



AAA Mediation.org™

FN-30 MN-30 LN-30, Esq.

Denver, Colorado



Current Employer-Title Holland & Hart LLP - Of counsel

Profession Attorney - Alternative Dispute Resolution (Arbitration, Mediation, Dispute Review Board), Legal Ethics, Professional Negligence, Construction

Work History Of counsel/Partner/Associate, Holland & Hart LLP, 1965-present.

Experience Until recent years, primarily a general civil litigator emphasizing commercial and construction cases. Commercial litigation practice included contract, tax, and business torts. Construction law practice involved representation of owners and developers, general contractors, architects, engineers, designers, lenders, suppliers, manufacturers, subcontractors and sureties, and insurers involved in public and private commercial, industrial, and heavy projects. Today, practice primarily is as an arbitrator and as an advisor in legal ethics and malpractice, and construction law. Lectures at University of Colorado on Alternative Dispute Resolution.

Mediator Experience Practiced law as a civil litigation attorney for 40 years, primarily emphasizing on business and commercial litigation, as well as construction litigation and counseling. In the past 20 years, has applied that litigation and counseling experience in serving as a part-time mediator in an estimated 80 cases. Experience as mediator has primarily involved business and commercial disputes and construction disputes. Amounts in dispute have ranged from \$5,000 to over \$15,000,000. In the disputes involving smaller sums, it has been common for one party to be an individual. In disputes involving more than \$250,000, both parties usually have been corporations or partnerships.

Has mediated an estimated 30 commercial and business disputes, involving amounts ranging from \$30,000 to in excess of \$2,000,000. While most of these mediations have involved contract issues, there is no common denominator as to industry, nature of business of the parties, nature of the disputes, issues presented, or even legal theory of the claims. Has mediated disputes involving manufacturers of many different kinds of products, an association of hospitals, software developer, security provider, fiber optic provider, distributorship, sales organization, retirement home, and realtor. Examples have included disputes as to terms and compensation under contracts for the supply of goods and services, dissolution of and disputes concerning partnerships and business ventures, whether executives were terminated with or without cause and the measure of the severance payment, and whether conditions in a sales contract had been fulfilled.

Has also mediated approximately 30 construction disputes, involving claims in excess of \$15,000,000. Many of these construction mediations have been between home purchasers and developers/contractors. These homeowner disputes have usually involved alleged construction defects, and usually involve less than \$75,000, except custom homes (which have sometimes involved \$250,000 or more). The legal theories involved have typically included breach of contract, breach of warranty, misrepresentation, negligence, and consumer protection act. The parties involved in other mediated construction disputes have included the spectrum of construction industry members, such as: owners, developers, design professionals, contractors, fabricators, subcontractors, and material men. Some of these cases have involved multi-party mediation. At least five mediations have been between owners and design professionals; at least ten cases have been between owner and contractors/developers; and at least 20 cases have been between contractors and subcontractors/material men. The types of the construction projects involved have included housing developments, roads and bridges, tunnels, apartment/condominium complexes, retail buildings, public works, and manufacturing facilities. The delivery methods involved have included: design/build, design/bid-negotiate/build, cost plus a fixed fee, and variations thereof.

Representative Issues Handled as a Mediator

Commercial disputes: Has conducted business and commercial mediations usually involving contract issues, such as whether a contract was formed, terms and interpretation of provisions of the contracts, performance of breach, termination, and remedies. Some business mediations have involved business torts such as fraud/deceit/misrepresentation, interference with contractual relations, breach of fiduciary duty, and respondent superior and imputed liability.

Construction disputes: The nature of the issues involved in the construction disputes have included express and implied contract terms, contract interpretation and custom of the industry, changed conditions/differing site conditions, defective construction, design error, delay/acceleration, warranties, termination, mechanic's liens, contribution and indemnity, changes and change orders, cardinal change, interference, pricing, equitable adjustment, surety rights and obligations, and insurance.

Mediator Style & Process Preferences

A successful mediator can be characterized by three words: preparation, patience, and perseverance - all being keys to successful mediations. While the legal and factual issues of some mediations may be similar, when the differences, attitudes and approaches of the specific parties are taken into account, there are rarely two mediations that have substantial similarities. However, there are certain definable concepts that enhance the probability of a successful mediation in most disputes.

