

Max Factor III Esq., Full-time Neutral

Since the year 2000, Mr. Factor has built a thriving mediation practice as a very active and persistent catalyst in resolving nearly 2000 litigated matters. His success has been built upon a foundation of thirty years as a highly regarded “deal maker” in complex business and real estate matters, a litigator in numerous employment and real estate matters and a recognized leader among his colleagues.

Max is well known for his abilities in settling the contentious and the not so civil litigation in every area of a business and commercial practice. Employment, Real Estate, Accountings, Professional Malpractice, Insurance Coverage, Intellectual Property, Health Care, Unfair Business Practices, Business Contract and Partnership Disputes have formed the core expertise of his full time practice as a neutral.

Mr. Factor's leadership qualities are highly valued by colleagues who have selected him as:

- Member, Los Angeles Superior Court ADR Committee & Sub-Committee on Operations, 2008 – 10
- Member, Executive Committee, Litigation Section, Los Angeles County Bar Association, 2009-10
- Chair, 4th Annual Robert I. Weil Lecture, 2009 and 2010
- President, Downtown Los Angeles Litigation Inn of Court, 2008
- Member, Chair's Council for the Division of Biology, CalTech, 2008-10
- Case Western Reserve University School of Law, Distinguished Visitor Lecturer, September 2007: "On Understanding the Effects of Anger and Fear in Negotiating Outcomes"
- Distinguished Fellow, International Academy of Mediators (2004-present)
- President, So. Cal. Association of Mediators – SCMA - (2005-06)
- Chair, State Bar Committee on the Administration of Justice (2006-07)
- Best Lawyers (ADR) 2006,07,08
- Super Lawyers (ADR) 2006,07,08,09

Mr. Factor has serves as an Adjunct Professor at Pepperdine Law School, teaching the Mediation Clinic, one day a week, at the Straus Institute's Dispute Resolution Clinic to graduate students and Master's candidates.

His negotiating expertise and settlement abilities are widely respected and sought after by both defense and plaintiff counsel. Attorneys applaud his unique combination of a strong practical understanding of complex legal matters, an insightful ability to assist counsel with high maintenance clients, his flexible approach to bringing both sides together and by working productively with counsel, whenever appropriate to be “an agent of reality.”

Education

- Yale Law School, J.D. (1969) *Member of Board of Editors of Yale Law Review*
- Harvard College, B.A. (1966) *Magna Cum Laude in Economics*

Areas of Expertise

- Commercial and Residential Real Estate Sales
- Construction, Development and Investment
- Employment and Labor Practices
- Business Contracts and Breakups
- Unfair Business Practices
- Insurance Coverage
- Intellectual Property, Entertainment
- Professional Malpractice
- Partnership Dissolutions in Real Estate and Professional

Alternative Dispute Resolution Experience

Following is a sample of the matters Mr. Factor has mediated.

REAL ESTATE

- Several partnership dissolutions between developers and investors, and between two or more general partners.
- Multi-party breach of contract dispute among general contractors, subs and property owner in residential and commercial developments.
- Land movement, soil erosion and drainage dispute among adjacent landowners in several hillside properties.
- Numerous restructuring of loans and equity on real estate ventures in which partners have filed breach of fiduciary duty, fraud and accounting claims and/or sought dissolution of partnership and partition by sale of in kind.
- Constructive eviction of undesirable national tenant by major investment group seeking to upgrade commercial tenancies for sale of office park.
- Real estate investors' claims a licensee either misrepresented material facts or failed to competently handle commercial and residential real estate transactions involving several million dollars.
- Probate contests involving complex real estate, business partnership and successor liability issues.
- Special Master in partition action involving hundreds of acres of developable property and more than thirty ownership interests.
- Easement disputes for property owners with limited or no reasonable public access.
- Real estate expert hired by prosecutor to evaluate fourteen (14) property transfers of a non-profit organization that effectively resulted in the embezzlement of millions of dollars. The result was full rescission of below market sales and jail time for the white collar criminal.

BUSINESS CONTRACT, CONSUMER TORT, MALPRACTICE, PARTNERSHIP DISSOLUTION, AND INTELLECTUAL PROPERTY/ENTERTAINMENT

- Bankruptcy of a major national retailer and successor liability issues.

