



Mediator Full Profile



Mr. Bennett Picker

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United States

Experience Qualification Path

Category 2: IAM

Mediation locations

United States - PA

Mediation languages

English

Current position and background

A fulltime mediator and arbitrator with over 20 years of experience as a neutral, Ben Picker has successfully resolved several hundred domestic and international disputes with a cumulative value of several billion dollars. He has served as a mediator in complex business disputes in the following areas: corporate and commercial transactions, asset/stock purchase agreements, securities, employment, environmental, ERISA, intellectual property, health care, real estate, products liability, bankruptcy, construction, class actions, professional liability, and shareholder and partnership disputes.

Mr. Picker is currently Senior Counsel at the law firm of Stradley Ronon Stevens & Young, LLP where he chaired the firm's ADR Practice Group for over 10 years. In 2007, Stradley Ronon's ADR Practice Group received the First Annual Award for Excellence in ADR from the CPR Institute.

Mr. Picker is a member of the Panel of Distinguished Neutrals and the Employment Panel of the CPR International Institute for Conflict Prevention & Resolution; a member of the Commercial Mediation, Arbitration and National Class Action Panels of the American Arbitration Association; and a fellow of both the American College of Civil Trial Mediators and the International Academy of Mediators. He is the author of Mediation Practice Guide - A Handbook for Resolving Business Disputes (Second Edition) published in 2003 by the American Bar Association Section on Dispute Resolution, and has written numerous book chapters and articles and lectured widely on mediation, negotiations and arbitration.



Mediator Full Profile

Mr. Picker was named a Pennsylvania Super Lawyer® (and one of the "Top 100 Pennsylvania Super Lawyers") by a vote of his peers each year from 2004-2009. He was also selected to be included in the 2005-2010 editions of The Best Lawyers in America, regarded as a definitive guide to legal excellence in the United States, as well as the 2007-2009 editions of Chambers USA.

Main mediation practice areas

For over 20 years, Ben Picker has served as a mediator in several hundred domestic and international disputes, mostly complex commercial disputes involving substantial dollars and/or important strategic interests. Served as mediator on multiple occasions in each of the following areas of dispute: corporate and commercial transactions, asset purchase and stock purchase agreements, UCC, securities, intellectual property (patent, trademark, licensing, unfair competition and computer software disputes), bankruptcy, healthcare, real estate, employment (discrimination, harassment, tenure, restrictive covenants and wrongful discharge), environmental, products liability, professional liability (law firms and accounting firms), shareholder and partnership disputes and class actions.

Mediation experience

Has served as mediator in numerous complex business disputes including multi-party disputes and class actions, following representative cases: dispute between two healthcare institutions involving alleged breaches of affiliation agreement (mediation resolved dispute and also permitted parties to dissolve a joint medical practice); dispute arising out of employment termination of key executives of public company; alleged breach of asset purchase and continuing supply agreements; nine figure claim by trustee in a bankruptcy against multiple parties involving claims of breaches of fiduciary duties, fraud and equitable subordination; claim by manufacturing company against manufacturer of component parts which were recalled worldwide; dispute arising out of purchase of computer software licenses alleging fraud, breach of warranties and breach of contract; nine figure claim against numerous insurance companies from North America and Europe for insurance coverage by owners of satellite which exploded in space; numerous claims against accounting firms in connection with audits (including claims for breaches of fiduciary duties and violations of GAAP and GAAS); claims by minority shareholders of corporation against majority shareholders for breaches of fiduciary duties and "minority oppression;" numerous shareholder, partnership and real estate disputes involving competing arguments on valuation issues; claims by limited partners in real estate investments against general partner for misallocation of profits from pooled sale of properties; claims by purchaser of securitized pools of sub-prime mortgages against originator for breach of loan originating guidelines; and claim against national law firm for damages arising from alleged conflicts of interest and failure to disclose certain relationships. Many of these mediations involved multiple days and some required continuing involvement at conclusion of mediation sessions.

Description of mediation style

I believe that mediation, in one word, presents an "opportunity" to parties in a dispute to solve their problem. In order to take advantage of this opportunity, preparation is key. I begin my work with parties and counsel by asking them what they expect of me and then affirmatively explore important issues such as any need for exchanged submissions, the substance of ex parte submissions which permit me to identify the underlying issues, the identity of the participants and issues of authority.



Mediator Full Profile

I believe that while the parties should own the outcome in any dispute, they are looking for my leadership on issues of process. With regard to the "facilitative-evaluation" debate, I find most parties want and deserve appropriate "reality testing." In the final analysis, while parties may tell me what they want, what they need, what is fair, what is right, what is true (all of which is fair comment), I will urge parties to listen respectfully, make good assessments and make responsible decisions. In my view, the benchmark for a responsible decision is comparing what can be accomplished in mediation with the consequences if the parties fail to achieve a settlement. My approach, however, will be different in each next case depending upon the positions, the people and the problem.

