



AAA Mediation.org™

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Chicago, Illinois

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Profession

Attorney, Arbitrator, Mediator, Consultant, Real Estate Investor and Developer

Work History

Arbitrator/Mediator, Attorney, Real Estate Investor and Developer, self-employed, 1997-present; Senior Vice President, Secretary and General Counsel, Shareholder, Jupiter Realty Corporation, 1989-97; Secretary and General Counsel, Jupiter Industries, Inc., 1989-97; Partner, Berliner & Krasnow, 1988-89; Sole Practitioner/Proprietor, Berliner and Associates, 1984-88; Partner/Associate, Levy and Erens, 1974-84; Lieutenant; Supply Officer, Polaris submarine USS Henry L. Stimson, U.S. Navy, 1968-71.

Experience

Over 40 years in practice of law, both as private practitioner and as general counsel to major group of Chicago-based businesses. Wide range of experience, including real estate, corporate, tax, estate planning, litigation and bankruptcy. Frequently retained as expert witness in real estate cases, especially where claims of legal malpractice involved. Participant in many real estate and other business and investment ventures. Selected as Illinois Super Lawyer. Member of National Academy of Distinguished Neutrals (invitation only selective organization of mediators and arbitrators) and Charter Member and Member, Executive Committee, Illinois Chapter.

Examples of matters handled (other than ADR):

- Represented homeowner who rented his home to producer of the movie "Thief" for use in filming. Drafted agreement between homeowner and film company and, when home was destroyed by fire during filming, handled litigation with producer's insurance company, resulting in settlement.
- Represented controlling shareholders of group of small and medium sized banks in formation of multi-bank holding company. Handled all contractual, corporate, regulatory and securities aspects of transaction.
- As general counsel, handled acquisition of fiberglass boat manufacturer from founding shareholder and, a few years later, sale of same company to publicly held Canadian transportation manufacturing company
- Represented major real estate investment and development company in debt financing for hotel in Philadelphia that formed part of multi-use development with major office and parking properties. Prepared easement and joint use agreements.
- Represented major developer, subsidiary of large retailer, in connection with construction of office building for use of credit card issuer affiliate.
- Represented certain defendants in antitrust case before Seventh Circuit Court of Appeals (Johnson v. Nationwide Industries, Inc., 715 F.2d 1333 (7th Cir. 1983)). Wrote brief and argued appeal.
- As general counsel, handled purchase of 10 hotels out of bankruptcy of developer and financing with lender that had held first mortgage.
- Represented lender and its affiliates in connection with workout of defaulted mezzanine loan and acquisition of senior first mortgage on, and ownership of, retail development in Arizona.
- Retained as expert witness by attorney for developer who purchased high rise apartment building

and alleged that his attorney had learned of asbestos pipe covering in building and had not disclosed existence of asbestos to client.

- As general counsel, acted as co-counsel in Texas case involving claim by broker to fee of some \$40 million in value for arranging purchase of interest in insurance company from bankrupt real estate investment trust. Dispute settled in mediation.

Academic and Continuing Legal Education (other than ADR):

- Adjunct Professor, Stuart Graduate School of Business, Illinois Institute of Technology, Financial Markets 525, "Real Estate Investment," 2003-2008.

- Kellogg School of Management, Northwestern University, REAL 447, "Legal Issues in Real Estate," Lecturer 1989-2011.

- Law Seminars International, CLE Conference on Construction Law, "Primary Contracts," 2007.

- Department of Finance, College of Commerce, DePaul University, "Taxation of Real Estate," in Finance 530, Real Estate Investment and Finance, 2007.

Military:

Lieutenant, United States Navy (1968-1971). Served as supply officer of one crew of nuclear powered Polaris missile submarine. Received Commanding Officer's Letter of Commendation.

Mediator Experience

Has mediated principally the following types of cases and disputes:

- Real estate matters, including landlord/tenant (both commercial and residential), title issues, condominium disputes, contract disputes, nuisance, property line
- Family and closely-held business, including estate and organizational issues, allocation of assets among parties, shareholder and partner disputes, business dissolution
- Employment and post-employment, including non-competition agreements, trade secrets and confidential information, breach of fiduciary duty, unpaid compensation
- Construction, including defects in quality of work, contractor's failure to perform
- Breach of contracts, including contracts for goods, contracts for services and actions for purchase prices and/or fees. Disputes involving services have included leasing consultants, medical consultants, attorneys, advertising and marketing agencies
- Torts, including personal injury and property damage (including subrogation), conversion of personal property, replevin
- Family disputes, including child support, visitation, property distribution, treatment of indebtedness

Specific examples of cases mediated:

- Multi-faceted dispute among adult children of deceased regarding portfolio of investment real property (development, management, disposition), distributions, duties of trustees, ownership and disposition of motor vehicles
- Dispute between manufacturer and former key employee responsible for product development regarding trade secrets and confidential information, breach of employment contract, breach of non-competition agreement
- Dispute between former owner and purchaser of business regarding breach of contract of sale and non-competition agreement, conversion of business property, nature of agreement regarding payment of purchase price, non-payment of purchase price, amounts due for compensation and expenses
- Dispute regarding advertising sign lease between property owner who wished to develop property and sign lessee who wished to retain sign
- Dispute between food distribution company and roofing contractor regarding performance of contract to replace warehouse roof
- Dispute between leasing consultant and tenant regarding amount of contingent fee due consultant in connection with lease termination and renewal
- Dispute among heirs of deceased titleholder regarding ownership of resort property in Caribbean
- Dispute among family members regarding distribution of proceeds of sale of commonly owned real property
- Dispute between two brothers and their families over ownership and operation of closely held business, where son of one had been active in the business
- Dispute between attorney and consultant for medical malpractice case regarding amount of fees due consultant
- Dispute between lender and borrower over alleged violation of Federal Fair Credit Reporting Act
- Dispute between unmarried couple formerly residing together over treatment of debts incurred while residing together

