

Curriculum Vitae – Philip E. Cutler

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PRACTICE EXPERIENCE

Over 47 years' experience in litigation, arbitration, and counseling in business, corporate and commercial law, business-government relations, licensing, trade secret, intellectual property and business torts law, antitrust and trade regulation matters; arbitration, mediation and other forms of dispute resolution; appellate practice.

Current practice limited to service as arbitrator in commercial and business disputes privately and through the American Arbitration Association.

PROFESSIONAL EMPLOYMENT

Philip E. Cutler PLLC/CutlerADR Seattle, Washington Owner – Practice Limited to Private & AAA administered arbitrations	11/1/21 – present
Cutler Nylander & Hayton (and predecessor firms) Seattle, Washington Shareholder, Director and President <i>Of Counsel</i> Practice limited to continuing Trustee work for deceased client	1990 – 10/31/21 11/1/21 – present
Sax and MacIver/Karr Tuttle Campbell Seattle, Washington Partner/Shareholder (Firms merged their practices in January 1986)	1979 - 1989
Perkins Coie Seattle, Washington Associate	1973 - 1979

EDUCATION

Northwestern University, Chicago, Illinois	1970 - 1973
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Pritzker School of Law: J.D. with Honors, June 1973. Staff Member (1971-72) and Editor-in-Chief (1972-73) of *Journal of Criminal Law and Criminology*. Published: Comment, *The Evidentiary Value of Spectrographic Voice Identification*, 63 J. Crim. L.C. & P.S. 343 (1972).

Georgetown University, Washington, D.C.

1966 - 1970

College of Arts & Sciences: A.B. (History), June 1970. Active in student government; member of Admissions Committee. Summer and school year employment as Special Assistant to U.S. Sen. Charles Percy (Illinois).

PROFESSIONAL LICENSES

Admitted to the Bar: Washington State (1973). U.S. District Courts – Western District of Washington (1973); Eastern District of Washington (1979); Northern District of California (1985, *pro hac vice*); Middle District of Alabama (2008, *pro hac vice*); Eastern District of Pennsylvania (2011, *pro hac vice*). U.S. Court of Appeals for the Ninth Circuit (1991). U.S. Claims Court (1976). U.S. Supreme Court (2006).

SELECTED PROFESSIONAL ACCOMPLISHMENTS

Complex Litigation

Administrative Law

Represented fireworks industry in suit successfully challenging administrative regulations adopted by Washington State Patrol (1997).

Special counsel to private, proprietary post-secondary educational institution in accreditation negotiations and licensing litigation with Washington state agency and federal Department of Education; architect of successful litigation strategy resulting in potential savings to client of over \$1.5 million in dispute with federal Department of Education (1991-93).

Antitrust

Retained as chief trial counsel by Northern Idaho developer on eve of Idaho state court jury trial of complex commercial and antitrust lawsuit against ski area developer and private utility operator. Settlement achieved after 3 weeks of trial (1992).

Trial and appellate counsel for milk cooperative in five-week antitrust jury trial. Adverse jury verdict unanimously reversed by Washington Supreme Court. *Bar-T Ranch Dairy v. Consolidated Dairy Products*, 97 Wn.2d 167 (1982).

Principal responsibility for defense of beef packer in civil antitrust litigation 1977-80 and related federal grand jury investigation. No indictment returned; civil suit settled on

favorable terms. See *Golob & Sons v. Schaake Packing Co.*, 93 Wn.2d 257 (1980).

Arbitration Practice and Procedure

Retained (2011) by California-based owner of assisted living facilities to advise it and its attorneys on arbitration practice and procedure in arbitration with manager over client's termination of manager's services. Cases settled (before hearing) summer 2011.

Retained by major national provider of ADR services to prepare *amicus curiae* brief to Washington Supreme Court in case involving the scope of judicial review of arbitration awards. Court unanimously decided case favorably to client's position; 4-Justice concurring opinion adopted the legal arguments made in *amicus* brief. *Boyd v. Davis*, 127 Wn.2d 256 (1995).