First, a successful mediation usually requires preparation by the parties and by the mediator.

Mediation rarely is successful unless each party and the mediator have devoted adequate time and effort to assembling the facts and law of their contentions and to analyzing their positions and supporting evidence.

Second, success in mediation comes through communication. Each party must know and understand the issues, contentions, and basic evidence of the other party. The mediator must understand the issues, the contentions, and general evidence in support of both party's positions. The parties and the mediator need to seek general agreement at to the issues presented by the dispute.

Third, a party must appreciate that a point of law or fact that is perceived to support its position, is of no benefit to it in a mediation if it is not disclosed to the other party. Hence, it is usually in the interest of each party to define its "best case" to the opposition and to the mediator.

Fourth, a mediator needs to know and hopefully understand the persons and personalities involved in the mediation and decision making process. The approach to resolution often must be in terms of the particular personalities making or influencing the decision making process.

Fifth, prior to the actual mediation, it often is helpful for the mediator to hold a pre-mediation conference with the parties: in person, by phone, by mail, or email. This provides an opportunity for the mediator to define his expectations insofar as preparations by the parties, and for the parties to express any obstacles or needs to be prepared for the mediation. Sometimes it is helpful for the mediator thereafter to follow up with a discussion.

Lastly, the formal mediation may not be the conclusion of the mediation. When a resolution is not obtained, the mediator should continue the effort until a resolution is obtained or all avenues for resolution are exhausted - by a reconvened formal mediation, phone calls, email, and any other form of communication. Sometimes the period after the formal mediation provides the opportunity for each party to give renewed consideration of positions and alternatives in a more relaxed atmosphere

- sometimes a "break" is needed by the parties. The mediator's role does not conclude until the dispute is resolved or the parties dictate that is concluded. Even then, a mediator should consider periodic follow-up to determine whether efforts to resolve the dispute should be undertaken. Preparation, patience, and perseverance result in successful mediations.

Education	University of Iowa (BA-1962); University of Pennsylvania (JD-1965).
Professional Licenses	Admitted to the Bar: Colorado (1965); U.S. District Court: District of Colorado; U.S. Court of Appeals: Tenth and Federal Circuits; U.S. Court of Federal Claims; U.S. Tax Court; U.S. Supreme Court.
Professional Associations	American Bar Association (Forum Committee on Construction Law); Colorado Bar Association (Construction Law Forum, Founding Chair); Denver Bar Association; College of Commercial Arbitrators.
Recent Publications & Speaking Engagements	<p>Author, COLORADO ARBITRATION LAW (24th. Ed. 2017, CLE in Colorado; Managing editor, COLORADO CONSTRUCTION LAW, 1st ed., 2000 through 7th Ed. 2017 (chapter author, "Alternative Dispute Resolution") APPLICATION OF THE FEDERAL ARBITRATION ACT IN STATE COURT PROCEEDINGS (2014); DISCOVERY TO NON PARTIES IN COLORADO ARBITRATIONS (2016) ; co-author, HOW TO PREPARE FOR, TAKE AND USE DEPOSITIONS, 8th ed., 1997; DRAFTING ARBITRATION CLAUSES FOR CONSTRUCTION CONTRACT; FINDERS & FINDERS FEES (1970); APPLICATION OF COMPARATIVE NEGLIGENCE AND CONTRIBUTION STATUTES TO THIRD-PARTY DEFENDANTS (1984); APPLICABILITY OF THE PRO RATA LIABILITY, COMPARATIVE NEGLIGENCE AND CONTRIBUTION STATUTES (1994); THE POWER OF ARBITRATORS AND COURTS TO ORDER DISCOVERY IN ARBITRATION (1996).</p> <p>SPEAKING ENGAGEMENTS: "Ethics in the Practice of Construction Disputes," 2005; "Five (or Ten) Ethical Pitfalls You Can Avoid," 2005; "Construction Law," Continuing Legal Education Seminar, 2003; "Advanced Mechanic's Liens," Continuing Legal Education Seminar, 2003; "Representing Contractors in the Construction Process," Continuing Legal Education Seminar, 2003.</p>
Mediation Rate	\$390 Per Hour
Languages	English
Citizenship	United States of America
Locale	Denver, CO

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.