

Philip E. Cutler

MEDIATOR / ARBITRATOR PROFILE

Cutler Nylander & Hayton PS
1191 Second Avenue, Suite 1650
Seattle, WA 98101

Phone: 206-340-4600
Fax: 206-340-4646
Email: philcutler@cnhlaw.com
Web: www.cnhlaw.com

Legal Experience and Work History

Over 30 years experience as a trial lawyer representing and counseling clients in complex business and commercial litigation and ADR. President and Shareholder/Principal, *Cutler Nylander & Hayton PS*, Seattle, 1990-present; Shareholder, *Karr Tuttle Campbell*, Seattle, 1986-89 (following merger of Sax and MacIver and Karr Tuttle); Partner, *Sax and MacIver*, Seattle, 1979-85); Associate, *Perkins Coie*, Seattle, 1973-79.

Law Practice

Law practice emphasizes business and commercial problem-solving and dispute resolution including trials, appeals, mediation and arbitration in areas of antitrust/business torts; franchising and product distribution; internal and external business and corporate disputes; e-commerce domain name disputes; employment discrimination and termination; government relations; licensing; intellectual property (copyrights, trademarks, trade secrets); insurance; UCC negotiable instruments, sales and warranty disputes; financial institutions (mortgage brokers and lenders); and securities (customer/broker and broker-dealer/broker-dealer).

Court Admissions

Admitted to the Bar: Washington, 1973 (WSBA #5084); U.S. District Court: Eastern (1979) and Western (1973) Districts of Washington; Northern District of California, 1985; U.S. Court of Appeals, Ninth Circuit, 1991; U.S. Claims Court, 1976; U.S. Supreme Court, 2006.

ADR Experience

Over 20 years experience serving as arbitrator, mediator, judge *pro tem*, and special master in several hundred business and commercial disputes involving a wide variety of disputes between public and private parties in areas such as agriculture, agricultural cooperatives and regulated commodities; class action settlements; communications; construction; consumer protection; contracts; licensing and intellectual property protection (copyrights, trademarks, patents and trade secrets); corporate affairs and governance; discovery under federal and state rules; franchising and distributor termination; Indian tribes and sovereign immunity; international law; securities; Olympic sports; and UCC sales and warranty.

Representative arbitrations include 6-, 7- and 8-figure customer/broker securities disputes; 8-figure securities dispute between Indian tribe and financial advisors; 7-figure international franchise encroachment and wrongful termination dispute; 8-figure aircraft parts manufacturer/ distributor dispute; 6-figure construction disputes (residential and commercial); 7-figure agricultural equipment breach of warranty dispute; athletes' challenges of U.S. Olympic Committee rulings under Ted Stevens Olympics & Amateur Sports Act; 6-figure dispute between agricultural cooperative and joint venture partner over interpretation of commodity purchase contract and LLC agreement; 6- and 7-figure disputes involving the communications industry (wireless and broadcast media).

Representative mediations include 5- to 8-figure disputes involving unfair business practices; commercial leasing; contracts; construction (residential and commercial); corporate, partnership and LLC reorganization and dissolution; business strategic alliances; distributor termination; employment; professional fees (legal, architecture); fishing rights; patents, copyrights and trademarks; labor/collective bargaining; real estate; securities (customer/broker and broker-dealer/broker-dealer); and software counterfeiting/piracy.

Representative Special Master assignments include Special Master for *Weyerhaeuser HBS Class Action Settlement* (San Francisco Superior Court, ongoing through 2009); Mediator/Arbitrator for *AAA/Prudential* mass claims settlement (1998-99); Mediator/Arbitrator for *Louisiana Pacific Inner-Seal Siding Class Action Settlement* (Portland OR federal court, active 1997-99); Discovery Master, *Kirlan Venture Capital v. Regis* (King Co. Superior Court, Judge Suzanne Barnett, 2001).

ADR Training

Arbitration: AAA Arbitrator Updates/ACE 2001-2006; ABA DR Section

Conferences – Seattle (2002), San Antonio (2003), Los Angeles (2005), Atlanta (2006), Washington DC (2007); AAA Neutrals Conferences (March and September 2005); AAA Commercial Arbitrator II Training, Seattle (March 2001); AAA Commercial Arbitration Train the Trainer course (Arb I), Denver (August 1998); NASD Arbitrator Chairperson Training, Seattle (June 1998); NASD Basic Arbitrator Training, Seattle (September 1996); AAA Basic Arbitrator Training, Seattle (September 1992). **Mediation:** Northwest ADR Conferences – Seattle (1994-2007); ABA DR Section Spring Conferences – Seattle (2002), San Antonio (2003), Los Angeles (2005), Atlanta (2006), Washington DC (2007); ABA DR Section Advanced Mediation Institutes – Seattle (2005), San Antonio (2007); AAA National Mediator Conferences – Denver (March 2000) and Chicago (September 2000); AAA Neutrals Conference (October 1998); Settlement Now Advanced Mediator Training, Seattle (December 1993); Federal Bar Assn/Western District of Washington mediation skills-training (various, 1986-2007).

