



AAA Mediation.org™

FN-6059 MN-6059 LN-6059, Esq.

Shaker Heights, Ohio



Current Employer-Title Independent Arbitrator and Mediator
Taft Stettinius and Hollister LLP - Of Counsel

Professional Summary Spent entire career as a litigator doing mostly commercial and technology cases, as well as software licensing. Served as an arbitrator along with law firm practice from the mid '80s to the present. Cases litigated and arbitrated were overwhelming business related with the majority involving entirely or partially engineering, science, or software disputes.

Profession Attorney, Arbitrator, Mediator

Work History Independent Arbitrator and Mediator, 2017-present; Of Counsel/Partner, Taft Stettinius & Hollister LLP (successor by merger to Kahn Kleinman, LPA), 2008- 2016; Principal/Associate (1971-1978), Kahn Kleinman Co. LPA, 1979-2008.

Experience Over 40 years of experience as an arbitrator in technology and commercial cases. Fifty years of experience as a civil litigation lawyer, focusing on providing legal advice and litigation ADR services to technology companies and other businesses facing engineering technology-related issues. Practice encompassed aspects of engineering design, software performance, intellectual property, trade secrets, and employee non-compete issues, including buying, selling, developing, implementing, and licensing hardware, software and other technology. Also represents clients in litigating cases involving engineering design, avionics design, military equipment, computer software, polymers, electronics, optics, structures, mining systems and equipment, materials, antitrust, patent, copyright, trademark, trade secret, contract, construction, employee non-compete agreements, environmental regulation, civil rights, zoning and real property matters and other complex business cases. Time equally divided representing plaintiffs and defendants. Successful as defense attorney in nationally prominent case of U.S. v. Schafer (Kent State National Guard criminal trial) in 1974. Has appeared before the U.S. Court of Appeals for the Sixth, Tenth, Eleventh, and Federal Circuits and the U.S. Supreme Court. Former Chair of the Visiting Committee, Case School of Engineering, Case Western Reserve University 1994-99. Member of the Case Advisory Board.

Heard and decided cases involving computer software, machine design, aircraft engine failure, patents, copyrights, utility rate setting, power generation facilities, minerals, biotech devices and research, construction and design of complex buildings, and other business and technology disputes.

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| Mediator Experience | <p>Mediated numerous cases involving technology and business disputes for the AAA, U.S. District Court for the Northern District of Ohio, Cuyahoga County Cuyahoga Common Pleas Court, and independently engaged. Special master for U.S. District Court for the Northern District of Ohio.</p> <p>Mediated numerous cases involving engineering and technology issues, including, dispute regarding mineral supply contract, three cases involving multi-million dollar enterprise software installations, one involving polymer formulations, and one involving destruction by fire of a large store due to an alleged defective electrical device. Mediated several intellectual property cases, one involving trademarks and related Meta data on a website, a patent dispute, and a copyright dispute regarding architectural drawing and designs. Has also mediated many commercial cases including truck part manufacturing and supply contract, shopping center lease disputes, international moving tariffs and fees, and bankruptcy preferences. Mediated at dispute between a national organ transplant coordinating organization and transplant service provider. Finally, has successfully mediated two employment disputes. One involved a teacher and a board of education, and the other a hospital and an employee.</p> |
| Representative Issues Handled as a Mediator | <p>Issues have included: Truck part supply contract, enterprise software implementation agreement, meta data and trademark infringement; change in chemical formulation of polymer raw materials and resulting manufacturing issues; failed implementation of an enterprise software system; ownership of and credit for award-winning architectural design; cause of electrical fire that severely damaged a retail store; calculation of shopping center rental and renewal rights; fees due for damaged goods shipped internationally; rights on termination of a teacher's contract for cause; wrongful termination of employee, and; preference claims in bankruptcy.</p> |
| Mediator Style & Process Preferences | <p>I believe that the vast majority of business-related disputes can and should be settled. It is the parties who are best able to determine what is in their best interest through, rather than, a third party, judge, jury or arbitrator imposing a resolution. However, settlement efforts often need assistance from a neutral outsider. The role of the mediator is to assist the parties in reaching a resolution that they can accept. As a mediator, I try to find out the needs and concerns of the parties first. I believe in giving each party an opportunity to express their position in a non-confrontational manner to both educate the other party as to their claims, positions, and concerns as well as to humanize each party. Often, disputes arise because one or both parties do not have all of the facts. Consequently, I try to encourage the sharing of facts that could assist in a resolution. Sometimes, I find it helpful to provide a reality check to one or both parties, who may have unrealistic understandings of the litigation process, the law, key facts, their likelihood of success or a realistic recovery. I generally try to work to a win-win resolution, encouraging and assisting the parties to develop mutually beneficial business solutions that could not be the result of a court judgment or arbitration award. However, I try never to forget that the process belongs to the parties. It is their settlement, not mine. Consequently, I try to build consensus and agreement, sometimes with some prodding, but without undue pressure.</p> |
| Technology Proficiency | <p>Arbitrated and mediated numerous case either fully or partially on Zoom. All preliminary hearings are held on Zoom or other platforms. Fully arbitrated case on zoom and fully mediated multiple cases on Zoom. As a lawyer and arbitrator have dealt in depth with multiple types of software that were the subject matter of the disputes including multiple enterprise software installations for various industries, medical/nursing home accounting software, engineering design software among others. Regularly deal with ESI from multiple aspects. Served on bar committee that developed the Court's local rules regarding ESI, developed clients ESI procedures, dealt with ESI in multiple litigations and arbitrations. Conversant with technology generally due to degree in engineering focusing on engineering physics.</p> |
| Education | <p>Harvard University (JD, cum laude-1971); Case Western Reserve University (BS, Engineering, with high honors-1968).</p> |
| Professional Licenses | <p>Admitted to the Bar: Ohio (1971); U.S. District Court: Northern (1973) and Southern (2005) Districts of Ohio, Eastern District of Wisconsin (2007); U.S. Court of Appeals: Sixth (1977), Federal (1994), Tenth (1995) and Eleventh Circuits; U.S. Court of Claims (1982); U.S. Supreme Court (1977).</p> |
| Professional Associations | <p>Silicon Valley Arbitration and Mediation Center (Tech List Appointee, Executive Committee and Board Member), American Bar Association (Dispute Resolution Section; Litigation Section; Computer Software Committees; P); Cleveland Bar Association Cleveland Metropolitan Bar</p> |