- Post-decree dispute between divorced couple regarding visitation, breach of parenting agreement, child support payments, property distribution

Mediator Style & Process Preferences

My philosophy of mediation is best described as "pragmatic." The mediator's role is to do whatever is in his power to help the parties achieve a settlement of their dispute. Sometimes that means acting purely as a facilitator of the parties' process with little mediator intervention; sometimes that means expressing opinions about potential outcomes and risks if the outcome will otherwise be decided by a third party; sometimes that means expressing opinions about how a settlement might be achieved; sometimes that means all of the foregoing. Each of these techniques is a tool that the mediator should make available to the parties in the appropriate circumstance to help them achieve success. The mediator needs to be sufficiently astute to determine what approach fits at each stage of the mediation process and needs to be sufficiently flexible to change the approach as required to help the parties to the finish line.

I believe that the skills of the mediator who is an attorney are the skills of the lawyer as deal-maker, not necessarily the lawyer as litigator or judge. The mediator needs to be able to listen to and understand the parties, to identify their underlying interests (which they may not articulate specifically), to help them craft a deal that best satisfies those interests, and to use his credibility to get them to accept it. I believe that a good mediator can lead the parties into turning a dispute that starts out as a legal siege into, essentially, a business problem to be resolved as a business matter. And a mediator must be patient, tenacious and persistent, both during the formal mediation conference (when everyone is together) and, if no settlement is reached at that time, thereafter. After the formal mediation (if no settlement is achieved), the mediator needs to be persistent in pursuing the process in an effort to bring the parties together and reach an agreement. I have found that these are the behaviors that can make a mediator successful.

I have high expectations of the parties and their attorneys and believe that those expectations, when met, create a high probability of success. I expect the parties and their attorneys to help me be up to speed when we start the mediation conference by supplying me with the materials necessary to educate me sufficiently about the dispute and the parties and their history so that I can efficiently help move the process toward a resolution. I will normally confer (in person or by telephone) with the attorneys, sometimes along with their clients (depending on the nature of the dispute), before the mediation conference itself, to learn more about the issues and personalities involved. I expect each party at the mediation to be represented by a person (other than an attorney) who has settlement authority at a satisfactory level. At the mediation conference itself, after meeting briefly with each party to introduce myself, I typically lead a joint session. At the joint session, I normally (although not always) would expect the party or party representative to give his or her side's version of the case from the business/personal viewpoint; I have found that parties can obtain great satisfaction from having this "day in court" that can go a long way toward facilitating a settlement. After the joint session, we would then normally go into caucus, and I would work separately with each side to move toward a resolution. During the joint session and caucuses and thereafter, I expect the parties to behave with civility toward each other and toward the attorneys and to be prepared to work toward settlement in good faith and with an open mind.

Education

Harvard College (AB-1967)
Harvard Law School (JD-1974)

Professional Licenses

Admitted to Illinois Bar, 1974.

Professional Associations

National Academy of Distinguished Neutrals (Illinois Chapter, Charter Member and Member of Executive Committee); Association of Attorney-Mediators, Board of Directors; Association of Attorney-Mediators, Illinois Chapter, Founding Member and President, formerly Vice President and Secretary; Association for Conflict Resolution, Board of Directors, Illinois Chapter) Chicago American Lincoln Inn of Court; American Bar Association; Illinois State Bar Association; Chicago Bar Association.

Recent Publications & Speaking Engagements

Publication:
"Small Claims Court Mediation in Will County," Illinois State Bar Association Section on Dispute Resolution Newsletter, May 2012

Speaking Engagements (including CLE presentations) on ADR subjects:

- "Alternative Approaches in Mediation," Chicago Bar Association, Alternative Dispute Resolution

Committee (April 2010) (segment on mediation of family business disputes)

- "Tales From the Mediation Front: Our Toughest and Most Interesting cases, What We Learned and What We Accomplished," Circuit Court of Cook County Mediation Seminar (June 2010)
- "Fundamentals of Mediation for the Practitioner," Gaido and Finzen (law firm) (August 2010)
- "Different Strokes for Different Folks," Circuit Court of Cook County Mediation Seminar (September 2010) (segment on mediation of family business disputes)
- "A Different Mediation Model for Family Business and Other Similar Disputes," Association of Attorney-Mediators Advanced Attorney-Mediator Training, New Orleans, Louisiana (March 2011)
- "Mediation: Different Disputes-Different Approaches," Hinshaw & Culbertson LLP (law firm) (April 2011)
- "Anatomy of a Mediation: The Parties, Their Attorneys and the Mediator Discuss a Successful Mediation," Circuit Court of Cook County Mediation Seminar (May 2011)
- "Mediation as a Tool for Litigators and Business Lawyers: Mediation Models and Ethical Issues," Locke Lord LLP (law firm) (May 2011)
- "Not Just for Litigators: Mediation and the Business Lawyer," Jenner & Block (law firm) (September 2011)
- "Fundamentals of Mediation for the Practitioner," Will County Bar Association (November 2011)
- "Negotiating Your First Job Offer: Tips, Advice and Mistakes to Avoid," American Bar Association, Section of Dispute Resolution Spring Conference (April 2013) (panelist)
- "What Mediation Can (and Can't) Do For You," ExecuSummit Annual Conference on Alternative Dispute Resolution, Montville, Connecticut (June 2013)

Mediation Rate	\$450 Per Hour
Languages	English
Citizenship	United States of America
Locale	Chicago, IL

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.