Professional Associations

Member of mediator/arbitrator panels:

- *American Arbitration Association* Mediation, Commercial and Large Complex Case Panels
- *FINRA (NASD and NYSE) Dispute Resolution* Public Arbitrator and Chairperson Panels
- *King County Superior Court* Mandatory Arbitration Panel
- *Western District of Washington* Rule 39.1 mediation and arbitration panel

Also member of:

- *ADR Roundtable* (www.adrroundtable.com)
- *American Bar Assn* (Sections of Antitrust (Civil Practice & Procedure Committee); Litigation; Dispute Resolution (Membership Chair, 2002-present; Section Council, 2005-present))
- *College of Commercial Arbitrators*, Fellow (www.thecca.net)
- *Federal Bar Assn/Western District of Washington* (Past Trustee; ADR Committee, Past Chair; ADR Task Force, Past Member)
- *King County Bar Assn* (ADR Section, Past Trustee and Past Chair)
- Ninth Circuit Standing Committee on ADR
- *U.S. District Court/Western District of Washington* (Civil Justice Reform Act Advisory Committee, Past Member)
- *Washington State Bar Assn* (Sections of Antitrust & Unfair Business Practices (Past Newsletter Editor); Litigation; Dispute Resolution (Past Chair))

- *Washington Supreme Court Committee on Pattern Commercial Jury Instructions*

Education

Georgetown University (A.B., History-1970); Northwestern University (J.D., with honors-1973; Editor-in-Chief, *Journal of Criminal Law & Criminology*, 1972-73).

Publications and Speaking Engagements

Articles: I AM YOUR ARBITRATOR..., Private/AAA, 2003-2007; REPRESENTING CLIENTS IN MEDIATION: A MEDIATOR'S PERSPECTIVE, *Dispute Resolution Magazine* (ABA DR Section), Spring 2003; ADR PROVISIONS IN COMMERCIAL AND EMPLOYMENT CONTRACTS: A DRAFTING CHECKLIST, Private, 1999; contributor, ADR DESKBOOK, 1998 supplement, Washington State Bar Association, 1998; DOING BUSINESS IN WASHINGTON, Washington State Bar Association, 1997 and supplements; WASHINGTON PATTERN JURY INSTRUCTIONS - MISAPPROPRIATION OF TRADE SECRETS/TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS, 6A Washington Practice, Washington Supreme Court Committee on Jury Instructions, West, 1997; WASHINGTON CONSUMER PROTECTION, ANTITRUST AND UNFAIR BUSINESS PRACTICES LAW DEVELOPMENTS, 2nd ed., WSBA, 1988 and 1993 supplements; ANTITRUST EVIDENCE HANDBOOK, American Bar Association Section of Antitrust Law, 1991; WASHINGTON ANTITRUST LAW DEVELOPMENTS, WSBA, 1985.

Faculty/Presenter: ABA DR Section Advanced Mediation Institute (Seattle - October 2005; San Antonio - October 2007); AAA Neutrals Conferences (March and September 2005); AAA Best Arbitration Practices (Seattle - October 2004 and 2005); AAA Arbitrator Updates/ACE (May 2003, December 2003, July 2005); AAA Commercial Arbitrator I and II courses (1999-present); NW ADR Conferences (Seattle - 1995-2006).

Program chair, presenter and/or panelist at numerous ADR skills seminars sponsored by a variety of organizations, including the AAA, ABA Dispute Resolution Section, Federal Bar Association/Western District of Washington, King County Bar Association, U.S. Department of Justice, University of Washington Law Foundation, and Washington State Bar Association. Guest lecturer in "Negotiations", San Diego State University Executive MBA Program.

Peer Recognition

ADR All Star, WSBA Dispute Resolution Section (1998-2002); *Super Lawyer*, *Washington Law & Politics* (1999-2007); Who's Who in America; Who's Who in American Law. Rated "AV" by peers in Martindale-Hubbell Law Directory. *Fellow*, College of Commercial Arbitrators.

Compensation

Arbitration/Special Master: \$345 per hour for AAA and private arbitrations, all special master assignments – plus costs/expenses. FINRA (NASD and NYSE) DR arbitrations, compensation per FINRA (NASD/NYSE) rules. King County Superior Court MAR program, court-paid (first day), additional days at hourly rate. Rate includes pre-hearing, hearing, study and award preparation time. *Per diem*/flat fee available on request. Pre-hearing deposit ordinarily required. Available to serve outside the Pacific Northwest at reduced fee for travel time. Costs/disbursements billed at "cost." Cancellation fee (up to one-half estimated compensation) may apply if hearing is canceled or postponed fewer than 14 days before scheduled hearing date (fewer than 30 days for multi-day hearings).

Mediation: \$345 per hour for most mediations; higher rate may apply for mediations involving multiple parties. Unless otherwise agreed, compensation is allocated equally among separately represented parties; pre-mediation deposit ordinarily required. Rate includes all preparation, conference and post-conference time. *Per diem*/flat fee available on request. Available to serve outside the Pacific Northwest at reduced fee for travel time. No cancellation fee for mediations. Routine costs (copying, fax, long-distance phone) up to \$50 in the aggregate are waived.

Further Information

Consult Cutler Nylander & Hayton's website (www.cnhlaw.com) or contact Amylyn Riedling (amylyn@cnhlaw.com) or Liz Fuhrmann (elizabeth@cnhlaw.com) for more information or scheduling.

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