



## Joan B. Kessler, Esq., Ph.D.

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### Case Manager

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## General Biography

**Joan B. Kessler, Esq., Ph.D.** joins JAMS with more than 10 years' experience as an ADR professional and a Ph.D. in communications. Dr. Kessler has mediated and arbitrated hundreds of diverse matters, including individual and class action employment; real property; business/commercial, including partnership and shareholder disputes; estate/probate/trust; insurance; and entertainment cases. With a law career spanning more than 30 years, she has the legal experience and knowledge to quickly understand complex legal issues. Dr. Kessler's 10-plus years of experience as a jury researcher and consultant affords her the ability to provide key insights into jury dynamics.

Dr. Kessler is a uniquely qualified mediator and arbitrator whose training and education allow her to communicate effectively with attorneys and all parties involved in her matters. Her background in communications helps her to develop a rapport with even the most challenging, combative and high-profile personalities. She possesses a keen ability to bring parties together to reach resolution on even the most contentious of matters. Dr. Kessler uses her ability to speak Spanish and her understanding of inter-cultural uniqueness in Korean, Persian, Israeli, Armenian, and other cultures to help resolve disputes through mediation.

### ADR Experience and Qualifications

- 10+ years' experience as an ADR professional, resolving hundreds of matters through mediation or arbitration
- 30-year legal career handling diverse matters, including individual and class action employment; real property; business/commercial, including partnership disputes and shareholder disputes; estate/probate/trust; insurance; and entertainment cases
- 10+ years' experience as a jury researcher and consultant

### Representative Matters

- **Accounting/Finance**
  - \$15M dispute over generally accepted accounting principles (GAAP), including sophisticated principles related to trust issues and sale of a closely held clothing company and related inventory valuation
  - Shareholders dispute over distributions and corporate governance. Many sophisticated accounting issues involving valuation of minority shareholder, for lack of control and lack of marketability. Dispute over business valuation. Assets' alleged value approximately \$35M.

- **Business/Commercial**

- Shareholders dispute over distributions and corporate governance involving sophisticated tax issues with conversion to Sub Chapter S Corporation and valuation of assets valued at tens of millions in real property
- High-profile dispute between owner of a well-known restaurant and person who had raised funds for the restaurant/club
- Whistleblower fraud matter involving a Fortune 500 company that brought suit against a corporation for allegedly submitting false invoices for services and equipment, and for bribing employees to mask the fraud
- Dispute concerning alleged failure to repay on promissory note and for fraud in inducing the loan through fraudulent financial statements
- Alleged breach of contract for monies due on assignment of health insurance benefits, breach of oral contract, unfair business practices claimed
- Contract dispute over a partnership agreement alleging fraud and breach of fiduciary duty
- Alleged negligent loan processing and packaging by a loan broker to a bank and resulting indemnification issues
- Breach of contract / implied warranty action
- Dispute over construction contract in large shopping mall
- Breach of contract claim against defendant for failure to honor its guarantees on retail installment sales contracts assigned to plaintiff
- Breach of contract regarding breach in licensing/distribution rights
- Dispute over terms and enforcement of commercial lease
- Alleged breach of contract for sale of goods
- Alleged breach of property management agreement
- Dispute over various retail installment sales contracts related to the issue of recourse or non-recourse
- Plaintiff sued by lender on promissory note. Defendant raised set-offs.
- Plaintiff sued for attorney's fees, and defendant filed a cross-complaint
- Large law firm accused of overcharging/failure to communicate with client
- Breach of contract claims and alleged fraud and misrepresentations raised by national mortgage company against packager of subprime mortgages
- Alleged breach of warranty and money due
- Business collection dispute
- Business alleged failure to pay factor on invoices

- **Employment**

- Numerous matters involving sexual harassment claims
- Various age discrimination cases
- Various race discrimination cases
- Various wage and hour cases including individual plaintiffs and class actions
- Wrongful termination matter including sexual harassment issues
- Trade secrets matter for improper taking of client lists and other trade secrets
- Hostile work environment claim involving allegations against supervisor for causing employee to view sexually explicit information
- Matter involving employee allegations of wrongful termination, denial of promotion and discrimination based on sexual orientation. Further claims of being wrongfully accused of sexually harassing someone in the workplace.
- Sexual orientation discrimination claim for multi-million-dollar sum
- Class action cases involving Fair Credit Reporting Act (FCRA) issues related to use of credit bureau documentation related to hiring
- Matters with failure to accommodate claims
- Whistleblower claims
- Pregnancy discrimination claims
- Misclassification of employees as independent contractors claims

