



Mediator Full Profile



Mr. Michael Wilk

Email: mwilk@hirschwest.com

Phone: 001-713-223-5181

Direct line: 001-713-220-9124

Fax: 001-713-223-9319

Address:

Hirsch & Westheimer, P.C.

1415 Louisiana, 36th Floor

Houston, Harris/Texas, 77002-2772

United States

Experience Qualification Path

Category 2: American Arbitration Association

Mediation locations

United States - TX

Mediation languages

English

Current position and background

Michael S. Wilk is president of Hirsch & Westheimer and a member of its Executive Committee. Michael joined the Firm immediately after graduating with honors from the University of Texas School of Law in 1966, where he was an Associate Editor of the Texas Law Review.

Noted for his business acumen and creative problem solving, Michael has broad experience in real estate, corporate and mergers and acquisition transaction matters for clients ranging from sophisticated multi-national corporations to local family owned companies. He has represented buyers and sellers of businesses and commercial real estate, and is particularly adept in advising clients about the overall structure and supervision of business transactions. He is routinely tapped by the Firm's other lawyers to provide counsel and representation to our clients in mediation and arbitration proceedings.

Beginning January 1, 2013, Michael made the decision to focus his practice almost exclusively on ADR, serving as a mediator and arbitrator in a wide variety of commercial disputes. Prior to that, Michael oversaw the Firm's representation in high-stakes complex litigation in state, federal, probate and bankruptcy courts throughout the State of Texas. He advised clients in contested civil litigation addressing issues of contract, oil and gas, alternative and renewable energy, labor and employment, real estate, partnership and corporation disputes, banking, common-law fraud and breach of fiduciary duty. In keeping with the Firm's strong financial background, Michael has successfully defended financial institutions in lawsuits involving claims of breach of good faith and fair dealing, usury, anti-trust, lender liability and family trust mismanagement. He represented and advised clients in matters involving bankruptcy and



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creditors' rights. Michael is experienced in probate and trust disputes, and has advised and represented clients in will contests and cases involving allegations of breach of fiduciary duty.

In 1991, Michael incorporated Alternative Dispute Resolution as part of his law practice and began acting as a mediator and arbitrator, drawing from his years of experience as a transactional, probate and civil litigator. He is recognized as a leader in ADR. Michael is a former chairman of the ADR Section for the State Bar of Texas for 2005-2006, and served on the ADR council. He also served on the inaugural board of directors of the Association of Attorney Mediators, and later as National Director and as National President. In 2011, he was inducted as a Charter Member of the Texas Chapter, National Academy of Distinguished Neutrals, awarded in recognition of a level of excellence in the practice of Alternative Dispute Resolution. In 2010, he became a member of the International Mediation Institute. He is a Certified Mediator by the Texas Mediator Credentialing Association (Credentialed Distinguished Mediator).

Michael served as Director of the Harris County Dispute Resolution Center, Chairman of Peer Mediations and Schools Task Force for the Houston Bar Association and the Houston Bar Association ADR Section and on the State Bar of Texas Grievance Committee, as a member and Past Chairman 4B. He was also an adjunct professor at South Texas College of Law, teaching negotiable instruments, bank deposits and collections and secured transactions. Michael has also been recognized in the Texas Monthly's annual publication, Texas Super Lawyers for ADR, from 2003 through 2013, and as a top lawyer in ADR by HTexas Magazine. Michael is rated AV by Martindale Hubble, and rated superb by AVVO.

Main mediation practice areas

Commercial disputes involving, among other areas, complex commercial, energy (oil and gas), corporate partnership, limited liability companies, other business entities, banking, employment, securities, real estate, bankruptcy, health law, and environmental issues.

Mediation experience

Representative Disputes: Breach of contract disputes, including: contracts relating to the energy and oil and gas business, the purchase and sale of businesses, sale of goods, including chemicals and other petroleum products; employment; securities and corporate disputes; disputes relating to service providers of technology; patent, license, trademark disputes; breach of fiduciary duty in both the partnership and legal entity context and in the context of trusts and estates; reorganization and bankruptcy, including turnover actions, objections to and confirmation of plans of reorganization, and objection to discharge. Construction disputes, environmental disputes, insurance disputes. Disputes relating to property damage to an underground oil and gas reservoir by improper drilling and destruction of an oil and gas prospect because allegedly improper drilling techniques. Real estate disputes, including leases and contracts for the purchase and sale of real estate. Also experienced with will contests and cases involving the breach of fiduciary duty.