- Breach of fiduciary duty and accounting claims when one of the founding partners of a law firm split off to join another downtown firm.
- Countless commercial disputes in the garment industry, diamond trade, construction trades and transportation industry, generally over failure to pay contracted rates and/or failure to deliver timely and/or accurately the goods ordered.
- Multi-party accounting claims arising from several partnership dissolutions of physicians in specialty groups that held hospital contracts.
- Million dollar-plus attorneys' fee dispute for defense of a class action.
- Licensing and franchise disputes in which the licensee or franchisee has copied product or service and is competing with original holder of protected business property rights.
- Commercial contract disputes involving development of computer hardware and computer software systems.
- The reorganization of business partnership assets involving millions of dollars of commercial contracts in the travel industry.
- Shareholder/directors' suit involving medical technology in rapidly developing international markets.
- Patent infringement dispute involving high-tech imaging company and hardware developer.
- Legal malpractice dispute surrounding the advice offered in post mortem tax planning of a family business.

EMPLOYMENT

- Wage and Hours claims in many service industries.
- Wrongful terminations based on national origin and/or gender.
- Constructive discharge based on sexual harassment and hostile work environment.
- Defamation and public humiliation claims arising from workplace disputes.
- Sexual harassment and hostile work environment lawsuits by EEOC and individuals.

Mr. Factor's Employment History

1978-2000: Private practice: emphasizing litigation and transactional work involving Real Estate Development/Sales/Commercial Leasing; Partnerships; Business Negotiations; and Consumer Torts. In private practice, Mr. Factor served as an advocate for plaintiff or defendant, in more than 100 mediations, arbitrations and dispute resolution procedures.

1974-1977: Deputy and then Assistant City Attorney, heading Consumer Protection Section, Office of Los Angeles City Attorney, responsible for enforcement of State's regulatory laws governing licensed businesses and professions, as well as enforcement of business and trade practice violations. The Office of the Los Angeles City Attorney also vigorously prosecuted misdemeanor violations and civil penalty actions against in the health care field. More than 1000 cases per year were tried or negotiated to settlement. Also, served as the Hearing Examiner, L.A. County Hearings on Improving Conditions in Los Angeles County's 400 Nursing Homes.

1972-1974: Managing Attorney, the California Law Center, a non-profit, public interest center that engaged in litigation and educational programs on a wide range of consumer protection,

credit reform, and employment discrimination issues. Filed landmark cases under the Civil Rights Act to cause the elimination of discrimination based on race and sex in the referral practices of local unions in the motion picture and in the restaurant industries, as well as class action civil rights cases to successfully protect the rights of African-Americans, Latinos and women working in Southern California.

1969-1971: US Court of Appeals (6th Circuit), Hon. Anthony J. Celebrezze, Law Clerk.

Publications: *Links to all these articles may be found on the "Published Articles" page of Mr. Factor's website: www.FactorMediation.com*

Will *Porter v Wyner* and *Cassell* Change Mediation Forever?

The first in a series of two articles about mediation confidentiality, published in The Daily Journal, April 23, 2010.

New Cases Suggest '*Wimsatt* Warnings' Are a Better Practice

The last in a series of two articles about mediation confidentiality, published in the Daily Journal, April 26, 2010.

Responding to "The Nibble" in a Wage & Hour Context

Published in The Daily Journal, March 26, 2010.

Something You Should Know: The Trust Game: One in a Series of Observations derived from Academia

Published in The Daily Journal, March 25, 2010.

Recognizing Emotional Demons for a More Effective Negotiation

Published in Cal.State Bar LPMT's "The Bottom Line", December 2008

Recognizing The Real Demon:a discussion of splitting & projective identification

Published in The Advocate, October 2008

Combatting Hardball Tactics

Published in the Daily Journal in December 2007.

Babasa v LensCrafters Alerts Attorneys to a Lurking Mediation Noose

Confidentiality in the mediation process. Published in The Daily Journal on October 12, 2007.

An Angry Negotiator is too often Happy to Strike a Poor Deal

Emotions in the mediation process. Published by The Daily Journal on August 17, 2007.