- **Entertainment**

- Dispute between talent and manager regarding payments due related to a TV project
- Dispute between special effects company and producer related to negligence on commercial project
- Dispute related to use of likeness
- Dispute over alleged defamation on documentary project
- Profit participation disputes
- Royalty calculations disputes
- Allegations of improper withholding of distributions related to profit participation on film project
- Allegations related to failure to secure tax credits on film project
- Disputes between business managers and agents
- Wage and hour cases, including below-the-line disputes related to commercials and filming
- Dispute over payment of insurance policy related to on-set accident involving special effects
- Dispute over workers' compensation issues related to an accident on a movie set
- Dispute between East Coast and West Coast beneficiaries of a music library

- **Estate/Probate/Trust**
  - Family estate planning and real estate matter related to family limited partnership (FLP) involving assets with alleged value of tens of millions of dollars and sophisticated tax issues
  - Dispute over the proper beneficiary of a large bequest including real estate
  - Beneficiaries of trust assets alleged that trustee breached fiduciary duties in administering trust
  - Beneficiaries of trust disputed division of real property and personal property (pre-litigation)
  - Warring family members fought an emotionally charged breach of fiduciary duty case regarding management of real estate. Longstanding family feud issues and millions of dollars in real estate were at issue.
  - Co-trustee brought action to remove the other co-trustee for breach of fiduciary duty
  - Children of deceased father in dispute with second wife over division of assets pursuant to trust. Extensive accounting issues.
  - Dispute between co-trustee and contingent beneficiaries over disposition of real estate of the trust and other issues
  - Transfer of property related to testamentary bequest was in dispute. Undue influence was alleged.
  - Special administrator for real estate with extensive tax and accounting and real property issues
  - Multi-million-dollar dispute among heirs to an estate involving accounting, inventory, tax and appraisal issues
  - Dispute over accounting issues in a trust matter. Dispute over sale of trust real property and who had the right to sell.
  - Dispute between daughter of decedent and husband of decedent over disposition of stock accounts, residence and retirement accounts. Dispute over validity of joint tenancy and accounting issues.
- **Health Care**
  - Multiple cases between insurers and hospitals regarding payment of fees
  - Complex payor/provider disputes involving reimbursement for past claims, future contract terms and determination of the usual, customary and reasonable rate
  - Complex employment disputes involving high-level health care providers and their employees
  - Medicare and Medicaid disputes
- **Insurance**
  - Coverage dispute over whether insurance was due and in what amount related to flooding of residence
  - Dispute concerning amount owed by insurer related to accident on commercial set
  - Dispute over whether coverage exists for payments related to in vitro fertilization
  - Disputes over title insurance coverage related to easement dispute
  - Dispute over which life insurance carrier's insurance policy covered decedent in tax-free exchange of policies
- **Professional Liability**
  - Case involving alleged malpractice by large CPA firm related to expert witness testimony
  - Case involving alleged malpractice by accounting professional related to audit
  - Case involving alleged malpractice by national law firm involving alleged abandonment of client
  - Case involving regional law firm involving alleged ethics violation