Representative Issues Handled as a Mediator: Interpretation of whether provisions in an agreement were ambiguous and the meaning, thereof, if so; whether there were material misrepresentations or omissions in contracts relating to the purchase and sale of business and other contracts; whether there was patent infringement, violation of trade dress, service mark or trade mark; whether a trustee or other fiduciary breached a fiduciary duty by self dealing;



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whether an investment advisor or other service provider breached its obligation of ordinary care. Also experienced with fraud in securities and various failed business transactions.

Multi Party Mediation Experience: Three environmental cases, one involving 2000 plaintiffs and a superfund site, claims and counterclaims between owners of working interests and royalty interests, operators, drillers and service companies and creditors relating to oil and gas properties. A case involving violation of an ERISA plan for employees against seven defendants. Receivership case involving dispute among 12 creditors. Several cases involving objections to confirmation of a plan of reorganization and competing interests of unsecured creditors, secured creditors and holders of administrative and priority claims. Objections to discharge, preferences and fraudulent conveyance actions. Will contests and inheritance cases. Construction dispute involving competing contractor, owner and sub-contractor claims.

Mediation Experience as an Advocate: Approximately 30 cases involving breach of fiduciary duty of corporate officers and directors and oppression of minority stock holder - \$10 million; breach of fiduciary duty by trustees - \$10 million; breach of franchise agreement - \$250,000; breach of lease agreement between a major retail tenant and mall landlord - \$1 million; breach of fiduciary duty by a partner in a real estate partnership - \$3 million; breach of contract - \$1 million; fraud and conversion of oil and gas payments - \$30 million; many breach of contract cases.

Years of Practice as a Mediator: 24

Total Number of Cases Mediated: 1125

Description of mediation style

I help the parties focus on the realities of the dispute by assisting them in evaluating their respective legal positions, by reminding them of the inherent risks and expense associated with litigation, by exploring options to litigation and facilitating communication to arrive at a compromise of the dispute. It is my belief that the parties look to the mediator to be strong, but impartial, by urging them to carefully and separately make a cost benefit analysis of settling the case or continuing with the dispute. Mediation is a process, not an event, and I must make the decision during the mediation when to let the process work on its own or to apply catalyst to keep the parties in the negotiation and press them to make difficult decisions that they are reluctant to do. I generally attempt to have a confidential discussion with counsel prior to the mediation. In addition, I request a confidential written statement summarizing the case, any special considerations and a frank statement of what they believe will be necessary for settlement. I begin the mediation with a general session in which all parties and counsel have the opportunity to make a presentation. During the general session, I lay out the ground rules and obtain a commitment each party is there in good faith, have authority to settle, and grant me the right to determine when to declare an impasse. After the general session, the parties break into private caucuses. During the caucuses, I reinforce my impartiality; review with the parties the strengths and weaknesses of their case, their estimate of the likely outcome, the costs through litigation and the time estimate for litigation through appeal. During those sessions, I act as devil's advocate to illustrate the uncertainties of litigation and the benefit of being in control of resolving the dispute. Offers and demands are exchanged until the parties reach agreement at which time a term sheet or settlement agreement is prepared and signed.

Code of professional conduct



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IMI Code of Professional Conduct; American Arbitration and American Bar Associations Codes of Professional Conduct; Standards of Practice and Code of Ethics of the Texas Mediator Credentialing Association.

Complaint process

IMI Professional Conduct Assessment Process

Professional indemnity insurance

Malpractice insurance through Hirsch & Westheimer, P.C.: Carrier: Darwin National Assurance Company \$2,000,000 maximum limit of liability per claim and \$2,000,000 maximum aggregate limit of liability for all claims.

Malpractice insurance through the Association of Attorney Mediators: Carrier: Underwriter at Lloyd's London \$250,000 per claim and \$2,000,000 aggregate with a \$500.00 deductible each claim.