Association (Former Trustee; Member ADR Section, Past Chair; Courts Rules Committee, Past Chair, Certified Grievance Committee, Judicial Selection Committee, Past Chair; Computer Law Institute, (Founder), Professionalism Task Force. Ohio State Bar Association, Fellow, Chartered Institute of Arbitrators (London), Fellow College of Commercial Arbitrators. Silicon Valley Arbitration Association, Tech List Appointee, Executive Committee Member, Program Committee, Co-Chair.

Recent Publications & Speaking Engagements

Diamant, Michael H., et al. "Arbitrating Technology Cases: Considerations for Businesspeople and Advocates." ADR Advocacy, Strategies, and Practices for IP and Technology Cases. Ed. Harrie Samaras, Chicago: ABA, Section of Intellectual Property Law, 2017. pp, 359-418. TECHNOLOGY MEDIATION, What's the Problem?, Cleveland Metropolitan Bar Journal, July/August 2017; ADR in Technology and Applied Science Cases, A Better Way, Dispute Resolution Journal, Volume 70, No. 1, p.p. 77-83, Effective ADR in Technology and Applied Science Cases, Cleveland Metropolitan Bar Journal, July/August 2014. Multiple local seminars regarding ADR generally and with regard to intellectual property and commercial contracts specifically. Speaker, "Tips from Mediators," Cleveland Metropolitan Bar Association, January 10, 2012. Speaker: "Effectively Representing Your client in Arbitration," Cleveland Metropolitan Bar Association, November 19, 2009; "Using Mediation, Arbitration, or Other ADR Techniques to Assist in Settlement," Litigating Trademark, Domain Name and Unfair Competition Cases, ALI/ABA, October 19-20, 2006; "Strategies for Mediation and Other Forms of Alternative Dispute Resolution," Litigating Trademark, Trade Dress, and Unfair Competition Cases, ALI/ABA, May 19-20, 2005; "Strategies for Mediation and Other Forms of Alternative Dispute Resolution," Litigating Trademark, Trade Dress, and Unfair Competition Cases, ALI/ABA, April 22-23, 2004; "Representing your Client Effectively in Mediation and Arbitration," Litigating Trademark, Trade Dress, and Unfair Competition Cases, ALI/ABA, January 3-4, 2002; "Alternatives to Going to Trial, Settlement and ADR Methods," Litigating Trademark, Trade Dress, and Unfair Competition Cases, ALI/ABA, December, 7-8, 2000; "Alternatives to Trial," Litigating Trademark, Trade Dress, and Unfair Competition Cases, ALI/ABA, November 18-19, 1999.

Locations Where Parties Will Not be Charged for Travel Expenses

Northern Ohio and Cape Cod/Boston Area

Mediation Rate

\$550 Per Hour

Languages

English

Citizenship

United States of America

Locale

Shaker Heights, OH

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.