



Michael E. Botnick, Esq.

Panelist Video

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Current Employer-Title

Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC
- Member

Work History

Member, Gordon Arata Montgomery Barnett McCollam Duplantis & Eagan LLC, 2003 - Present; Deputy City Attorney, City of New Orleans, 1988 - 2003; Attorney, Self-Employed, 1980 - 2003; Associate, Steeg Law Firm, 1975 - 1980.

Experience

Certified mediator with more than 40 years of experience in commercial litigation. Practice encompasses transactions, real estate, contracts, and corporate law, as well as trusts and estates.

Spent approximately 30 years practicing construction law and handling litigation cases involving commercial disputes, while gaining recognition in one of the top attorney directories.

Served as Deputy Attorney for the City of New Orleans from 1994-2003. Responsible for the negotiation, drafting and preparation of all public bid, professional, and personal service contracts for the City. Also, assisted all City departments in the drafting of contracts and served in an advisory capacity to these departments. During this time, chaired the committee responsible for reviewing all contracts, leases, capital projects, professional and personal service contracts for compliance with policy and legal requirements before submission for the mayor's consideration and signature.

From 1993-1994, served as Director of Economic Development for the City of New Orleans and as the City's lead counsel for the 1988 Republican National Convention, the Pope John Paul II visit, the Harrah's Casino project, and in various complex and high-profile state and federal litigation.

Represented the City of New Orleans, landlords, public and private developers, lending institutions, a publicly traded real estate investment trust, real estate companies and brokers. Represented Sizeler Property Investors, Corporate Realty, Inc., and Sizeler Realty Co., Inc. Handled matters involving negotiating and preparing commercial leases for New Orleans landlords, warehouses, shopping centers, hospitals, office buildings and tenants. Assisted with zoning, permitting, and licensing issues; reviewing, drafting, and negotiating construction agreements, development agreements, service contracts and related agreements; and closing purchases and sales of apartment complexes.

As Deputy City Attorney for New Orleans, served as lead counsel for \$800 million Harrah Casino project and various public/private developments.

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Acts as one of the managers and licensed title agents for Current Title Agency, L.L. C., a Louisiana licensed title insurance agency, which is owned and operated by Gordon Arata.

Experience as a Mediator

Served as designated Administrative Officer for 15 years for all public bid and competitively selected contract disputes during tenure as Deputy Attorney for the City of New Orleans. Presided over more than 30 cases involving construction, real estate, leases, capital projects, professional and personal service contracts. The monetary value of these disputes ranged from approximately \$50,000 to more than \$10 million. The parties involved included companies and individuals in the public and the private sector. The hearings required analysis and interpretation of public construction matters, complex cooperative endeavor agreements, and public/private sector economic development initiatives.

A majority of these hearings involved multiple competing developers, contractors and vendors submitting complex, voluminous bids and proposals that required a detailed competitive selection process. The parties were permitted to have the award and contract reviewed to determine the substantive, responsive and responsible merits of the contract to be awarded.

The hearing process involved a detailed review of the proposals and submissions to determine the validity of the award based on the law and evidence presented.

Representative Issues Handled as a Mediator

Primary issues of cases mediated involved various multi-party construction, environmental toxic tort, boundary dispute and personal injury matters. The construction matters primarily involved defective workmanship and delay damages. The environmental toxic tort matters involved unearthed radioactive material. The personal injury disputes involved various automobile accidents and slip and fall incidents.

Years of Practice as a Mediator

15

Total Number of Cases Mediated

30

Mediation Experience as an Advocate or Party

Participated as an advocate in approximately 20 mediations in similar multi-party matters involving construction, real estate, personal injury, and toxic torts ranging from \$100,000 to over \$10 million during tenure as a private practitioner.

Mediation Philosophy

Before the mediation, the mediator should contact participating counsel to determine what relationship exists between the parties and whether an initial joint session is desirable or should be avoided. Although joint sessions are nearly always beneficial, in some instances it may not be helpful because the relationship between the parties is volatile and would prejudice the process. It is also of utmost importance that someone be present from each side having the necessary settlement authority for the process to be successful. The absence of such authority is fatal to reach a settlement. Concise and relatively short position papers should be submitted by each party, describing the factual details which are the basis of the conflict, the current status of the dispute, and each of the parties' desired result

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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.

as well as the legal basis of their position.

