



Mediator Full Profile



Mr. Don Philbin

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Experience Qualification Path

Category 2: CPR Institute

Mediation locations

United States - TX

Mediation languages

English

Current position and background

Don Philbin, J.D., M.B.A., LL.M., is an AV-rated attorney-mediator and president of Picture It Settled® (www.pictureitsettled.com), a software company that develops predictive analytics for negotiation based upon deep data from thousands of litigated cases.

After litigating commercial cases, forging business deals and case resolutions as general counsel and president of technology companies, and mediating hundreds of individual and collective cases in a wide variety of substantive areas, Don observed that the rhythm of the negotiation dance was predictable. So he collected data on thousands of cases from lawyers, companies, mediators, and other sources. Studying the patterns in two dimensions (money and time), he developed Picture It Settled.

Using neural networks, predictive modeling, and genetic algorithms, Don, with considerable assistance from scientists at Southwest Research Institute®, isolated trends across groups of similar negotiations and trends that develop within particular negotiations. Now Picture It Settled® web-based software and its mobile app help negotiators optimize their concession strategies and predict where a round will end.

Don was one of three Texas mediators listed in the inaugural edition of The International Who's Who of Commercial Mediation (2011; one of five Texas mediators in the 2012 edition), was recognized as the 2011 Outstanding Lawyer in Mediation by the San Antonio Business Journal, and is repeatedly listed in: The Best Lawyers in America, Texas Super Lawyers, The Best Lawyers in San Antonio, and the U.S. News and Best Lawyers "Best Law Firm" survey. He is an



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elected fellow of the International Academy of Mediators and the American Academy of Civil Trial Mediators.

Main mediation practice areas

- * Accounting Malpractice
- * Appellate
- * Business
- * Civil
- * Commercial
- * Community
- * Consumer
- * Construction
- * Contracts
- * Copyright
- * Discrimination
- * Divorce
- * Education
- * Employment
- * Energy
- * e-Neutral
- * Environmental
- * Estate
- * Family
- * Financial
- * Franchising
- * General Counsel
- * General Mediation
- * Government
- * Health Care
- * Home Owners Associations
- * Insurance
- * Insurance Bad Faith
- * Intellectual Property
- * Land Use
- * Landlord / Tenant
- * Labor
- * Legal Malpractice
- * Medical
- * Municipal
- * Organizational
- * Partnership
- * Patent
- * Personal Injury
- * Premises Liability
- * Probate
- * Products Liability
- * Professional Fees
- * Professional Malpractice



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- * Public Policy
- * Real Estate
- * Regulatory
- * Securities
- * Settlement Counsel
- * Shareholder Disputes
- * Software
- * Tax
- * Technology
- * Telecommunications
- * Torts
- * Trademark
- * Valuation (ad valorem)
- * Wills, Trusts & Estates
- * Work Place

Mediation experience

Philbin has extensive experience and education in the fields of business, law, negotiation, and mediation, and mediates individual and class matters in a range of substantive areas.

Description of mediation style

Trained in a variety of styles (facilitative to evaluative) and uses the full range of techniques subject to party consent.

Code of professional conduct

IMI Code of Professional Conduct

Complaint process

IMI Professional Conduct Assessment Process

Professional indemnity insurance

Association of Attorney-Mediators (Underwriters at Lloyd's, London) (\$250K claim / \$2M aggregate)

Feedback digest

Reviewer: Robinson Peter (peter.robinson@pepperdine.edu)
Latest Update: 2009-06-30 17:18:35

This Feedback Digest is based on seven feedbacks in seven mediations and was initially submitted on May 19, 2009.

Upon review, it is clear that Mr. Philbin has consistently performed at a high level while acting as a mediator. Mr. Philbin has thus far received Performance Level 5 ratings in all categories by the parties he served and several have provided commentary praising his clear approach to resolution and his diligence in settling complex business dissolutions.



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The parties Mr. Philbin has worked with appear happy to reuse his services or refer him to other disputing parties. Disputing parties have emphasized his value, his attention to detail and his level of sophistication when dealing with their claim. Mr. Philbin has also received high marks for his level of organization and his patience in dealing with complex claims. Parties referred to his conscientiousness and his ability to understand and manage both emotional and strategic elements of each case.

During the mediation process, Mr. Philbin's skills in building rapport, keeping emotional parties at the table, and continuously moving both sides towards settlement were highly emphasized. Several feedback providers claimed he had done generally great work as a listener, a deal-maker and a peace-keeper and that he was effective throughout the mediation process.