Recognized Exceptions to Mediation Confidentiality and Remedies that Every Litigator Should Know. Written with Alice M. Graham and originally published on mediate.com in 2005

What "The Practice" could learn from "ER": Lessons from the Harvard Medical School Keynote Address, June 2005

Published in The Daily Journal: Alternative Dispute Resolution Section: Focus Column on Thursday, August 25, 2005

They Say it's about Dollars, but it's often about Emotion: How to Use Mediation to Restore Business Judgment to Business Disputes

Mediate.com website article, March 2005

Using Mandatory Early Mediation to Protect Clients and Attorneys

The Daily Journal: ADR Section: Focus Column on Thursday, March 25, 2005

Six Ways to Defuse Moore-Style Techniques Used in Mediation

The Daily Journal: ADR Section: Focus Column on Thursday, July 22, 2004. *Written shortly after Michael Moore's documentary "Fahrenheit 911" was released.*

Making Sure the Rojas Shield Doesn't Become a Weapon: How to Prevent Opposing Counsel from Cloaking Evidence with the Shield of Mediation Confidentiality

The Daily Journal: ADR Section: Focus Column on Thursday, September 20, 2004

Is Duck Hunting for Mediators?

Southern California Mediation Association Newsletter, September 2004 *Written after the Justice Scalia debacle, one in a series of articles exploring the ethical dilemmas of mediation participants.*

Thirty FAQ's for California Mediators on Ethical Minefields Involving Business, Construction, Employment and Real Estate Mediations. Questions re: Which Standards of Ethical Practice Govern Mediators' Conduct

Written and published for the 15th Annual Conference of the Southern California Mediation Association, "Waves of Change", held at Pepperdine's Straus Institute for Dispute Resolution, on November 3, 2003.

When Should Public Policy Interests Require that Mediation Confidentiality in California be Subject to Certain Common Sense Exceptions?

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Guest Lecturer, Adjunct Professor or Panelist:

Adjunct Professor, Straus Institute for Dispute Resolution, Pepperdine University: The Mediation Clinic, a required course. 2006-present.

Los Angeles Superior Court ADR Training: 2008, 09, 10, Panellist & Presenter for Mediation and Early Neutral Evaluation Programs

International Academy of Mediators Conference:

May 2008: Panellist - "Emerging Ethical Issues: Are Mediations Really Confidential?"

October 2007: Moderator, Panel Presentation on: 'Fear, Anger & Risk in Mediation'.

November 2005: Panellist - "Beyond Yes: An Exploration of the Mind and Decision-Making".

Los Angeles County Bar Association: Downtown Los Angeles: Litigation Inn of Court:
President: 2008-09

Case Western Reserve University School of Law, Distinguished Visitor Lecture, September
2007: "On Understanding the Effects of Fear and Anger on Negotiating Outcomes".

Moderator, International Academy of Mediators,

Conference Chair, Southern California Mediation Association's 17th Annual Interactive
Conference, "The Absolute Mediator", November 2005, Straus Institute

Founder, Beverly Hills Chamber of Commerce/BH Bar Association Monthly Lecture Series:
"Business Needs 2 Know", on Real Estate, Employment and Insurance.

Business Inn of the Court, West Los Angeles: Panelist, January, May, 2005.

Los Angeles County Bar Association, Inn of the Court (downtown L.A): "Successful Techniques
You Can Use to Achieve Litigation Objectives through Mediation and Make More Money"
(June, 2004)

Southern California Mediation Association, Roundtable Meeting: "Human Flaws that Interfere
with Rational Decision-Making of Mediation Participants and What Mediators Can Do to
Restore Rational Decision-Making" (April, 2004)

Southern California Mediation Association, 15th Annual Interactive Conference: Presented
session: "How to Avoid Mediator Malpractice, Build Trust and Resolve Ethical Dilemmas in
Business/Consumer, Employment and Real Estate/Construction Defect Disputes" (November
2003)

California Institute of Technology (CalTech) and Art Center College of Design of
Pasadena: "Proven Negotiating Techniques in Business Environments" (March 2002)

Southern California Mediation Association, Annual Employment Law Conference: "Building a
Successful Mediation Practice" (May 2002)

Family Foundation Resource Center, "Navigating Conflict in the Family Foundation" (December
2002)

Inn of Court, Downtown Los Angeles: Panelist and Mentor, "VoiR Dire & Opening Statements in
Business Litigation", 1999-2000