In addition to the "litigation-risk" analysis, virtually every settlement decision is also driven by some other interest, need, agenda item or problem in the background. I make every effort to take a multi-dimensional view of a dispute, looking beyond the differing views on positions. In addition to exploring the potential for creative solutions, I also explore the existence of potential barriers to resolution such as the relationship between attorney and client or differences among the various representatives of one party.

I hope what I bring to the table, in addition to my skill, experience and integrity, are qualities of patience and perseverance. My credo is "never give up".

Code of professional conduct

IMI Code of Professional Conduct
ABA Model Standards of Conduct for Mediators

Complaint process

IMI Professional Conduct Assessment Process

Professional indemnity insurance

I am covered by my firm's professional liability insurance coverage. Details available upon request.

Feedback digest

Reviewer: Meyer Judith (judith@judithmeyer.com)
Latest Update: 2015-08-31 10:02:11

The following feedback was collected by the Reviewer in 2015. The review is based upon 12 feedbacks from responders in large, complex business disputes. Some of the feedback comes from users who have worked with Mr. Picker in prior matters and use him as their first choice in disputes which have failed all attempts at settlement by parties and counsel.

Mr. Picker is well-known and highly-regarded for his successes in enabling parties to reach resolution in very difficult and highly emotional cases. In an acrimonious partnership breakup the parties observed he was "very diligent in preparing for the mediation". At the mediation session he shows immense patience, empathy and wisdom. Often parties express their surprise and delight that matters, which may be scheduled for months of trial, resolve at mediation in



Mediator Full Profile

creative ways Mr. Picker is able to encourage parties to consider.

Mr. Picker takes time and care to develop a relationship with the parties at a mediation. He listens to clients and earns their trust. A user commented: "He established credibility with our client almost immediately." He works with multiple defendants to triage liability and percentages of contribution without alienating any party. He possesses "an uncanny knack" for figuring out where in the process it is time to "knuckle down" and make hard decisions. He does not rush the process, but makes it "crystal clear" when it is time to focus on options.

Mr. Picker's preparation for mediation is "impeccable." He "rolls up his sleeves" and masters arcane substantive legal issues such as rarely interpreted United States Internal Revenue Service provisions and ERISA. He has handled complexed UCC issues where a product has been used in the railroad industry. He is familiar with environmental remediation. He remains unflaggingly dedicated to the process of negotiation, being facilitative, and evaluative when necessary.

Mr. Picker prepares meticulously for each mediation. He is known for his candor in assessing a case, and, importantly, should a case fail to settle after a day in mediation, he follows up with the parties and counsel in post-mediation discussions that often lead to settlement.

Mr. Picker is used frequently in employment disputes and in disputes between major U.S. health care providers. One client includes Mr. Picker on his "short list" of very effective mediators and finds his commitment to each case "very impressive. His style is not aggressive, but persuasive."

An attorney who has mediated for 25 years with prominent national full-time mediators observed of Mr. Picker:

"There are many other mediators whom I like and respect, but none more than Mr. Picker. His finest points are:

Advising and coaching me as an advocate in how best to prepare for opening statements in the mediation in a way gives Mr. Picker ammunition to get the case resolved;

His introductory remarks to all which I believe improved the tone and got acrimonious parties and counsel into a better frame of thinking;

His careful review of the submissions and record so that he could help the parties reconsider their true risks and recognize the possibility that their evaluation had advocacy-bias built-in - both parties deeply respected his more objective perspective;

A dogged and optimistic approach that help prevent parties from shutting down when progress was very slow and emotions running very high;

His guidance in the negotiating and bid-asking process, including use of techniques to break impasses;

His respectful but helpful dialogue with the decision-maker/client on my side that helped him to consider all his interests and risks and make decisions that resulted in resolution;

When it seemed like the negotiations had ended and the day would end without resolution, a very skillful use of the double-blind technique that stretched the decision-makers to their limits and secured an unlikely resolution that somehow could be accepted by both parties; and

Guiding the parties' counsel to a written terms sheet (rather than full-blown settlement agreement) and resolving minor differences to ensure that the bargain was not lost.



Mediator Full Profile

Mr. Picker has the ability from the outset to make all parties feel comfortable in the mediation process. He lets the parties and counsel know they are important, encourages them to voice their views of the facts and articulate their goals. While a joint opening session is encouraged, Mr. Picker also knows when to avoid one. Throughout, he asks the parties to confront and respond to the tough issues in the case. He listens, carefully, as he tries to craft areas of agreement or disagreement on the facts before he delves into ways to resolve the parties' dispute. Mr. Picker rarely gives up (though, in the rare case, even he recognizes the parties' inability to reach common ground). Mr. Picker makes clear that he is not the judge and jury, rather a resource to resolve the dispute. He listens to the presentations, pushes each side to realistically look at the case, assesses the strength of the counsel, and gives wise advice.