Mr. Philbin is generally described as a great mediator with a good style and clear approach to the process. Feedback providers consistently remarked that they would further recommend his services and that they were fortunate to work with him.

No reportable negative comments have arisen in the past two calendar years.

Professional affiliations

- * Outstanding Lawyer in Mediation (2011), SAN ANTONIO BUSINESS JOURNAL
- * Distinguished Service Award (2011), Bexar County Dispute Resolution Center
- * Listed in THE INTERNATIONAL WHO'S WHO OF COMMERCIAL MEDIATION (inception in 2011-present) (1 of 3 listed for Texas in 2011 Inaugural Issue; 1 of 5 listed for Texas in 2012 Issue)
- * Fellow, American Academy of Civil Trial Mediators (2009-present); Editorial Board, American Journal of Mediation (2012-present)
- * Distinguished Fellow, International Academy of Mediators (2010-present; Communication Committee 2011-present)
- * Distinguished Fellow, National Academy of Distinguished Neutrals (2010-present)
- * Founding Member and Executive Committee Member, Texas Academy of Distinguished Neutrals (2010-present)
- * Fellow, American College of e-Neutrals (2011-present)
- * Certified Mediator, International Mediation Institute (IMI) (2009-present)
- * Credentialed Distinguished Mediator, Texas Mediator Credentialing Association (2007-present)
- * Listed, TEXAS SUPER LAWYERS (2010-present) (1 of 4 listed for ADR in San Antonio 2010; 1 of 5 in 2011)
- * Listed, THE BEST LAWYERS IN AMERICA® (Alternative Dispute Resolution, 2007-present) (1 of 4 listed in San Antonio for 2012 in the categories of mediation and arbitration)
- * Listed in the U.S. NEWS AND BEST LAWYERS "BEST LAW FIRM" survey (2010-present) (1 of 4 firms listed 2010; 1 of 3 in 2011 - Tier 1 San Antonio in Mediation; Tier 2 San Antonio in Arbitration)
- * Listed in The BEST LAWYERS IN SAN ANTONIO (Arbitration and Mediation, 2007-present; Business Litigation 2012)
- * Listed in the BAR REGISTER OF PREEMINENT LAWYERS (2007-present)
- * Martindale-Hubbell® rating: AV (1999-present)
- * Member, Association of Attorney - Mediators (2007-present)



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- * Senior Mediator (2008-present); Certified Mediator (2009-present), Mediate.com
- * Member, Society for Empirical Legal Studies (2008-present)
- * Member, Decision Analysis Society (2008-present)

References

- * "I just completed the most difficult mediation of my career. We literally worked for 22 hours straight. Don Philbin quickly recognized the legal and factual issues involved as well as the unique and challenging personalities that needed to be managed. He did a flawless job keeping the parties focused on the goal of settlement and helped the parties find common ground and a path to resolution. Most importantly, he did not give up and kept the parties working 22 hours. This was my first mediation with Don, but it will not be my last. I highly recommend Don to all who are in need of a dedicated and skillful mediator." Trial attorney on LinkedIn and other sites
- * "Don has helped to settle cases with some of the most difficult clients. His business-sense helps clients understand the long-term and unseen costs of litigation to a business versus pursuing a matter on principal." Anonymous private practice attorney on Best Lawyers
- * "Stellar intellect & character." Anonymous judge on Martindale
- * "Don Philbin is one of the very best mediators I have seen. He is a top-notch professional." Private practice attorney on Best Lawyers
- * "Mr. Philbin's education in the legal field as well as his business knowledge serves a client very well." Private practice attorney on Best Lawyers
- * "Don stepped in to mediate a case with interesting legal issues and emotionally charged parties. He did a great job realistically evaluating the potential legal outcomes from both perspectives. In a single session with Don, we were able to reach a settlement agreement that included a novel, non-financial element neither party had previously considered. It was a creative solution that enabled the parties to resolve their differences without further litigation." National firm lawyer on Martindale
- * "Excellent person, lawyer, mediator." Anonymous judge on Martindale
- * "Don is an incredibly personable attorney. He is extremely intelligent and able to communicate difficult concepts with ease." Anonymous private practice attorney on Martindale
- * "Don is one of the very best mediators. He is very smart, very talented, and very dedicated to his work." Anonymous private practice attorney on Martindale
- * "Don Philbin successfully mediated a complicated and emotionally-charged business divorce matter for me. He built a positive rapport with the participants and introduced creative ideas. Don was determined to resolve the dispute, which he did after 18-hours of mediation." National firm lawyer on Best Law Firms
- * "Don Philbin is a great mediator! He is smart. He knows how to make litigants consider the risk / reward of a settlement." Anonymous lawyer on Best Law Firms
- * "This was my first time to use Don. He came to me highly recommended. He was fair, objective and absolutely knew his stuff. I was impressed with how rapidly he grasped the important points of a complex transaction. I will use him again." Anonymous private practice attorney on Martindale
- * "Don is an extremely talented mediator. Don works hard, and has the skill to get a tough case settled." Anonymous private practice attorney on Martindale
- * "Great 3rd party neutral in all areas of ADR and knows more about negotiation than all but a few lawyers in Texas." Anonymous private practice attorney on Martindale
- * "A dedicated mediator willing to work hard to create an environment of settlement." Anonymous private practice attorney on Martindale
- * "Using his business skills, legal skills and a lot of common sense, he is able to understand and