Feedback digest

Reviewer: Erickson Helena Tavares (herickson@cpradr.org)

Latest Update: 2014-07-07 09:41:34

This Feedback Digest is based on 15 feedbacks from experienced counsel covering numerous complex commercial matters, including one class action claim. Feedbacks were initially submitted in September 2009. Four were received in 2014 covering mediations held in 2013-14. ☐☐

Mr. Wilk's raters all rated his skills and abilities at a level 4 or 5 and were unanimous in their willingness and intent to use him again and recommend him to colleagues. Some had done so already numerous times. All but one resolved their matters in the mediations or shortly afterward, and one rater noted that his mediation was ongoing and if it settled, Mr. Wilk's skill would be a significant factor. Mr. Wilk was viewed as possessing high business acumen, creative, and understanding of human nature and various personalities. His ability to synthesize complex arguments into a single proposition was lauded. One reviewer praised him for his efficiency and effectiveness. He was cited often for his persistence and tenacity, follow-up and grasp of issues as well as his practical and common sense approach. It was noted that he was well prepared and worked hard to achieve fair results. His calm and professional demeanor and approach to the mediation process were cited as factors that made a difference in the outcome of the matter.

☐☐The comments regarding Mr. Wilk were uniformly positive. One attorney described Mr. Wilk as "solid" and another, "a sophisticated business lawyer, he is thorough and innovative". Another noted, "I recommend him regularly - he is very capable and persistent - gets along well with people and gets the matter resolved." " Michael Wilk is very effective in getting people to the point that they see the benefits of resolving their differences." Finally, one user summed him up as "The most diligent mediator I've met in 25 years."☐☐

All of the raters were satisfied to very satisfied with the mediation process and the costs of the mediation (one noted that he was underpaid) and there were no negative comments.



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Professional affiliations

International Centre for Dispute Resolution (ICDR) Panel Member; American Arbitration Association Panel of Neutrals (Large Complex Commercial Case Panel); International Centre for Dispute Resolution (ICDR) Panel, international division of the American Arbitration Association; CPR International Institute for Conflict Prevention and Resolution (National Panels: Accounting, Financial Services and Energy); FINRA Dispute Resolution Panel of Neutrals; Texas Mediator Credentialing Association (Credentialed Distinguished Mediator); Association of Attorney Mediators; and College of Commercial Arbitrators (Fellow). Michael has also been on interstate arbitration panels under the auspices of the International Chamber of Commerce and the International Centre for Dispute Resolution. He is a member of the State Bar of Texas; American Bar Association (Alternative Dispute Resolution Section); Texas Bar Foundation (Fellow); Houston Bar Foundation (Fellow); State Bar of Texas Grievance Committee (Member and Past Chairman 4B); Harris County Dispute Resolution Center (Director, Pro Bono arbitrator, mediator, moderated settlement conference panelist); and The College of the State Bar of Texas (maintaining member).

Fee rate

\$475 per hour (minimum of 8 hours); reimbursement for travel expenses for mediations not conducted in Houston, Texas U.S.A.

References

David K. Bissinger
Siegmyer, Oshman & Bissinger, LLP
2777 Allen Parkway, 10th Floor
Houston, TX 77019
(713) 524-8811
dbissinger@bizlawhouston.com

John O'Neill
Howrey LLP
Houston, TX
(713) 654-7642
john.oneill@howrey.com

David A. Furlow
Thompson & Knight
Houston, TX
(713) 654-8111
david.furlow@tklaw.com

Robert S. MacIntyre, Jr.
MacIntyre & McCulloch LLP
Houston, TX
(713) 513-6148
macintyre@mmlawtexas.com

John Hopwood



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Locke Lord Bissell & Liddell
Houston, TX
(713) 226-1289
jhopwood@lockelord.com

Odean Volker
Haynes & Boone LLP
Houston, TX
(713) 547-2211
odean.volker@haynesboone.com

G. Michael Curran
Curran Tomko Tarski LLP
Dallas, TX
(214) 270-1402
mcurran@cttlegal.com

Andrew C. Schirrmeister III
Schirmeister Diaz-Arrastia Brem LLP
Houston, TX
(713) 221-2500
acs@sdablaw.com