One user commented: "I represented a small company that was a defendant in a products liability case brought by a Fortune 500 company. The dispute was complex and required an appreciation of the UCC and the railroad industry where the product was employed. Prior to the mediation the parties were far apart in their respective settlement positions and attitudes. The objective of the larger company was to put the smaller company out of business. My client was severely limited in the amount of funds it could devote to a settlement. Despite the many difficulties, Mr. Picker proved to be a skilled and productive mediator. He learned the important aspects of the case before the parties assembled for the mediation. In the day-long mediation he deftly learned and applied the strengths and weaknesses of each position so that the parties became motivated to settle the case. There were numerous aspects of the method Mr. Picker used to conduct the mediation that revealed his sensitivity to the art of negotiation. Mr. Picker is a true professional who is guided by a high standard of ethics and a keen intellect."

Mr. Picker conducts pre-mediation telephone calls with the parties and sends out a comprehensive premeditation set of questions which must be answered before the day of mediation. At the mediation, Mr. Picker does not simply shuttle back and forth between the parties' conference rooms exchanging numbers. He tests each party. He understands leverage and the monetary value of a case and, importantly, the non-monetary factors which could move the parties.

Professional affiliations

ADR Certifications and Panels:

- * Fellow, American College of Civil Trial Mediators
- * Fellow, International Academy of Mediators
- * Member, Panel of Distinguished Neutrals, CPR International Institute for Conflict Prevention and Resolution
 - CPR Arbitration and Mediation Panels
 - CPR U.S. - China Trade Panel
 - CPR National Employment Panel
- * Member, Commercial Arbitration and Mediation Panels of American Arbitration Association
 - AAA Large Complex Case Panel
 - AAA National Class Action Arbitration Panel
 - ICDR Mediation Panel (International Centre for Dispute Resolution)
- * Member, Mediation Panel of Court of Arbitration for Sport (Lausanne, Switzerland)
- * Member, Mediation Panel of World Intellectual Property Organization (Geneva, Switzerland)
- * Certified Mediator, U.S. District Court for the Eastern District of Pennsylvania



Mediator Full Profile

ADR Boards:

- * Member, Board of Directors and Executive Committee, American Arbitration Association and former Co-Chair of Association's National Mediation Committee
- * Member, Executive Advisory Committee, CPR International Institute for Conflict Prevention & Resolution
- * Member, Advisory Council of the Straus Institute for Dispute Resolution of Pepperdine University School of Law

Fee rate

\$575 hourly rate for all preparation and travel time. \$650 hourly rate outside of the Philadelphia region. Reimbursement of all travel and lodging costs, as incurred.

Mediation teaching and mentoring

Lecturer/trainer (ADR, mediation and negotiations) in programs sponsored by American Bar Association (including numerous lectures and panels at ABA Section's Advanced Mediation Institute and Annual Meetings), Pennsylvania Bar Associations, Practising Law Institute, Center for Dispute Resolution (United Kingdom), CPR International Institute for Conflict Prevention & Resolution, American Arbitration Association, American Corporate Counsel Association, Wharton School of the University of Pennsylvania, American College of Civil Trial Mediators, International Academy of Mediators, Villanova Law School, Temple University Law School and numerous in-house legal departments of corporations throughout the United States.

Mediation publications

Books:

- * Author, *Mediation Practice Guide: A Handbook for Resolving Business Disputes* (Second Edition), published in 2003 by the American Bar Association Section on Dispute Resolution
- * Author, *Guía Práctica Para La Mediación* (Spanish Edition of *Mediation Practice Guide*), published in 2003 by Centro Empresarial de Mediación y Arbitraje (Mediation and Arbitration Center of Buenos Aires)
- * Co-author with Jack Foltz (former chair of American Corporate Counsel Association), Chapter on ADR in multi-volume series, *Successful Partnering Between Inside and Outside Counsel*, published in Fall 2000 by West Group, Inc. and American Corporate Counsel Association
- * Author, *Mediation Practice Guide: A Handbook for Resolving Business Disputes* (First Edition), published in 1998 by Pike and Fischer, Inc., a subsidiary of the Bureau of National Affairs, Inc. and the ABA Section on Dispute Resolution

Articles:

- * "The 10 Most Common Mistakes Made by Mediation Advocates," *The Legal Intelligencer* (April 19, 2007)
- * "Navigating The Mediation Process: Overcoming Invisible Barriers to Resolution," *Dispute Resolution Journal*, American Arbitration Association (Vol. 61, No. 3, August-October 2006)



Mediator Full Profile

- * "Strategies for Successful Mediation," Alternatives, CPR International Institute for Conflict Prevention & Resolution (June 2006), transcript of comments at CPR's Annual Meeting
- * "Experts Identify ADR Trends And Best Practices," The Metropolitan Corporate Counsel (January 2006)
- * "EDR: Make the Investment, Reap the Rewards," The Metropolitan Corporate Counsel (August 2003)
- * "How to Best Aid Negotiations by Breaking Down Barriers," Alternatives, CPR International Institute for Conflict Prevention & Resolution (December 2001)
- * "Negotiation vs. Litigation," The Philadelphia Business Journal (October 1999)
- * Course materials for over 50 presentations on ADR, mediation, arbitration and negotiations

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.