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be extremely effective. Mr. Philbin is very sensitive to the stress mediation places on a client. He is able to put the client at ease to achieve results." Anonymous private practice attorney on Martindale

* "This was my first mediation with Mr. Philbin and I was very impressed with his professionalism, creativity and commitment to the parties and attorneys in resolving some very difficult issues. Mr. Philbin was dedicated to staying the course and gratuitously spent considerable additional time to reach resolution. I've been involved in many mediations in 20+ years of practice and this was one of the most positive mediation experiences I have had. I look forward to working with him again." Anonymous private practice attorney on Martindale

* "I have known Don for many years but just recently mediated with him on a very tough custody issue. Don was quite professional and helped my client through an extremely difficult situation. He has good suggestions and ideas to help the parties reach a resolution." Private practice attorney on Martindale

* "Don is a great mediator!" Anonymous private practice attorney on Martindale

* "Fantastic mediation with great follow-up. You want Don to mediate your case!" Anonymous private practice attorney on Martindale

* "Excellent and creative approach to arrange a settlement that all agree." Anonymous private practice attorney on Martindale

* "Don was able to really understand a very complex business "divorce" and help the parties dissolve a 14 year business relationship. He kept pushing the parties toward resolution and was able to obtain a great result for my client." Anonymous private practice attorney on Martindale

* "Don is an incredible mediator. Two weeks ago he was appointed to mediate a visitation dispute - first time I had met him. We reached an agreement. This couple had very poor communication. After the mediation, the father called the mother and they talked for two hours. My client is very thankful the matter settled out of court, and for this new ability to communicate with her former spouse. Second mediation with Don was last week - more difficult facts and equally satisfying results." Anonymous private practice attorney on Martindale

Mediation education and training

* Straus Institute for Dispute Resolution, Pepperdine University School of Law (ranked No. 1 in the country by U.S. News and World Report multiple times, including years of LL.M. training) (TADRA §154.052(a))

* Over 600 hours of classroom and practicum training culminating in a 28-academic unit LL.M. degree

* Academic Courses: Commercial and International Dispute Resolution, Mediation, Negotiation and Settlement Advocacy, Arbitration, International Investment Disputes, Selected Issues in Dispute Resolution (Labor Disputes), Third-Party Processes, Faith-Based Diplomacy and International Peacemaking, Communication and Conflict, Social Psychology of Conflict

* Professional Skills Courses: Advanced Mediation (2006); Improvisational Mediation (2007); Mediating the Complex Case (2008); Mediating Complex Construction Disputes (2009); Neuro-Collaboration: How New Perspectives from the Neurosciences Can Enhance Your Collaborative Conflict Resolution Skills (2009); Domestic Relations Dispute Resolution (2010)

* Program on Negotiation at Harvard Law School

* The Program on Negotiation for Senior Executives (2007)

* Dealing with Difficult People and Difficult Situations (2007)

* Cambridge Executive Enterprises: Senior Executive Training (MIT Professor John J. Donovan (2002))

* International Academy of Mediators: Advanced Mediation Training (Salt Lake City 2010;



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Nashville 2010 (faculty); Austin 2011; Washington 2012)

* American Academy of Civil Trial Mediators, Advances Mediation Training (Manchester, VT 2010 (faculty); Lake George, NY 2012)

* National Academy of Distinguished Neutrals: Advanced Mediation Training Retreat (Orlando 2010; Amelia Island 2011 (faculty))