- **Real Property**

- Discovery referee for depositions and related discovery
- Breach of contract and alleged conversion of rents and rescission in sale of commercial property
- Residential lot line and easement dispute between property owners
- Alleged concealment of prior debt in real estate transaction
- Fraud and breach of contract in purchase and sale of residential real estate where mold was found after close of escrow
- Real estate dispute over whether transaction was a lease or whether there was a veiled security (or loan)
- Matter concerning real estate broker alleged failure to disclose termite and water damage
- Dispute over construction work at a condominium, which resulted in damages to a downstairs neighbor unit owner
- Borrower dispute with lender over alleged oral agreement related to terms of real estate refinancing agreement
- Alleged non-disclosure of prior water damage in sale of residential real property
- Alleged breach of contract in sale of commercial real estate and related assignment agreement
- Alleged real estate appraisal fraud related to subprime lending
- Breach of contract regarding sale of commercial real estate resulting in alleged lost sales and revenues
- Dispute related to Franchise Tax Board real estate valuation claims
- Dispute between broker and seller over payment of commissions
- Dispute over payment of broker's commission in residential real estate sale and alleged fraud
- Alleged failure to disclose a material fact in the sale of a residence against major brokerage
- Default on the lease by subtenant. Cross-complaint alleged defects to the real property (leaks, etc.).
- National corporation sued individuals and large national bank for millions of dollars alleging that defendants fraudulently transferred ownership of property
- Commercial property dispute over signage and parking issues
- Adverse possession and prescriptive right claim
- A lot line dispute with cross-complaints that went on for many years before mediation
- Partners in a real estate transaction disputed distribution of proceeds after sale of property
- Alleged that seller/seller's agents failed to disclose material fact in sale of property
- Neighbors dispute over responsibility for damage caused by landslide
- Title insurance company cases involving millions of dollars alleging failure to properly issue title insurance policies, equitable subrogation and related issues
- Dispute of responsibility for breach of assigned leases
- Landlord tenant dispute

## **Honors, Memberships, and Professional Activities**

- **Honors**

- Recognized, "Top Lawyers" list, Beverly Hills Courier, 2010
- Los Angeles Superior Court Awardee in Mediation, 2008
- Recognized, Top Women Litigators list, Daily Journal, 2006
- Peer-rated "AV Preeminent" by Martindale-Hubbell, highest-possible rating in both legal ability and ethical standards, 1997-Present
- Named on multiple lists of Who's Who, including Who's Who in America, Who's Who in American Law and Who's Who of American Women
- Named in the "Corporate Counsel Super Lawyers Edition"
- Southern California Super Lawyer, 2006-2009, 2012-2018

- **Memberships**

- Admitted to the State Bar of California
- Admitted to the U.S. Tax Court
- Admitted to the U.S. District Court, Central District of California
- Member, Los Angeles County and Beverly Hills Bar Associations, Present
- Member, Women Lawyers Association of Los Angeles (WLALA), 1986-Present
- Member, Executive Committee, Business Section, Beverly Hills Bar Association, 2013-2015
- Panel Mediator, U.S. District Court of Central District of California, 2012-Present
- Member, California Academy of Distinguished Neutrals, 2008-Present
- Member, Southern California Mediation Association, 2006-Present
- Member, Organization of Women Executives, 1996-Present

- **Professional Activities and Community Service**

- Associate Editor, Consumer Attorneys Association of Los Angeles (CAALA) "Advocate" Magazine, 2007–2016
- Los Angeles City Attorney's Office Transition/Advisory Team Member, 2001–2004
- Board of Governors, City of Hope, Member of Executive Committee, 1994–1999
- Advisory Council, University of Michigan Rackham Graduate School, 1992–Present
- Board of Directors (Western States Board), National Jewish Center for Immunology & Respiratory Medicine, 1991–1995
- Board of Directors, St. Vincent's Hospital Foundation, 1990–2007
- Board of Directors, St. Vincent's Meals on Wheels, 2007–2009
- Board of Directors, American Cancer Society, San Fernando Valley Unit, 1982–1983
- Advisory Board, Kauai Film Commission, 2003–2009
- Advisory Board, Turks & Caicos International Film Festival, 2006
- Advisory Board, Loyola Law School Center for Conflict Resolution, 2008–Present
- Board of Governors, Loyola Law School, 2013–Present
- Board of Trustees, University of Michigan Hillel, 2013–Present
- Prolific writer on the elements that impact jury decision-making
  - Kessler, Karnes & Follert, "The Effect of Juror Sex on the Decision-making of Student and Actual Jurors in a Simulated Civil Case," S C A convention paper, Houston (1975)
  - Kulka & Kessler, "Is Justice Really Blind? – The Influence of Litigant Physical Attractiveness on Juridical Judgment," 8 Journal of Applied Social Psychology 366 (1978)