Kevin McEvily
McEvily & Flowers
Houston, TX
(713) 654-1415
kmcevily@mcevilflowers.com

Mediation education and training

Advanced mediation training, Association of Attorney Mediators (2013); AAA Regaining Speed and Economy in Dispute Resolution, 2011; Efficient ADR - Saving the Client's Money Through Technology and Common Sense, 2010; AAA, ADR Strategies That Save Time and Money, 2010; AAA/ICDR Neutrals Conference, 2009; Juris Conference, Electronic Evidence and Disclosure International Arbitration, 2008; State Bar of Texas CLE, Alternative Dispute Resolution Texas Style, 2007; State Bar of Texas ADR Section, Legislative and Case Law Update, 2007; Houston Bar Association ADR Section, South Texas College of Law and Association of Attorney Mediators, Advanced Mediation Training: Communication Tools and Techniques, 2007; Faculty, AAA Dealing with Delay Tactics in Arbitration (ACE004), 2006, 2005; AAA Neutrals Conference, 2006, 2005, 2004, 2003; Texas Mediators Credentialing Association, Yearly Training, 2004; FINRA Dispute Resolution Training, Panel Member Course and Examination, 2002; Association of Attorney Mediator's Advanced Mediator Training, 2001; Chartered Institute of Arbitrators-North American Branch, International Commercial Arbitrators Basic Training Course, 2000; Association of Attorney Mediators "Advanced Mediator Training;" A.A. White Dispute Resolution Institute, University of Houston Law School, Houston, Texas 2009; 40-Hour Mediator Training, 1999.

Mediation teaching and mentoring



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"Mediated Settlement Agreements," "Facilitative Mediation," Alternative Dispute Resolution Texas Style, Texas Bar CLE, Dallas, Texas, October 2007.

"Mediation of Securities Fraud Disputes," Houston Bar Association, Securities Litigation and Arbitration Section, Houston, Texas, January 2007.

"Mediation of a Bankruptcy Case," Mediation for Litigators, South Texas College of Law, Houston, Texas, October 2002.

"Mediation of Bankruptcy Disputes," Oklahoma State Bar Meeting, Alternative Dispute Resolution Section, November 2001.

Presentation of Mock Mediation," National Association of Certified Valuation Analysts, Houston, Texas, September, 2000.

"Helping Lawyers See Beyond the Case," Texas Association of Mediators Annual Conference Training Course, Houston, Texas, February 26, 2000.

"Ethical Considerations in Mediation," 16th Annual Bankruptcy Conference, the University of Texas School of Law, Austin, Texas, November 1997.

"Consensual Settlement," Association of Insolvency Accountants, 13th Annual Bankruptcy and Reorganization Conference, Dallas, Texas, May 1997.

"Advocacy In Mediation," The CLE Institute, Houston, Texas, October 1996.

"The CPA's Role in Alternative Dispute Resolution," AICPA National Advanced Litigation Services Conference, New Orleans, Louisiana, October 1996.

"Evaluative Mediation: Why, When, and How to Manage the Merits," American Bar Association Section of Dispute Resolution, Orlando, Florida, August 1996.

"Mediation — Five Years Later," Houston Bar Association Institute, Houston, Texas, October 1994.

"Future ADR Trends and New Concepts: Resolving Disputes: Litigation vs. ADR," South Texas College of Law, Houston, Texas, March 1993.

Mediation publications

"Resolution of Domestic and International Bankruptcy Issues through Mediation," Conflict Management, A Publication of the Committee on Alternative Dispute Resolution - American Bar Association, p. 19 (Summer 2005 - Volume 9, Issue 2).

"ADR Basics," Conflict Management, A Publication of the Committee on Alternative Dispute Resolution - American Bar Association, p. 16 (Summer 2004 - Volume 8, Issue 3).

"Mediation of a Bankruptcy Case," American Bankruptcy Institute Journal, (May 2003) at 12.



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"Helping Attorneys See Beyond the Case: Return to Objectivity," *Alternative Resolutions* No. 2, p. 13 (November 2002).

"Alternative Dispute Resolution with the Resolution Trust Corporation and the Federal Deposit Insurance Corporation," 9 *The Practical Real Estate Lawyer* (May 1993) at 27.

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.