Attorney Discipline

Special disciplinary counsel for Washington State Bar Association in case against lawyer for trust account violations. After a 3-day hearing (2000), Hearing Officer suspended the lawyer for one year. WSBA Disciplinary Committee reduced punishment to 6 months suspension. Washington Supreme Court affirmed. *In re McKean*, 148 Wn.2d 849 (2003).

Banking

Retained (1997) by major national mortgage lender to defend class action lawsuit challenging "document preparation fees" as unauthorized practice of law and unfair and deceptive practice under Washington's Consumer Protection Act. Case settled (1999) for nominal amount.

Selected by major Washington bank to defend it in \$1 million loan guaranty suit by Japanese trading company. Architect of successful litigation/negotiation strategy leading to *de minimis* settlement (1987).

Advised and represented banks, trustees in bankruptcy and other creditors in loan workouts, liquidations, reorganizations, receiverships, and related business litigation (1980-2000).

Complex Commercial/Business

Retained (2016) by LLC member in dispute with 50% partner over continuation or dissolution of business (sale of hardware/software). Case settled in mediation on eve of trial.

Retained (2014) by contractor in commercial/UCC dispute with supplier over compliance of product with government (U.S. Dept. of Veterans Affairs) specifications. After 5-day Superior Court bench trial, supplier's claims dismissed with prejudice (July

2017).

Retained (2007) by Seattle-area entrepreneur and two of his companies to defend lawsuit by Alabama-based plaintiff for breach of non-disclosure agreement and trade secret, unfair competition and federal trademark infringement claims arising from unsuccessful negotiation of a business buy-out agreement and client's commencement of similar business; action successfully removed to Montgomery AL federal court. Bench trial conducted October 2008; judgment in clients' favor dismissing all claims entered September 2009. *Movie Gallery v. Greenshields*, 648 F. Supp. 2nd 1252 (M.D. Ala. 2009).

Succeeded in obtaining *vacatur* of \$23 million default judgment (2007) for Washington resident based on no direct service and faulty substitute service. Case settled.

Arbitration counsel (2005-2006) for claimant in breach of contract/fiduciary duty/good faith-fair dealing case involving respondent's refusal to remit commission splits under written contract and respondent's disbursement of commission revenues to himself and his associates. After 3-day hearing, arbitrator entered award in client's favor of \$601,000, including pre-award interest, all costs and 95% of attorneys' fees. Assisted (2007-2009) judgment enforcement counsel in fraudulent conveyance case against respondent personally, leading to judgment against him of \$895,000.

Retained (2003) to represent minority owner plaintiffs in federal and state court appraisal/breach of fiduciary duty suits against majority owners of cellular telephone partnerships. Cases dismissed on summary judgment. Trial court in state-court case affirmed by Washington Court of Appeals Division I (133 Wn.App. 1023 (2006)) and in federal court case by the 9th Circuit Court of Appeals (215 Fed. Appx 616 (2006) and 508 F.3d 1177 (2007)).

Retained by hops cooperative to negotiate global settlement of brewers' and dealers' claims for 7-figure UCC cover damages following loss at trial of 3 cases. Developed strategy that resulted in settlement of all cases/claims on terms favorable to client, permitting client to distribute greater amount of assets to members in liquidation.

Constitutional

Represented prison-based water-jet cutting company in constitutional, antitrust and public disclosure claims by competitors arising from the client's participation in the Washington Prison Industries Program. Public disclosure claims resolved in client's favor (1999 and 2004); antitrust claims voluntarily dismissed (2000). Constitutional claims dismissed on summary judgment by the trial court. Washington Supreme Court affirmed (*Washington Water Jet Workers Assn v. Yarbrough*, 148 Wn.2d 403 (2003)), then reversed on reconsideration (151 Wn.2d 470 (2004)). Plaintiffs' antitrust, consumer protection and tortious interference claims against State co-defendant under fourth amended complaint dismissed on summary judgment; dismissal affirmed by Washington Court of Appeals Division I (2008); petition for review to Washington

Supreme Court denied (2009).