- **Publications**

- Kessler, "Assessment tools in mediation", Volume 42, Number 9, Advocate (September, 2015)
- Kessler & Turner, "The Innovative Online Arbitration Evaluation Tool: CaseXplorer® Arbitration™," LexisNexis® Emerging Issues Analysis, Research Solutions (April 2015)
- Kessler, "Pre-litigation Mediation: A Signal of Weakness or a Sign of Strength?" Volume 41, Number 9, Advocate (September 2014)
- Kessler, "Deep-seated Issues Lurk in Family Business Disputes," Daily Journal, November 2013
- Kessler, "Interview: Kenneth Feinberg" Advocate (September 2013)
- Kessler, "Caucus or Joint Session: To Meet or Not to Meet?," Volume 39, Number 9, Advocate (September 2012)
- Kessler, "Is Collegiality a Thing of the Past?," Volume 38, Number 9, Advocate (September 2011)
- Kessler, "The Connection between Mediation and Military Strategy," Daily Journal (July 8, 2011)
- Kessler, "Key Elements of the Successful Mediation," Volume 37, Number 9, Advocate (September 2010)
- Kessler, "The Mediation Isn't Successful If the Settlement Doesn't Stick," Volume 36, Number 10, Advocate (October 2009)
- Kessler, "Mediation Roadmap: The Mediation Brief – Plain English Trumps Legalese," Volume 35, Number 10, Advocate (October 2008)
- "Mediator Draws on Her Multifaceted Careers," Los Angeles Daily Journal (April 18, 2008)
- Kessler, "Beyond the Golden Rule: Successful Intercultural Mediations" Volume 34, Number 10, Advocate (October 2007)
- University of Michigan, Rackham School, Alumni Magazine, 2005, article, page 10
- Benson and Kessler, "Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing," 20 Loyola of Los Angeles Law Review (January 1987)
- Kessler, "The Lawyer's Intercultural Communication Problems with Clients from Diverse Cultures," Northwestern Journal of International Law and Business 64 (Spring 1988)
- Kessler, "Use of Videotape for the Expert Witness," 28 Journal of the American Academy of Forensic Science (April 1983)
- Kessler, The Social Psychology of Jury Deliberation, in R. J. Simon (Ed.), The Jury System in America, A Critical Overview, Beverly Hills: Sage Publications (1975)
- Note, An Empirical Study of Six- and Twelve-member Jury Decision-making Processes, 6 U. of Mich. J. L. Ref. 712 (1973) (cited in) *Colgrove v. Battin* 413 U.S. 149, 159 (1973); *Georgia v. Ballew* 435 U.S. 223, 238, 242 (1978)

## **Background and Education**

- Mediator, arbitrator and special master, JAMS, 2017–Present
- Attorney, mediator and arbitrator, Kessler & Kessler, A Law Corporation, president and shareholder, 1994–2017
- Managing Director, CaseXplorer Arbitration and CaseXplorer Mediation, 2014–Present
- Arbitrator and mediator, American Arbitration Association, 2010–2017
- Mediator, arbitrator and discovery referee, ADR Services, Inc., 2006–2013

- Attorney, Gold, Marks, Ring & Pepper, 1990–1993
  - Attorney, Frandzel & Share, A Law Corporation, 1986–1990
  - Extern, California Court of Appeal, 1985–1986
  - J.D., Loyola Law School, 1986
    - Chief Articles Editor, Loyola of Los Angeles International and Comparative Law Journal
  - Associate Professor, California State University, Northridge
    - Honors, Danforth Fellowship, 1981–1986
    - Tenured, Department of Speech Communication, 1977–1983
    - National Endowment for the Humanities Fellowship, 1977–1979
    - Women’s Center Board of Directors
  - Assistant Professor, Loyola University of Chicago, Department of Communication, 1973–1976
    - Conducted jury behavior research and consulted on jury selection
  - University of Michigan, Ph.D., Speech Communication, 1973
    - Jury researcher and consultant, 1971–1973
  - University of California, Los Angeles, M.A., Speech Communication, 1969
  - University of Michigan, A.B., English, 1967
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