



AAA Mediation.org™

Marjorie C. Aaron, Esq.

Cincinnati, Ohio



Current Employer-Title University of Cincinnati College of Law - Professor of Practice, Emerita
Marjorie Corman Aaron, Just-Decisions.com - Principal

Profession Attorney, Arbitrator, Mediator, Consultant; Educator

Work History Principal, Marjorie Corman Aaron Mediation & Dispute Resolution, 1998-Present; Professor of Practice, Emerita, University of Cincinnati College of Law, 1999-Present; Executive Director, Program on Negotiation, Harvard Law School, 1994-1998; Senior Research Assistant, Harvard Business School, 1993-1994; VP Professional Development and Senior Mediator, Endispute, 1988-1994; Assistant District Attorney, Plymouth County District Attorney's Office, 1985-1987; Litigation Attorney, Goodwin Procter, 1981-1985.

Experience Has mediated and arbitrated continuously since 1988, along-side professional work as Executive Director of the Program on Negotiation at Harvard Law School and faculty for negotiation and dispute resolution courses there.

Since 1998, based in Cincinnati, Ohio, has mediated and arbitrated cases involving employment (including employment contracts, race, gender, national origin and religious employment discrimination, harassment, and retaliation as well as whistle blower retaliation claims), commercial construction (including multi-party construction disputes), wide range of commercial contracts, real estate, franchise, banking, business torts, family and other closely held business disputes, insurance coverage, intellectual property, personal injury, and medical malpractice.

Served on Chicago federal court (appointed through a special master) mediator panel for resolution of individual claims pursuant to settlement of gender discrimination class action against an investment brokerage firm, and on a panel advisory arbitrators for allocation of settlement funds among class members in two class action race discrimination cases.

Faculty at the University of Cincinnati College of Law since 1999, has taught negotiation, mediation, mediation advocacy, client counseling, advanced decision analysis and ADR survey courses as well as trial practice. These negotiation and dispute resolution related courses focus on litigation contexts and commercial business contexts.

Has designed and taught many, many mediation training workshops to attorneys through various

organizations, including: Boston, Univ. of Cincinnati Center for Practice, Kentucky Bar Association, Federal District Court Panels in Pennsylvania, New York, and Michigan. Has also designed and provided numerous workshops in negotiation, client counseling, and decision tree analysis for law firms, bar associations, businesses, and governmental organizations.

Four years of civil litigation practice as attorney at Goodwin Procter in Boston included product liability, business torts, general commercial contract and business and some securities litigation, followed by work as an Assistant D.A. in Plymouth County, MA.

Mediator Experience

Professional practice has been as a neutral only since 1988. Has mediated a wide variety of legal disputes including:

- 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;
- Negligent design and breach of contract claims by automotive facility purchaser against mechanical clutch fabricator and design subcontractor;
- Negligence and breach of contract claims by hotel owner against general contractor relating to pool and deck installation;
- Claims by theater against mechanical lifts fabricator alleging breach of contract, negligent design and delay damages;
- Ownership and profit distribution between founders of on-line start up in music education
- Dispute between mall owner and restaurant tenant involving lease terms and accounting;
- Lender liability claims by business borrower against bank and lender liability, fraud, contract claims by franchise owner against specialty lender;
- Dispute between mall owner and restaurant tenant involving lease terms and accounting;
- Several corporate separation disputes, including physician shareholder with radiology practice group, and principal of exhibit design company, resolving terms of separation and asset distribution;
- Canadian franchisee from US based franchisor regarding rights to customer lists, product marketing, and intellectual properties creating phased process for business separation, renaming, and promotion.;
- Dispute between sellers and purchasers of financial paper regarding value and extent of credit debt exchanged;
- Allocation of limited insurance proceeds among two injured parties;
- 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.

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

- 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 resolution of individual class action claimants against an investment brokerage firm, eventual work included evaluation of class-wide statistical evidence under special process at request of both counsel.

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.

Mediator Style & Process Preferences

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. 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 sometimes introduce formal or informal decision analysis, preferably built upon participant assessments. When all else fails, and upon request, I will offer my neutral analysis for participants to consider. However, the bargaining process remains within the participants' control: I do not consider it ethical to push the bargaining to align with my assessment.

From the first contact with counsel 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? 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. For example, 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. In construction cases, absent hard information as to repair costs, I will ask for documentation or bids obtained. Where business solutions appear possible, I will recommend that parties do the internal groundwork needed to bring options to the table.