* Association of Attorney-Mediators (Austin 2008; San Antonio 2009; St. Louis 2010; New Orleans 2011)

* Advanced Commercial Mediation Institute (AAA and ACR) (Austin 2008; San Diego 2011 (faculty))

* Dispute Resolution Section of the American Bar Association: Advanced Mediation and Advocacy Skills Training (2007); Annual Conferences (2008 - present)

* Texas Bar CLE: Advanced Mediation: Skills and Techniques (Houston 2009; San Antonio 2009; San Antonio 2010; Houston 2011 (course director); Austin 2012)

* Global Collaborative Law Council, Civil Collaborative Training (September 2009)

* Securities Arbitration & Mediation Hot Topics (City Bar of New York 2011 (faculty))

* Austin Dispute Resolution Center, Advanced Family Mediation Training (2007) (TADRA §154.052(b))

* Bexar County Dispute Resolution Center, Group Facilitation Skills Training (2007), Children's Court Training (2010)

Mediation teaching and mentoring

* Preventing Bad Settlement Decisions and Impasse: Using Brain Science, Game Theory, Animated Communication, and Micro-Interventions (Pepperdine Professional Skills Program (with Doug Noll) 2011; 2012)

* Deal or No Deal: Leveraging Information to Overcome Decision Errors (Advanced Commercial Mediation Institute 2011)

* Concession Rates: Offers and Counter-Offers; Deal or No Deal: Leveraging Information to Overcome Psychological Barriers to Efficient Deals (National Academy of Distinguished Neutrals 2011)

* Moderator, Tactical Interventions in Mediation (ABA Dispute Resolution Teleconference 2011)

* Negotiation Skills (Texas Bar Essentials of Business Law Course 2011)

* Using "Picture Power" In Settlement Negotiations to Enhance Communications and Reduce Decision Making Mistakes (ABA Dispute Resolution Annual Conference in Denver 2011)

* Mediation Roundtable of Daily Ethical Issues Faced by Mediators (Association of Attorney-Mediators 2011)

* Co-Course Director, Magic of Conflict Resolution (Texas Association of Mediators 2011)

* Course Director, Tactical Interventions in Mediation: Preventing Bad Settlement Decisions and Impasse Minute by Minute (State Bar of Texas 2011)

* Music to My Ears: A Mediation Program (International Academy of Mediators 2010)

* Advanced Mediation Training (American College of Civil Trial Mediators 2010)

* Administrative Law Course (UT CLE 2010)

* Using "Picture Power" in Settlement Negotiation (Dallas Bar Association 2010)

* Bench Motions & Trials II (San Antonio Bar Association 2010)

* Securities Arbitration & Mediation Hot Topics (City Bar of New York 2010; 2011)

* Using Game Theory to Improve Negotiating Results (Akin Gump nationwide 2010)

* Southern California Mediation Association (2009)

* Texas Mediator Credentialing Association (2009)

* Advanced Decision Analysis Class with Marjorie Aaron, University of Cincinnati School of Law



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(2009)

- * Mediation Course, St. Mary's University School of Law (Spring & Fall 2009; 2010; 2011; 2012)
- * Association of Attorney-Mediators (San Antonio 2009)
- * Texas Attorney General In-House Training Course (Austin 2009)
- * Bench Motions & Trials - Bexar County Style, San Antonio Bar Association (San Antonio 2009)
- * Litigation Section of the American Bar Association (Atlanta 2009)
- * Technology Panel, Ohio State Journal on Dispute Resolution (Columbus 2009)
- * Dispute Resolution Symposium, Texas Wesleyan Law Review (Fort Worth 2009)
- * Employment Disputes Class; Straus Institute for Dispute Resolution at Pepperdine School of Law (2008, 2010; 2012)
- * The Conference Board: Council of Chief Legal Officers (Washington 2008)
- * Manufacturers Alliance / MAPI Law Council (Chicago 2008)
- * Basic Mediation Training for the Bexar County and Hill Country Dispute Resolution Centers (2008; 2010; 2011; 2012)
- * Association of Attorney-Mediators (Austin 2008)
- * International Association of Heat and Frost Insulators and Allied Workers (with C. Richard Barnes and Associates; Las Vegas 2008)
- * San Antonio Family Lawyers Association (San Antonio 2008)
- * San Antonio Bar Association Litigation Section (San Antonio 2008)
- * Dispute Resolution Section of the American Bar Association (Seattle 2008)
- * National Electrical Contractors Association (with C. Richard Barnes and Associates; New Orleans 2008)