Franchises

Retained (1999) to prosecute claims of 6 dealers against manufacturer for wrongful termination, Washington Franchise Act violations, federal antitrust (tying) claims. After 10 day arbitration, Panel issued mid 6-figure award (2001) in favor of clients for wrongful termination and Washington Franchise Act violations.

Fraudulent Transfer

Retained (2006) by Washington resident to defend Texas plaintiff's enforcement of 8-figure Texas federal court judgment and same plaintiff's Washington federal court fraudulent conveyance action (filed spring 2008). Fraudulent conveyance case and judgment enforcement matters settled March 2011.

Insurance

Retained (1999) to defend class action lawsuit against major national automobile insurer claiming attorneys' fees for insured's recovery of Personal Injury Protection payments for benefit of insurer. Case settled (1999) on terms favorable to client. Retained (2000) as local counsel for same insurer in class action lawsuit seeking diminution-in-value damages under UIM portion of policy.

Intellectual Property & Business Torts

Retained (2011) by individual and business defendants in cybersquatting/trademark infringement and related unfair competition litigation in E.D. Pennsylvania lawsuit brought by trademark owner. Case settled.

Retained (2001 - 2013) by national securities brokerage firm to represent new broker-employees in breach of contract/trade secret misappropriation actions brought by former employers. Defeated most former employers' attempts to obtain TROs from NASD/court.

Retained (2003) to represent Russian joint stock company plaintiff in federal court trademark infringement lawsuit against U.S. company. Claims settled within 3 months.

Retained (2002) to represent Hawaiian videographer in federal copyright infringement action. Jury awarded client \$170,000+ in statutory damages after 7-day trial (April 2003). Thereafter, court awarded client \$240,000 in attorneys' fees and costs. Case settled on appeal.

Arbitration counsel for joint venture partner in arbitration (2002) over buy-sell provisions of LLC agreement, alleged trade secret misappropriation, and tortious interference. Claims of other joint venture partner rejected.

Retained (2002) to represent clients in reciprocal cybersquatting/metatagging federal trademark infringement case. Case settled (May 2003) after mediation and resolution of dispositive motions.

Retained (2000) to represent interests of U.S. company and its employees and Chinese parent corporation in misappropriation of trade secrets lawsuit brought by former employer of employees. Case settled within a month.

Represented (1997-98) defendants and their former counsel in Federal Trade Commission's contempt of court claim following settlement of FTC pyramid-scheme case by Consent Decree. Defeated FTC's claim for criminal contempt against defendants and for civil contempt against their counsel; civil contempt against defendants forestalled for 8 months.

Trial counsel for former employee of publishing company in damages phase of lawsuit brought by former employer for tortious interference with former employer's business arising from client's departure and establishment of competing business. After 7 day trial (1993), court rejected former employer's claim for 7-figure damages and awarded \$1 nominal damages only; obtained \$16,000 in discovery abuse sanctions against former employer.

Represented major insurance company in successful 7 day trial (1990) of suit against former agent for trade secret misappropriation and enforcement of confidentiality agreement and non-compete covenant. Obtained high 5-figure judgment for attorneys' fees.

Represented trademark and copyright owners in infringement and licensing litigation; principal counsel for plaintiff in license termination litigation, resulting in negotiation of new license, pre-paid royalty (1985-90).

Major pre-trial and trial responsibility for defense of seller of glass business in technology/trade secret misappropriation litigation. Motion for directed verdict granted after seven weeks of trial, upheld on appeal to Washington Supreme Court. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38 (1987).

