



Marjorie C. Aaron, Esq.

Hourly Rate	\$350
Current	Marjorie Corman Aaron Mediation & Dispute Resolution Services - Director; University of Cincinnati College of Law - Professor of Practice
Practice	21
Cases	350
Languages	English

Current Employer-Title

Marjorie Corman Aaron Mediation & Dispute Resolution Services - Director; University of Cincinnati College of Law - Professor of Practice

Work History

Director, Marjorie Corman Aaron Mediation & Dispute Resolution, 1998-present; Professor of Practice, University of Cincinnati College of Law, 1999-present; Executive Director, Program on Negotiation, Harvard Law School, 1994-98; Senior Research Assistant, Harvard Business School, 1993-94; VP Professional Development and Senior Mediator, Endispute, 1988-94; Assistant District Attorney, Plymouth County District Attorney's Office, 1985-87; Litigation Attorney, Goodwin Procter, 1981-85.

Experience as a Mediator

Professional practice is as a neutral only. Professional time is largely spent teaching in this field. Has mediated many, many commercial business contract fraud and misrepresentation-related cases, recently including:

- Corporate provider of physical therapy and billing services' breach of contract and misrepresentation claims against health insurance company;
- Dispute between mall owner and restaurant tenant involving lease terms and accounting;
- Breach of exclusivity and non-competition provisions claims against consumer product manufacturer by spin-off beverage manufacturer, resolved on terms involving adjustments in manufacturing facilities' leases, royalty payments and revision of stock call prices;
- Breach of contract claims regarding tax allocation by corporate provider of learning programs against materials provider;
- Lender liability claims by business borrower against bank alleging constructive knowledge of fraud underlying related transactions;
- Negligent design and breach of contract claims by automotive facility purchaser against fabricator of mechanical clutches and design subcontractor;
- Claims by theater against mechanical lifts fabricator alleging breach of contract, negligent design and delay damages;
- Lender liability, fraud, reliance and breach of contract claims by franchise owner against specialty lending organization;
- Several corporate separation disputes, including physician shareholder with radiology practice group, and principal of exhibit design company, resolving terms of separation and asset distribution;
- Dispute between sellers and purchasers of financial paper regarding value and extent of credit debt exchanged.

Major portion of mediation practice in employment involving discrimination, breach of contract, or whistleblower claims, recently including:

- Contract and reliance based employment claim involving allegations of fraud in manipulation of electronic data;
- Race and ethnic origin claims by terminated employee against pharmaceutical sales company;

- Two age discrimination claims by H.R. professionals at medical device manufacturer involving performance and reduction in force issues;
- Former employee whistleblower claims against large utility company, raising state utilities regulation issues;
- Disability discrimination claims by former employee with multiple sclerosis, resulting in payment and home refitting to accommodate disability;
- Age and gender discrimination claims by commission saleswoman for real estate developer resulting in payment and transfer of land parcels;
- Automobile customer service representative claims of sexual harassment and hostile work environment against former employer and supervisor;
- Age discrimination and whistleblower claims by senior scientist against manufacturer of specialty flavors, resolved with structured settlement;
- Numerous gender and sexual harassment claims by former and current employees of large investment brokerage, as mediator panelist for the Merrill Lynch Claims resolution process, eventual work included evaluation of class-wide statistical evidence under special process at request of both counsel.

Mediation practice over the past several years has included a wide variety of other legal claims, included those below:

- Serious personal injury claims arising out of gas explosion by six steel company employees alleging intentional tort;
- Dispute between residents and cement company regarding permits and conditions for cement loading operation;
- Dispute between umbrella rowing organization and member group regarding separation and asset allocation;
- Wrongful death claim against police involving reasonable restraint and care in hospital emergency setting;
- Attorney malpractice arising from failed immigration and work permit application;
- Homeowners' and advocacy organizations' claims of racial red-lining in the sale of homeowners' insurance.

Representative Issues Handled as a Mediator

Employment cases have involved state and federal statutory age, gender, disability, race, ethnic origin and harassment claims, including hostile work environment, constructive discharge, notice defense issues and non-compete agreements.

Contract claims in construction and design related cases have involved delay damages, design and manufacturing defects, negligent supervision, and ambiguity in termination and damage limitation provisions.

