



AAA Mediation.org™

## James A. Brown, Esq.

P.O. Box 24611, Brooklyn, NY 11202



**Current Employer-Title** Arbitrator and Mediator

**Work History** Self-Employed, Arbitrator and Mediator, 2012-Present; Partner, Brown & Gropper LLP, 2002 - 2012; Owner, Law Offices of James A. Brown, 1995 - 2002; Associate, Colleran, O'Hara & Mills, 1991 - 1995; Associate, Seham Klein & Zelman, 1990 - 1991; Assistant General Counsel, New York City Office of Municipal Labor Relations, 1987 - 1990; Associate, Manning Raab Dealy & Sturm, 1986 - 1987.

**Experience** Currently employed as full-time arbitrator and mediator; serve on approximately 20 panels.

Previously worked in labor and employment law practice in both the private and public sectors. Litigated employment-related matters in both state and federal courts. Experience includes litigation under Title VII, the Americans with Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act ("FLSA"), Family and Medical Leave Act, Equal Pay Act, Federal Rehabilitation Act, New York State Human Rights Law and New York City Human Rights Law. Negotiated, drafted and reviewed numerous employment, non-competition and severance agreements.

Employee Benefits/Withdrawal Liability/Pensions: Previously represented multiemployer funds including pension, health and welfare, vacation, and apprenticeship plans, primarily in the construction industry. At arbitration, sought contributions from participating employers. Also represented plan participants in ERISA appeals, including proceedings to establish pension service credits and entitlement to disability pensions. Litigated over assumption of pension liability in connection with transfer of assets, and collectively bargained to increase level of health benefit contributions to ensure solvency of fund.

Has written columns on employment law and mediation in the New York Law Journal, NYSBA Labor and Employment Journal and other publications.

Lectured before the New York State, New York City and New York County Bar Associations and NELA/NY on topics related to employment law and arbitration in particular, and has also taught CLE courses on employment law.

Has spoken before the New York City Charter Review Commission on the topic of administrative

judicial review and before the New York City Council on employment law.

## **Mediator Experience**

As an advocate who practiced labor and employment law for 25 years through 2011, regularly appeared before mediators who presented a variety of styles, from purely facilitative to evaluative.

Since 2011, serve as full-time mediator and arbitrator. Has adopted an evaluative approach to mediation, drawing from many years of litigating employment disputes on behalf of plaintiffs and employers.

Mediated over 100 cases, most of which are employment-related, including statutory discrimination claims, contract disputes and wage and hour claims.

Has mediated single and multi-plaintiff cases; employers have ranged in size from small restaurants to large multinational corporations.

Also has experience mediating wage claims brought by undocumented workers, and structuring settlements where collective bargaining rights and obligations may impact the outcome.

### **References:**

James O'Donnell, Esq., Helen Dalton & Associates, jamespodonnell86@gmail.com

Matthew Brown, Esq., Milman Labuda Law Group, Matt@mllaborlaw.com

David A. Robins, Esq., Ruskin Moscou Faltischek, DROBINS@rmfpc.com

Dorina Cela, Esq., Phillips & Associates, dccla@tpglaws.com

## **Representative Issues Handled as a Mediator**

Transgender employee retaliated against after complaining about workplace treatment.

Sexual assault by small business owner.

Hotel employee placed in less visible work station due to race.

Reasonable accommodations for employee's religious beliefs.

Sexual harassment by same-sex supervisor.

Promotions denied based on religion and national origin.

Reasonable accommodations for disabled employee.

Fee dispute, under Title VII, after client prevailed before the NYS Division of Human Rights.

Transgender employee constructively discharged in connection with alleged hostile work environment.

Overtime claims involving allegedly misclassified employees.

Off-the-clock overtime claims made by restaurant workers.

Delivery workers alleging minimum wage violations.

## **Mediator Style & Process Preferences**

I have been mediating for over ten years, and have mediated approximately 250 cases.

Mediation requires patience, a positive outlook, and a willingness to compromise. A good mediator will address the parties' concerns with the aim of problem solving. Mediators should also help the parties recalibrate their prior expectations in the interest of reaching a settlement.

Before a mediation is conducted, I receive memoranda from counsel summarizing their clients' contentions and also stating the history of settlement discussions and each side's settlement range. I then follow-up with ex-parte telephone calls to address any questions raised by the submissions and also to identify who will attend the mediation.

At the mediation, I carefully listen to the parties in order to help them achieve their stated interests which are not necessarily the same as their stated desires. I ultimately engage in a "litigation risk"

discussion during caucuses, subject to confirmation or challenge by counsel, as a means to ensure informed participation. Toward the end of the mediation, I detail the benefits of settling, especially if the potential settlement falls short of initial expectations.

The attorneys play an important role at mediation. They must have with them all necessary documents pertaining to both liability and damages. After conferring with counsel, there will sometimes be a joint session at which the attorneys state their clients' positions without being argumentative. During caucuses, I allow the parties to do most of the talking because I find that establishing a rapport with the parties is essential to a successful outcome.

<b>Education</b>	Brooklyn Law School (JD-1986; Tufts University (BA-1983).
<b>Professional Licenses</b>	Admitted to the Bar: New York (1987); U.S. District Court: Southern (1989) and Eastern (1990) Districts of New York; U.S. Court of Appeals, Second Circuit (1999).
<b>Professional Associations</b>	Member, National Academy of Arbitrators; and New York State Bar Association.
<b>Recent Publications &amp; Speaking Engagements</b>	<p>Recent Publications:</p> <p>"Wage and Hour Mediations and the Small Employer," New York Law Journal, December 14, 2018.</p> <p>"SDNY Automatic Referrals and Pre-Mediation Discovery," New York Law Journal, September 14, 2017.</p> <p>"Friedrichs: The End of Public Sector Labor Relations as We Know It?" NYSBA Labor and Employment Law Journal, Fall 2015, Vol. 40, No.1.</p> <p>Recent speaking engagements include:</p> <p>Federal Mediation and Conciliation Service "Evidence and Proof: What it Takes" (May 2021);</p> <p>National Academy of Arbitrators, Region 2 "Alternative Dispute Resolution in Wage and Hour Cases" (May 2019);</p> <p>New York County Lawyers Association "Wage and Hour Mediations: What to Know in an Expanding Area of Law" (April 2019);</p> <p>"Motion Practice in Arbitration: A Bridge Too Far or a Welcome Development?" (NYS Bar Association, January 2018);</p> <p>"Labor Arbitration - An Overdue Look at Some Controversial Issues in Disciplinary Cases" (NYS Bar Association, September 2016);</p> <p>"Labor Arbitrator Roundtable: Best &amp; Worst Practices for Labor Arbitration" (NYS Bar Association, October 2013); and</p> <p>"New Labor Arbitrator Panel" (NYC Bar Association, June 2013).</p>
<b>Locations Where Parties Will Not be Charged for Travel Expenses</b>	New Jersey
<b>Mediation Rate</b>	\$600 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Brooklyn, 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.