Land Use

Trial and appellate counsel to landowner in state court zoning/environmental challenge to thoroughbred race track. Washington Supreme Court dismissed citizen group's appeal. *CAPOW v. Northwest Racing*, 126 Wn.2d 356 (1995). Related federal court environmental challenge voluntarily dismissed following plaintiff's failure to obtain preliminary injunction.

Represented landowners in protracted inverse condemnation action; negotiated settlement with municipality resulting in municipality's acquisition of clients' properties at

favorable price and terms (1995).

Receiverships

Counsel for the receiver (retired Washington Supreme Court justice) in special receivership (2010-2011) involving debtor's real property. Efforts to sell property frustrated by debtor, who declared bankruptcy while receivership pending.

Special litigation counsel (2003-2006) to receiver (retired Washington Supreme Court justice) of defunct securities company in suits to recover fraudulent transfers and on promissory notes. State court granted receiver summary judgment in fraudulent transfer case (2003); one suit on promissory notes settled in mid-six figures (2004); obtained 6-figure default judgment in another case (2004); summary judgment granted client on borrower's claims that note and deed of trust was void (2004) and recovered mid-6-figures in deed of trust foreclosure (2005).

Business and Government Relations Advice & Counsel

Antitrust/Product Distribution

Principal outside general counsel to major Redmond-based national consumer electronics manufacturer and supervised law firms' work for client (1982-90). Prepared and annually reviewed all domestic and international product distribution contract documents for client; advised client regarding significant domestic and international marketing and pricing decisions and programs.

Corporate Structure and Intra-Business Relations

Outside general counsel (1992-2000) to seller of specialized computer software and hardware packages. Advice and counsel to client in restructure of corporation; preparation of corporate documents, shareholder buy-sell agreement; assistance to client in securing bank and investor financing; negotiated pre-litigation settlement with principals' former employer over business tort/trade secret misappropriate claims.

Government Relations

Outside general counsel to start-up "brew-on-premises" business (1994-98). Represented client in negotiations with state Liquor Control Board and federal Bureau of Alcohol, Tobacco & Firearms over licensing of client's business, leading to first-ever U-Brew license awarded by state; advice and counsel to client in corporate, business, and licensing matters.

Represented (1997) landowner in sale of large tract to large local municipality for park purposes; developed and implemented zoning-change and complex trust transfer strategies that resulted in favorable sale price and tax-advantaged terms for client.

Assistance to fireworks industry in *amicus* letter to State Attorney General concerning municipal responsibilities under 1995 revisions to state fireworks code resulting in favorable Attorney General Opinion (1995); continuing advice and counsel with respect to state and local legislative matters involving fireworks.

Obtained agency rules change benefitting private, proprietary post-secondary educational institution and accrediting commission (1991-93).
Represented Fortune 500 telecommunications company in successful contract negotiations and resolution of related dispute with large city government (1991).

Municipal Governments

Outside general counsel to 16,000-customer South King County public water district (1990-92, 1994-96). Advised District and Board of Commissioners on all important matters, including preparation of non-standard resolutions, preparation of contracts, interface with Washington State Auditor, compliance with state law concerning conduct of public meetings, involvement of District and staff in political matters.

PUBLICATIONS

Author: “Discovery in Arbitration”, *King County Bar Bulletin* (October 2016); “I am Your Arbitrator – Here’s What to Expect from Me . . . and What I Expect from You”, *Dispute Resolution Journal* (American Arbitration Association), Vol. 70, No. 1 (Spring 2015); “Making the Case for Arbitration”, *CorporateCounsel.com* (August 2014); “Arbitrator’s Powers”, *King County Bar Bulletin* (January 2013); “Reclaiming the Promise of Arbitration”, *King County Bar Bulletin* (July 2011); “Arbitration: Getting the Evidence, Getting it in and Persuading the Arbitrator”, *King County Bar Bulletin* (August 2010); “Representing Clients in Mediation: A Mediator’s Perspective,” *Dispute Resolution Magazine* (ABA Dispute Resolution Section) (Spring 2003); “Who Owns the Expirations?” *The Broker*, 55/3:16 (July-August 1992); numerous publications in connection with Continuing Legal Education programs sponsored by the American Bar Association, Federal Bar Association of the Western District of Washington, University of Washington Law School, Washington State Bar Association, Washington State Trial Lawyers Association. See also www.cutleradr.com for other ADR-related materials.