An initial joint session is desirable (barring a volatile relationship) to enable the parties to become familiar with and embrace the process. It is helpful to encourage and congratulate them on agreeing to participate. Explaining that a majority of cases do reach a settlement and further emphasizing that the participating parties control the outcome is also useful. To facilitate communication between the parties, emphasize that mediation is not bound by the same rules and strict structure as litigation.

Assuring the parties that all the information is strictly confidential enables them to make a good faith effort to participate and use their best efforts to reach the desired settlement. The initial joint session offers the parties direct face-to-face communication, which is not available in any phase of the litigation process. The mediator should observe the interaction of the parties and counsel, setting a favorable tone for the process and endeavor to develop the trust of the participants to create a productive learning conversation. Importantly, emphasize the value of resolving the dispute "today" with certainty as opposed to the risk and uncertainty of the "future."

While direct dialogue between the parties in a joint session is preferable, a private caucus is often needed to aid the parties in moving forward to a settlement. When and if the joint session reaches an impasse or becomes stressful, a closed caucus between the mediator and each party in tandem can facilitate more open discussion of sensitive and highly confidential matters. If this information is offered, it is necessary to obtain permission to convey it and proposals to the parties at the end of the caucus.

Once a settlement has been reached, it is necessary to enter into a detailed agreement to formalize the settlement.

Mediation References

Danny Shaw - dshaw@bakerdonelson.com (985) 819-8401; Bruce Shreves - bshreves@spsr-law.com (504) 569-2030
Gary Giepert - giepert@cox.net (504) 523-0700.

Alternative Dispute Resolution Training

ACE21 Impartiality: Do You Know Where Your Biases Are? 2021; ACE 20 - Cyber Security: A Shared Responsibility, 2020; 2019 Construction Super Conference; Arbitrator Performance and Demeanor - Meeting Participant Expectations, 2018; AAA Best Practices for Counsel: Mediating and Arbitrating The Complex Commercial Case, 2017; AAA Arbitration Fundamentals and Best Practices for New AAA Arbitrators, 2016; Awards; Safeguarding, Deciding & Writing Awards, 2016; The Mediation Institute: Civil, Commercial and Employment Mediation Training, 2015.

Professional Licenses

Admitted to the Bar: Louisiana, 1975; U.S. Supreme Court, 2007.

Professional Associations

Construction Lawyers Society of America (Inaugural Member), American Arbitration Association, Louisiana State Bar Association; New Orleans Bar Association; and New Orleans Academy of Trial Attorneys; Association for General Contractors; Association of Builders and Contractors; Association of Corporate Growth.

Education	Tulane University (JD - 1975); University of New Orleans (Law School Admission-1972)														
Awards and Honors	Chambers USA: America's Leading Lawyers for Business. Peers praise include "good at breaking it [the situation] down" and "anticipating issues before they happen and coming up with practical solutions that avoid wasting time and money." Listed in the A.M. Best's Directory of Insurance Professionals, Louisiana Super Lawyers and New Orleans Magazine's Top Lawyers for construction.														
Publications and Speaking Engagements	Co-Presenter of Legislative Update: How Boudin is Made in Baton Rouge (Gordon Arata Annual Duck Lunch & Seminar, October 2015) Co-Presenter of The Contested Case - A View from Both Sides (The Basics of Administrative Law in Louisiana, Lorman, November 2004).														
Citizenship	United States of America														
Languages	English														
Locale	New Orleans, Louisiana, United States of America														
Compensation	<table> <tr> <td>Hearing:</td> <td>\$3600.00/Day</td> </tr> <tr> <td>Study:</td> <td>\$450.00/Hour</td> </tr> <tr> <td>Travel:</td> <td>\$225.00/Hour</td> </tr> <tr> <td>Cancellation:</td> <td>\$3600.00/Day</td> </tr> <tr> <td>Cancellation Period:</td> <td>2 Days</td> </tr> <tr> <td>Comment:</td> <td>Cancellation rate is \$3600 if cancelled within 48 hours of the hearing and no fee if cancelled prior to 48 hours.</td> </tr> <tr> <td colspan="2">Other Compensation: Expenses</td> </tr> </table>	Hearing:	\$3600.00/Day	Study:	\$450.00/Hour	Travel:	\$225.00/Hour	Cancellation:	\$3600.00/Day	Cancellation Period:	2 Days	Comment:	Cancellation rate is \$3600 if cancelled within 48 hours of the hearing and no fee if cancelled prior to 48 hours.	Other Compensation: Expenses	
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