISSOURI LAWYERS WEEKLY, ST. LOUIS CONSTRUCTION NEWS & REAL ESTATE, KANSAS CITY DAILY RECORD, ST. LOUIS DAILY RECORD, THE COUNTIAN, and ST. CHARLES COUNTY BUSINESS RECORD. Legal writer for the ST. LOUIS CONSTRUCTION NEWS & REVIEW. Author of Chapter 15, "Alternative Dispute Resolution," MISSOURI LITIGATION SETTLEMENTS, 2009 Cumulative Supplement. Author of ARBITRATION AND MEDIATION (MoBar 2011). Faculty, "Maximizing Efficiency and Economy in Arbitration: Challenges at the Preliminary Hearing," Program #11ACE65802, sponsored by the American Arbitration Association, November 9, 2011. Moderator, "Mudslinging, Manners, and Mediators" webinar sponsored by The Missouri Bar, September 13, 2011. Speaker at more than 70 seminars on construction, ADR, trial and ethics for AAA, AIA, Associated General Contractors, Construction Financial Management Association, Home Builders Association, Engineer's Club, Missouri Bar, Bar Association of Metropolitan St. Louis, St. Louis Council of Construction Consumers, Missouri Bar Real Estate Committee, Society of Illinois Construction Attorneys (SOICA) on the jury instructions for a construction case; National Business Institute, Construction Expo, and Mound City Bar Association.
Mediation Rate	\$335 Per Hour
Languages	English
Citizenship	United States of America
Locale	St. Louis, MO

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.