Personal injury claims have involved intentional tort and workers' compensation issues, as well as contributory negligence. Land use and real estate cases have involved zoning, environmental permitting, religious organizations and restrictions.

Partnership and corporate separation cases have involved issues of fiduciary duty, minority shareholder rights, interpretation of corporate buy-out provisions, access to corporate financial information, business valuation and non-competition agreements.

Real estate cases have involved claims of fraud, breach of fiduciary duty, and breach of contract by real estate agents and developers. Professional malpractice cases have involved attorney malpractice and accounting malpractice issues.

Years of Practice as a Mediator

21

Total Number of Cases Mediated

350

Mediation Philosophy

From the first contact in mediation, I seek to learn: Why couldn't settlement be achieved without a neutral? What are the barriers to resolution and how can I help the parties address and overcome them? So, my initial approach is active curiosity about the particular barriers to settlement: Enmity? Missed communication? Lack of adeptness in negotiation, or entirely different negotiation styles or assumptions? Particularly difficult personalities or emotional baggage that render efforts at rationality futile? Failure to gather, exchange and analyze information necessary to evaluate the case and the parties' alternatives? Or, good faith, widely divergent views of the likely court outcome, often due to blinders we often wear as involved parties and partisans? I view my first responsibility as "diagnosis" based upon initial conversations and then a recommendation as to how the process should be structured to overcome those barriers. Thus, if I learn that parties are missing certain information, I will suggest it be exchanged in advance, enabling both sides to factor it into their preparation (within the corporate hierarchy or insurer). In a reduction in force case, if I learn that the employee was indeed valued (at least in certain areas of performance) but feels loss of identity, I may ask the employer's representative to speak in joint session of areas in which the employee contributed well. In construction cases, absent hard information as to repair costs, I will ask for documentation or bids obtained. Where creative business solutions appear possible, I will recommend that parties do the

internal groundwork needed to bring options to the table. None of this is radical; it simply anticipates what must be in place settlement.

I generally favor an initial joint session structured to provide information, perspective, or address emotion/psychological needs - if appropriate. It is the more efficient and effective forum for learning information and gaining insight into legal issues or potential solutions, or for a party seeking to be heard. In caucus, I reference joint session discussion without concern for compromises in perceived neutrality.

As I often remark in opening session, each party to a mediation will have a decision problem: whether to settle for what is "on the table" by the end of the day, or not. If each comes to believe that is better than their alternatives, they will choose settlement (emotional needs having been met). Thus, the mediator's role may include working with participants to analyze the alternative - generally, the litigation path. As the bargaining phase begins, if one or all participants appear to have simplistic or unrealistic assessments of the trial risk and likely outcomes, I suggest their discussion of more rigorous assessment. Because providing direct mediator evaluation can diminish perceived neutrality, I view mediator evaluation as a very last resort. I will however walk participants through their analysis of the litigation's likely twists and turns. (I am scrupulous about NOT revealing what I might think in this phase. In my experience, subtle or indirect evaluation, with raised eyebrow or disapproving tone, also creates an unhelpful defensive or adversarial relationship between the parties and the mediator.) I sometimes introduce formal or informal decision analysis, built upon participant assessments. When all else fails, and upon request, I will discuss my own analysis as additional neutral input for participants to consider. I endeavor to refrain from pushing the bargaining toward that analysis.

From the outset, I actively seek counsel's insight into clients' personalities, business or professional contexts, and thorny legal issues. In mediation, I encourage parties' direct participation. I may coach participants as negotiators, to present in a way the other side will be willing to hear and to make offers likely to elicit movement toward settlement.

Mediation References

Randolph Freking, Esq., randy@frakingandbetz.com, (513) 721-1975; Daniel J. Donnellon, Esq., ddonnellon@hioinjunctionlaw.com, (513) 252-9458; James Lawrence, Esq., jlawrence@fbtlaw.com, (513) 651-6822.

Alternative Dispute Resolution Training

ACE 21 – Impartiality: Do You Know Where Your Biases Are?, 2021; ACE20 - Cyber Security: A Shared Responsibility, 2020; AAA ACE19 Case Finances: What Arbitrators Need to Know, 2019; Arbitrator Performance and Demeanor ~ Meeting Participant Expectations, 2018; ACE08 - Principled Deliberations ~ Decision-Making Skills for Arbitrators, 2018; AAA Exercising Arbitrator Discretion: A Look at Some Best Practices ACE11, 2016; AAA Dispositive Motions in Arbitration - Best Practices for Advocates & Arbitrators, 2015, AAA Lemon Law Arbitrator Training, 2009; Cambridge Middlesex Multi-Door Courthouse Mediator Panel Training.

