



AAA Mediation.org™

**FN-95 MN-95 LN-95, Esq.**

Albany, New York



**Current Employer-Title** Breakell Law Firm, P.C. - Attorney

**Profession** Attorney

**Work History** Attorney, Breakell Law Firm P.C., 2003 – Present; Senior Managing Partner/Attorney, Breakell & Couch P.C., 1989 – 2003; Private Practice, 1980 – 1989.

**Experience** Practicing attorney since 1977 specializing in commercial and contract law; construction litigation; arbitration and mediation; private, state and federal contracts; drafting and preparation of owner, contractor and subcontractor agreements; surety payment and performance bond claims; mechanic's liens; contractual termination issues; OSHA citation; and contractual warranty issues. Significant element of legal practice is focused upon private and public commercial construction disputes with additional involvement in homeowner and builder disputes; representation of subcontractors, suppliers, owners, general contractors, and sureties in construction claims and/or disputes. Also represents electrical, mechanical, plumbing, utility, roofing, paving, and sitework contractors and other specialty contractors. Represents public and private owners as well as sureties on payment bond and performance bond claims. Has extensive litigation experience in state and federal courts, and before state and federal administrative contract review boards. Several client representations involved cases exceeding \$1 million. Types of projects in which disputes arose included double contained underground fuel piping system on federal installation; undisclosed subsurface condition on hangar installation; wrongful contract termination of municipal school project; deficient structural design pertaining to community college, deficient design capacity water treatment facility; multiple changed conditions on both private and public projects, changed condition on airport taxiway construction; additional work, interference, and delay claims on various schools, hospitals, commercial and industrial facilities. Served as special counsel to U.S. Bankruptcy Trustee.

**Mediator Experience** Service as a mediator has been provided in both commercial and construction matters. In the commercial arena, has mediated two cases between a product manufacturer and vendor; one case involving a franchise dispute and one case between a material supplier and manufacturer.

More than 70 construction related cases have been mediated. 20 cases were between owner and contractor (commercial); 10 cases were between owner and contractor (residential); 33 cases were between contractor and subcontractor and 7 cases were between suppliers and contractors.

<b>Representative Issues Handled as a Mediator</b>	<p>The franchise dispute involved issues regarding territory, accountings pertaining to calculation of royalty payments, franchisor support services and termination of franchise interests. The case involving the manufacturer and vendor involved the questions of material compliance and contractual interpretation. The case between the material supplier and manufacturer dealt with material specification compliance, timeliness of delivery, quantities delivered and payment terms.</p> <p>The construction related disputes involving owner and contractor (residential) dealt with payment, workmanship, timeliness of performance and material compliance. The owner &amp; contractor (commercial) dealt with allegations of non-payment of contractual extra work, contractual scope of work, design delegation &amp; design deficiencies as well as allegations of owner interference in contractor methods and means of work performance.</p> <p>The construction related disputes with contractors and subcontractors involved Pay-If-Paid v. Pay-When-Paid contractual terms, quality and warranty of workmanship, payment entitlement for work, timeliness of work, manpower and schedule issues, obstruction with work progress, obligations under contract for come back work or non-sequential work.</p> <p>The construction related disputes between contractor &amp; vendor involved payment issues, specification requirements and material compliance along with delivery time, on-site -vs- off-site storage and shop drawing approvals.</p>
<b>Mediator Style &amp; Process Preferences</b>	<p>A principal overriding philosophy of my mediation methodology is that the parties need to fully understand and accept that a resolution developed with their active participation and while they are in control of the final decision making is imminently better than allowing a third party to impose a resolution in which the parties have no ultimate decision making authority.</p> <p>As a mediator I expect that the different parties will be fully versed in the facts surrounding the dispute, will have present during the mediation parties whom have either participated in the issue or are fully knowledgeable of the issues which gave rise to the dispute. The final decision maker (with the exception of municipalities and school districts) need to be present and have authority to conclude the dispute. In the mediations involving municipalities &amp; school districts their representatives must have a range of authority at which those entities would authorize a resolution.</p> <p>My role as mediator is to be fully aware of the issues of all parties, utilize my professional &amp; personal experience to assist parties to overcome barriers to a resolution. I seek to involve the parties in an analysis of the practical, factual and legal elements of their respective positions in an effort to bridge the gap between the parties positions. I also have presented methodologies for utilization of third parties for inspection of work, serving as escrow agents, and have proposed the establishment of benchmarks for events to occur in an incremental or phased resolution where the parties have lost trust with each other.</p>
<b>Education</b>	State University of New York at Buffalo (JD-1977; BS-1974).
<b>Professional Licenses</b>	Admitted to the Bar: Florida (1980), New York (1978); U.S. District Court: District of New York (1979); U.S. Court of Federal Claims.
<b>Professional Associations</b>	American Bar Association (Litigation Section; Public Contract Section; Forum Committee on Construction Industry; Fidelity and Insurance Section; Labor and Employment Law Section); Upstate New York Construction Industry Advisory Counsel; New York State Bar Association; Northeast Subcontractors Association; Eastern Contractors Association; Associated Building Contractors.
<b>Recent Publications &amp; Speaking Engagements</b>	Articles on payment bond claims, contractual condition precedent on notice requirements, documentation, mediation and ADR procedures published in business publications. Speaker on construction related topics to the Northeastern Subcontractors Association, Eastern Contractors Association, Associated Builders and Contractors.
<b>Mediation Rate</b>	\$400 Per Hour
<b>Languages</b>	English

**Citizenship**

United States of America

**Locale**

Albany, NY

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.