While I often favor an initial joint session intentionally structured and moderated to provide information, perspective, or address emotion/psychological needs, I recognize that a joint session risks doing more harm than good. Thus, I respect counsel's and participants' preference to move directly into caucus without a substantive joint session. Caucusing enables private confidential discussion of the issues most important to the parties, as well as discussion of bargaining moves, and progress toward settlement. Fundamentally, the process should remain flexible enough to facilitate settlement decisions.

Technology Proficiency

Zoom and other video conferencing technologies.
TreeAge and other decision tree analysis software.

Education

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

Professional Licenses

Admitted to the Bar: Massachusetts (1981); Ohio (2022).

Professional Associations

American Bar Association (Section on Dispute Resolution); American Council of Civil Trial Mediators; CPR Institute for Conflict Prevention and Resolution (Academic Member); Cincinnati and Ohio Bar Associations.

Recent Publications & Speaking Engagements

Books:

Risk & Rigor: A Lawyer's Guide to Assessing Cases and Advising Clients, DRI Press, 2019;

Client Science: Advice for Lawyers on Counseling Clients on Bad News and Other Legal Realities, Oxford University Press, 2012;

NEGOTIATING OUTCOMES: POCKET MENTOR SERIES, Harvard Business School Press, 2007.

Articles and DVDs:

"Beyond Abstinence: Promoting Safe, Impartial, and Evaluative Acts", [Co Author with Dwight Golann] Dispute Resolution Magazine (October 2019);

"The Haunting Specter of Fiss' Against Settlement," in A. Hinshaw and A. Schneider, eds., Discussions in Dispute Resolution: The Foundational Articles (Oxford University Press, 2021);

"Confessions and Redemption-and Politics-For an Un-Neutral Person Who Mediates," ALTERNATIVES 38,9, 2020;

Reflections on Untethered Philosophy, Settlements, and Nondisclosure Agreements," ALTERNATIVES, 38,8. 2020;

"Initial Contacts in Mediation" in two parts, in ALTERNATIVES, October/November, 2012;

"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;

Mediation of a Multi-Party Dispute – Ceiling Collapse, directed and produced with Professor Dwight Golann, available through the ABA/Suffolk teaching video website. 2016;

Mediation of an International Business Dispute, a video directed and produced with Professor Dwight Golann, available through the ABA/Suffolk Teaching Video website, 2016;

"The Right Frame: Managing Meaning and Making Proposals," HARVARD MANAGEMENT COMMUNICATION LETTER, pp. 1-4, vol. 2, no. 9;

"Shaking Decision Trees for Risks and Rewards" (co-authored with Wayne Brazil), Dispute Resolution Magazine (Fall 2015);

Hapless Harvest Interviewing and Counseling, a four-part video series including segments on interviewing and counseling both "By the Book" and "Not by the Book", directed and produced these video recordings with Professor Dwight Golann, available through the ABA/Suffolk teaching video website;

"The Client Science Course," a complete package of course materials (original article on initial client interviews, simulations, exercises, problem sets, and 100+ page instructors' guide for teaching lawyer-client interviewing and counseling), 2014;

"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);

Decision Analysis as a Method of Evaluating the Trial Alternative," *MEDIATING LEGAL DISPUTE*, Boston: Little, Brown and Company, pps. 307-334.

SPEAKING ENGAGEMENTS:

Advanced Mediation Refresher for Federal Mediator Panel, MI (2023).

Negotiation workshops for Goodwin Procter transactional and litigation attorneys (2022).

Decision Tree Analysis, Cincinnati and Kentucky bar associations and mediator panels (2015-2022).

Actors' Imaginary Truths for Lawyers, UC Law Downtown Faculty Teach-In (2016);

Negotiating Anchors, Perception, Power, and Improvisation for Better Deals, UC Law Downtown Faculty Teach-In (2015);

Decision Analysis for Lawyers I & II, Introduction and Beyond the Basics, developed and presented these two, one-day workshops (2006-08, 2012-13);

On Delivering Bad News, jointly sponsored by the Cincinnati Bar Association, and the Center for Practice, designed and taught this half-day CLE workshop (2013);

"Advanced Negotiation Seminar," a three-day workshop, Master Class workshop, and other programs for govt. ministries. New Zealand Ministry of Foreign Affairs and Trade, Ministry of Economic Development, Office of Treaty Settlements, Leadership Development Centre, Wellington, NZ, 1999-2010.

Locations Where Parties Will Not be Charged for Travel Expenses

Cincinnati, OH

Mediation Rate

\$400 Per Hour

Languages

English

Citizenship

United States of America

Locale

Cincinnati, 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.