Professional Licenses

Admitted to the Bar, Massachusetts, 1981.

Professional Associations

American Bar Association (Section on Dispute Resolution); American Council of Civil Trial Mediators.

Education

Princeton University (BA-1978); Harvard Law School (JD-1981).

Publications and Speaking Engagements

"The Skills of a Legal Mediator," DVD featured mediator "The Skills of a Legal Mediator" by Dwight Golann for use with Golann's "Mediating Legal Disputes," funded by JAMS Foundation and distributed by the ABA Section on Dispute Resolution, 2008; NEGOTIATING OUTCOMES: POCKET MENTOR SERIES, Harvard Business School Press, 2007; CHAPTER AUTHOR, "Finding Settlements with Numbers, Maps, and Trees," THE HANDBOOK OF DISPUTE RESOLUTION, pps. 202-218, San Francisco: Jossey Bass, 2005; "Do's and Don'ts for Mediation Practice," DISPUTE RESOLUTION JOURNAL, 11, 2, Winter 2005 (selected for inclusion in "Best Articles" published by the ABA, GP SOLO, 23,2: March 2006); "On Psychology in Negotiation," UC Law Alumni Association, 2006; "Initial Contacts in Mediation" in two parts, in ALTERNATIVES, October/November; and "The Right Frame: Managing Meaning and Making Proposals," HARVARD MANAGEMENT COMMUNICATION LETTER, pps 1-4, vol. 2, no. 9; "Negotiating," on-line article featured in the HARVARD MANAGER, Cambridge: Harvard Business School

Publishing, also available on CD from); co-author, "Using Evaluations in Mediation," Dwight Golann, DISPUTE RESOLUTION JOURNAL, pps. 26-34, 52, 2; "Evaluation in Mediation," MEDIATING LEGAL DISPUTES, Boston: Little, Brown & Company, pps. 267-305; "Decision Analysis as a Method of Evaluating the Trial Alternative," MEDIATING LEGAL DISPUTE, Boston: Little, Brown and Company, pps. 307-334.

RECENT SPEAKING ENGAGEMENTS: "Advanced Negotiation Seminar," a three-day workshop, Master Class workshop, and other programs for particular ministries, with original simulation materials. New Zealand Ministry of Foreign Affairs and Trade, New Zealand Ministry of Economic Development, New Zealand Office of Treaty Settlements, New Zealand Leadership Development Centre, Wellington, NZ, 1999-2008; "Breaking the Rules: The Truth About Consequences," ABA Section on Dispute Resolution Spring Conference, 2008; "On Negotiating," CEO Roundtable, Cincinnati, OH, 2007; "Academy to Action for Practical Negotiation Advice," Westchester Chamber Alliance, 2007; "Spotlight on Women Negotiating," Women's Networking Initiative of the law firm of Thompson, Hine & Flory, Cincinnati, Ohio, 2006; "Decision Analysis: It's Not Just for Settlement Anymore!," Spring Meeting of the CPR Institute for Dispute Resolution, 2006; "Mediator Manipulation: The Art and The Ethics," opening plenary, ABA Section on Dispute Resolution with Professor Golann, 2006; "Negotiation," NY Stock Exchange. Enforcement Div., with original materials, co-presenters D. Laws of MIT and H. Bellman, mediator, 2005; "Negotiating Medical Faculty Issues," University of Cincinnati Medical School, 2005; "Triaging Family and Family Business Disputes," Symposium on Preventing and Resolving Family Business Disputes, ABA Section on Dispute Resolution, Regional Meeting, Boston, MA, 2004; "Mediating Without Mistakes," IP Legal Dept., Procter & Gamble, Cincinnati, OH, 2004.

Compensation

\$350 Per Hour

Languages

English

Citizenship

United States of America

Locale

Cincinnati, OH

The AAA provides mediators to parties on cases administered by the AAA under AAA mediation procedures. Mediations that proceed without AAA administration are not considered AAA mediations, even where parties select a mediator who is a member of an AAA mediation roster.