



John M. Harens

Harens Mediation Center, LLC
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Mission Statement

After almost twenty years as a civil litigator, Mr. Harens decided that while courtrooms are an effective way to resolve disputes, alternative dispute resolution in general and mediation in particular was infinitely better. In 1994, after mediating over one hundred disputes as Chairman of the ADR panel for Minnesota's Ramsey County District Court, Mr. Harens was judicially "grandfathered" into the first pool of ADR neutrals approved by the Minnesota Supreme Court. Over the last 20 years, he has devoted his practice to the resolution of large complex civil litigation cases, with a special emphasis on multiparty cases.

Mr. Harens believes in the sanctity of the neutrality of ADR providers. However, he also believes that this commitment to neutrality does not compel an ADR provider to park their personal passion for doing what they do well and with vigor. With that personality trait, he works extremely hard to get the parties to complex litigation to recognize the risks inherent in taking and refusing to moderate unreasonable or intransigent positions. His undergraduate degree in Mathematics from the University of Minnesota's Institute of Technology drives him to analyze claims and defenses and always "do the math" with respect to each scenario that confronts a litigant in the modern world of civil litigation. He is committed to the process and has a reputation that he will virtually never give up and will always follow-up.

Mr. Harens loves his job and would not change a thing about how he got to be a mediator. In his opinion, the best way to learn how to resolve cases as a mediator is to have been a litigator. He can be facilitative, but he will not shrink from telling the parties what he thinks instead of what they want to hear. He will not sidestep the evaluation of the parties' respective positions and will not avoid suggesting and working through the tougher parts of non-cash deals. His methodology embraces his credo that mediators should bring passion to their efforts to resolve disputes.

Representative Mediated Cases

Here are some representative cases that Mr. Harens has mediated over the last five years:

- **The I-35W Bridge Collapse Case.** Mr. Harens was selected by the parties and the Court to work on this complex matter. It involved over 100 injured and deceased victims of the collapse, as well as the State of Minnesota, a large construction firm, and two of the largest engineering firms in the world. It involved numerous insurance carriers from all over the world and involved complex issues of engineering, insurance, special legislation, statutes of repose and limitations, indemnity, and trial strategies. Ultimately, the case was resolved through mediation with a total settlement sum in excess of \$60 million. (For his efforts on this case, Mr. Harens was selected as one of Minnesota's Attorneys of the Year for 2010.)
- **River Station Condominium Case.** Mr. Harens was selected by the parties to mediate this case involving the alleged defective construction of over three hundred condominium units. The claims exceeded \$15 million. The final mediation sessions were conducted over a four day period at the new Minneapolis Central Public Library because it was one of the few local venues that could accommodate the number of interested parties. The eventual settlement involved more than 50 different contributing interests and almost 75 signators to the final settlement agreement. The case involved complex issues of fault allocation, indemnity, insurance coverage, additional insured coverage, and "time on the risk" considerations. It also involved a long standing process that Mr. Harens championed in Minnesota whereby cases are resolved in what is known as a "blind" mediation process.
- **Wakota Bridge Case.** Mr. Harens was selected to co-mediate this case involving a dispute over the construction of two interstate highway bridges over the Mississippi River. The dispute involved claims for over \$50 million in increased costs that were incurred as a result of the interruption of construction due to claimed design errors in the bridges. The construction was suspended after the initial third of the first bridge was erected. The case involved complicated issues regarding change order procedures and procurement law, and also involved complex engineering and costing issues. The case was ultimately resolved through mediation with the final settlement value being \$20 million.
- **Ivy Hotel Case.** This case involved the construction of a hotel and condominium project with a project cost of over \$75 million. The parties selected Mr. Harens to mediate a dispute that arose out of the project that included a large arbitration claim, as well as numerous lawsuits among a large number of the interested parties, including contractors, subcontractors, suppliers, condo owners, architects, sureties, insurance carriers, guarantors and indemnitors, and mortgagees. The case involved complicated issues regarding mechanics liens, delay damages, change orders, mortgage priority, suretyship and guaranty law. The case was mediated at several sessions that spanned numerous months, and was ultimately resolved using a mediator's proposal made by Mr. Harens on a "blind" basis. Under this practice the various parties who paid and accepted consideration for the settlement only knew their respective shares of the deal and did not know the individual payments made or received by each party to the dispute.