Mediation publications

- * The One Minute Manager Prepares for Mediation: A Multidisciplinary Approach to Negotiation Preparation, 13 HARVARD NEGOTIATION LAW REVIEW 249 (2008); excerpted in Carrie J. Menkel-Meadow et al, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (Aspen WoltersKluwer, 2nd ed. 2010), reprinted in Securities Arbitration & Mediation Hot Topics 2008: "The" Program for Attorneys, In-House Counsel, Experts, Arbitrators & Mediators, New York City Bar (2008 & 2010).
- * The Value of Economic Analysis in Preparing for Mediation, 63 DISPUTE RESOLUTION JOURNAL 49 (April 2008), reprinted in AAA HANDBOOK ON MEDIATION (2d 2010).
- * Deal or No Deal? Or Perhaps a Better Deal? The Impact of Improved Information, 25 ALTERNATIVES TO THE HIGH COST OF LITIGATION 177 (Dec. 2007).
- * Decisional Errors - On the Field, On the Bench, In Negotiations, HARVARD NEGOTIATION LAW REVIEW Online Edition (2009).
- * Decisional Errors - Why We Make Them and How to Address Them, 64 DISPUTE RESOLUTION JOURNAL 64 (Nov. 2009 - Jan. 2010).
- * The Psychology of Bad Economic Decisions, 7 JAMS DISPUTE RESOLUTION ALERT 1 (Fall 2007).
- * Comprehensive Trial Preparation Includes ADR Process Design: What Type of Mediator Best Fits This Case?, 11 CONFLICT MANAGEMENT Newsletter 17 (ABA, Section of Litigation, Fall 2007); reprinted as Trial Preparation Includes ADR Process Design: What Type of Mediator Fits Best?, 9 ABA COMMERCIAL & BUSINESS LIT. 1 (ABA LIT. WINTER 2008).
- * Thankful for Unanswered Prayers? Unconscionability 'Equilibrium', 27 ALTERNATIVES TO THE HIGH COST OF LITIGATION 145 (Oct. 2009).
- * Litigators Needed to Advise Transaction Lawyers on Litigation Prenups, 56 THE ADVOC. 36 (Fall 2011).



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- * Trends in Litigating Arbitration: Using Motions to Compel Arbitration and Motions to Vacate Arbitration Awards, 76 DEFENSE COUNSEL JOURNAL 338 (2009).
- * Litigating Arbitration: A 2007 Texas Arbitration Review, 60 BAYLOR LAW REVIEW 613 (2008) (with Audrey Lynn Maness).
- * Fifth Circuit Survey Articles, Alternative Dispute Resolution: Litigating Arbitration Slows as Mediation Becomes More Popular, 43 TEXAS TECH LAW REVIEW 757 (2011) (with Audrey Lynn Maness and Philip J. Loree).
- * Fifth Circuit Survey Articles, Still Litigating Arbitration in the Fifth Circuit, But Less Often, 42 TEXAS TECH LAW REVIEW 551 (2010).
- * Fifth Circuit Survey Articles, Litigating Alternative Dispute Resolution in the Fifth Circuit, 41 TEXAS TECH LAW REVIEW 739 (2009) (with Audrey Lynn Maness).
- * Fifth Circuit Survey Articles, Alternative Dispute Resolution, 40 TEXAS TECH LAW REVIEW 445 (2008) (with Audrey Lynn Maness).
- * Chief Justice Rehnquist's First Bout With Classroom Instruction, 58 OKLAHOMA BAR JOURNAL 817 (1986) (with Pamela J. Minetto).
- * Off the Bench: While Senators Debated His Future, William Rehnquist Became a Laid-Back Professor in Malibu, LOS ANGELES TIMES MAGAZINE, Nov. 2, 1986, at 8 (with Pamela J. Minetto).
- * Christmas Gifts to Employees: Ham It Up And You May Come Out Looking Like a Turkey, UNITED STATES LAW NEWS, Dec. 1, 1986, STUDENT SECTION at 11 (with Charles W. Ryan).

Note: This Mediator Profile is intended to offer guidance to users of mediation services about the competency, skills, styles and potential suitability of the IMI Certified Mediator featured above. The Reviewer, the Mediator and IMI are attempting to present fair, balanced and objective information but none are to be held responsible for reliance on the information given. Users of mediation services are encouraged to pursue further research before selecting the IMI Certified Mediator, including contacting references and conducting an interview with the Mediator before making a selection.