



AAA Mediation.org™

**FN-4633693 MN-4633693 LN-4633693,
Esq.**

San Diego, California

Current Employer-Title Law Office of Kirk D. Yake

Profession Arbitrator, Attorney, Mediator, Real Estate Broker

Work History Owner, Law Office of Kirk D. Yake, 2013 - Present; Of Counsel Attorney, Ward & Hagen, LLP, 2008 - 2013; Associate, Naumann, Levine & Silldorf, LLP, 2005 - 2008; Partner, Burdman Law Group, 1998 - 2005; Associate, Silldorf, Burdman, Duignan & Eisenberg, 1994 - 1998; Contract Attorney, Post-Bar Law Clerk, 1993 - 1994.

Experience Twenty-five years of broad litigation experience, including multi-week jury trials, primarily involving construction defect claims, including (but not limited to): mold contamination, roof and window defects, soils subsidence, slope failure, landslides, plumbing, and mechanical system defects.

Represented HOAs, also groups of homeowners, individual owners, and builders. Represented HOAs as general counsel, including CC&Rs and Rules revisions. Represented homeowners and tenants in litigation brought by HOAs; construction contractors; in real estate purchase transactions, including non-disclosure, in nuisance and trespass actions, toxic tort / exposure, personal injury. Represented business consultants in business slander / defamation matter. Hired as a consultant with condominium converter to create a litigation avoidance/containment program.

Participation in dozens of mediations in multi-party cases, involving liability apportionment, insurance coverage, and expert testimony. Negotiated landslide monitoring program with mass graders, homebuilders, HOA, affected homeowners, and geotechnical engineering firms. Assisted in litigation involving groundwater contamination, nuisance, trespass, and federal CERCLA and RCRA claims.

Mediator Experience Mediator of construction, real estate and HOA law matters since 2004. Has mediated employment matters for the EEOC since 2016, and serves on the San Diego Superior Court mediator panel. Other types of mediated matters include: multi-party real estate and construction; consumer debt cases; business disputes and dissolutions; landlord/tenant; and personal injury.

Serves on the Executive Committee on the Alternative Dispute Resolution section of the San Diego County Bar Association since 2011, and has been elected as Chair for multiple terms during that period.

Mediator Style & Process Preferences Mediation can be defined as the actuation of the parties' self-determination to resolve their own conflict under terms they determine agreeable to them, aided by the mediator, and if retained, by their counsel. The mediator's role is to (1) create the proper setting for the mediation, (2) develop a mediation plan that focuses on the issues that will present the greatest challenge to settlement, (3) prepare the parties to engage in a process that most likely requires development of trust with the mediator, the process, and the opposing parties' good faith, (4) and to prepare and assist the parties in evaluating settlement options in a realistic and holistic way, considering the claims and defenses

in the context of evidence, law, uncertainty of litigation, and cost.

A successful mediation is usually one that concludes with an enforceable settlement agreement reached by and signed by the parties, following a process of discussions with the mediator, among parties and their counsel, sometimes but not always directly with the opposing parties and their counsel, and the exchange of several sets of demands and offers. Sometimes a mediation will not succeed due to time constraints, lack of preparation by the participants, lack of desire by the parties to settle their claims within the established settlement range, or other factors such as lack of authority or lack of participation by third parties (such as insurance representatives). It is the mediator's role, in those cases, to identify the reasons why the mediation did not succeed, and if the parties agree, to seek to address those issues in further settlement efforts with the assistance of the mediator.

Settlement of legal claims almost always involves an intensive, often uncomfortable evaluation of one's position, claims and defenses, evidence and law. The mediator's pre-mediation role is to prepare the parties for the mediation, including reviewing submitted briefing and prior discussion with counsel, and to plan the direction of the mediation, highlighting the issues that will require special attention.

Oftentimes, the parties have undisclosed settlement parameters which may prevent settlement. These include attorney's fees' and/or contingencies, liens, insurance payments, medical, litigation or other costs, or a preconceived settlement ceiling or floor established as a "matter of principle." These undisclosed interests may prevent or derail an otherwise resolvable dispute, and sometimes determining, examining, and overcoming these interests is the primary obstacle in the mediation. It is the mediator's job to not only declare 'neutrality,' but to demonstrate it throughout the mediation; to respect and adhere to principles of confidentiality not only as to third parties, but to the participants, respecting their confidentiality and earning their trust during the mediation. It is the parties' (and counsel's) obligation to share adequate information and engage as requested so that the mediator can perform his/her role.

Education	University of San Diego School of Law (JD-1993); University of California, San Diego (BA-1987).
Professional Licenses	Admitted to the Bar: California (1993); U.S. District Court: Southern District of California (1993); California Bureau of Real Estate, Broker (2005).
Professional Associations	San Diego County Bar Association
Recent Publications & Speaking Engagements	<p>Presenter, "ADR Fundamentals, Building an ADR Practice," San Diego County Bar Association, March 2018.</p> <p>Moderator, "Good, Bad & the Ugly - What Will Become of California's Mediation Confidentiality," San Diego County Bar Association, March 2016.</p> <p>Frequently introduce programs produced by ADR Section, San Diego County Bar Association.</p>
Mediation Rate	\$400 Per Hour
Languages	English
Citizenship	United States of America
Locale	San Diego, CA

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.