Special Areas of Expertise

Mr. Harens has mediated over 2,500 cases and based on that experience and his litigation career, he has developed an expertise in the following kinds of complex cases:

- Large complex claims involving allegations of design errors and omissions.
- Claims by developers, owners or contractors involving complex construction or development issues, including claims involving banking commitments, loan release procedures, delay damages, acceleration directives, mechanics liens, CPM scheduling, and change order requests.
- Large personal injury claims that involve complicated issues of indemnity, insurance coverage or worker's compensation formulas.
- Complicated subrogation claims involving large fire or other catastrophic losses, including business interruption and actual cash value computations.
- Multiple family housing project claims, including issues involving construction defects, replacement reserves, insurance coverage and warranties.
- Complicated banking and collection claims.
- Highway heavy claims, including issues regarding equipment utilization, earthwork quantities, design warranties, geotechnical findings and the ripple effect of multiple claims on a single project.

Mr. Harens litigation experience was largely concentrated in the construction field with an early emphasis on the highway heavy industry and a later emphasis on engineering, architectural and geotechnical professional liability defense. This background has given rise to an acute awareness by Mr. Harens of how to manage large complex claims that involve multiple parties with a large number of interests to address. This experience is mirrored in the cases that he tends to mediate.

Representative Distinctions

- Recognized as a "Super Lawyer" for more than ten years by Minnesota Law and Politics.
- Recognized as "Attorney of the Year" by Minnesota Lawyer, 2010
- "AV" Rating in Martindale-Hubbell

Representative Publications

Here are some of the matters on which Mr. Harens has written, spoken and been published:

- “The Fundamentals of Connecting with Parties and Counsel: The Effective Use of Personality and Passion.”
- “Negotiating and Documenting Settlements in Minnesota”
- “Indemnification and Additional Insured Provisions - The Impact on the Mediation of Construction Cases”
- “A New Frontier in ADR – Blind Mediations: How Less Information Might Promote More Self Determination”
- “Dispute Resolution Contracts”
- “The Ethics of Negotiation”
- “Mediation: An Opportunity for Certainty in Construction Litigation.”
- “RFI’s: A Trap for the Unwary Engineer or Architect.”
- “Refining the ADR Process: The Fundamentals of Connecting with Counsel and the Parties.”
- “Hammering Out Results: The Settlement of Construction Disputes.”
- “Creative Alternatives and Litigation: Non Standard Arbitration Clauses, Mediation and More.”
- “Effective Construction Dispute Avoidance and Resolution in Minnesota.”
- Alternative Dispute Resolution: First Aid to save the Construction Job.”
- “The Mediation Process and Settlement Agreement.”
- “Top Ten Issues in Insurance Coverage in Minnesota”
- “Resolving Wet Houses through Mediation.”

Education

- University of Minnesota Law School, Minneapolis, MN
Juris Doctor (1976) *Cum Laude*
- University of Minnesota Institute of Technology, Minneapolis, MN
Bachelor of Mathematics *with High Distinction* (1973)

Professional Profile

Harens Mediation Center, LLC

- Owner (August 2012 - Present)

Moore, Costello & Hart, P.L.L.P.

- Partner (1981 to 2012)
- Associate (1976 to 1981)
- Summer Associate (1975 - 1976)

Admitted to Practice Law

- Minnesota Supreme Court (1976)
- United States District Court (1976)
- United States Court of Appeals for the Federal Circuit (1991)

Professional/Community Organizations and Activities

- Mr. Harens is a member of the Minnesota State and Hennepin County Bar Associations. He has served as Chairman of Court Rules Committee of Ramsey County Bar Association; Member of joint task force of lawyers and judges to study court calendar system in Ramsey County; Chairman of the Continuing Legal Education Committee of Ramsey County Bar Association; Chairman of the Judiciary Committee of Ramsey County Bar Association; Member of the Governing Council of the Minnesota State Bar Association's Civil Litigation Section; and Member of Governing Council of Minnesota's Board of Continuing Legal Education.
- Mr. Harens has been an Affiliate member of the American Institute of Architects; Affiliate member of Minnesota Construction Management Association; Affiliate Member of St. Paul Builder's Exchange; and an Approved Neutral of the Minnesota Supreme Court ADR Neutral Roster.