Co-Author: “Intra-Tribunal Relations” and “Arbitrator Fees and Costs” chapters in *Guide to Best Practices in Commercial Arbitration*, College of Commercial Arbitrators (3rd Ed. 2013; 4th Ed. 2017)

Contributing author: *ADR Deskbook (1998 Supp.)* (WSBA, 1998); *Doing Business in Washington* (WSBA International Law Section, 5th Ed. (2010); also 3rd Ed. (1997) and Supp. 2003); *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)); *Antitrust Evidence Handbook* (ABA Section of Antitrust Law, 1991); *Washington Antitrust Law Developments* (WSBA Section of Antitrust Law, 1985); *Washington Consumer*

Protection, Antitrust and Unfair Business Practices Law Developments (2nd) (WSBA Section of Consumer Protection, Antitrust, and Unfair Business Practices, 1988) and 1993 Supplement (same, 1993).

MAJOR PROFESSIONAL ACTIVITIES

Long-standing membership in **American Bar Association** (Antitrust, 1980-1990 (active in Civil Practice & Procedure Committee); Dispute Resolution (1978-2015) (Chair of Membership Committee, 2002-2008) and Litigation Sections (1980-2010); **Washington State Bar Association** (Consumer Protection, Antitrust and Unfair Business Practices Section; Litigation Section; Dispute Resolution Section (Chair, 1998-99; Mandatory ADR Court Rule Task Force (principal drafter of Task Force Report, submitted 1997)); ADR Committee, 1999-2006; Special Disciplinary Counsel, 2003); **Federal Bar Association of the Western District of Washington** (Trustee 1998-2000; Court Congestion/ADR Committee (chair, 1985-95, co-chair 1996-1998); member of FBA ADR Task Force, 1994-95)); and **King County Bar Association** (Trustee of ADR Section, 1997-2007, Chair, 2002-2003; numerous committees and special projects).

Northwest Dispute Resolution Conference, Planning Committee, Co-Chair and/or Fundraising Chair, 1995-2018. **ABA Dispute Resolution Section Annual Conference**, Planning Committee, Co-Chair and/or Fundraising Chair 2001-2008.

Member, Washington Supreme Court **Pattern Jury Instruction Subcommittee on Commercial/Business Litigation** (1994-1997); U.S.D.C., Western District of Washington **Civil Justice Reform Act Advisory Group** (1998-2003); **9th Circuit Standing Committee on ADR**, Ninth Circuit Judicial Council (1997-2010).

Member, **CPR Institute for Dispute Resolution** (2003-2006); **American Arbitration Association Commercial Arbitration Panel** (1992-present), **AAA Mediation Panel** (1997-present), **AAA Large Complex Commercial Case Panel** (1999-present); **FINRA/NASD Public Arbitrator and Chairperson Panels** (1996-present); **King County Superior Court Arbitration Department Register of Arbitrators for Mandatory Arbitration Cases**, 1982-2019. Court-approved Arbitrator (1992-present) and **Mediator** (1982-present), U.S. District Court/Western District of Washington. **Judge Pro Tem, King County Superior Court** (1993-1995).

Member, **ADR Roundtable**, by-invitation-only association of Seattle lawyers practicing ADR (1997-present; vice-chair, 1999-2000; chair, 2000-2019) (more information available on www.adrroundtable.com). Co-chair, Pacific Northwest Economic Region (**PNWER**) Dispute Facilitation Service Project (2000-2002).

Lecturer at and/or program chair for numerous continuing legal education programs sponsored by the **American Bar Association Section of Antitrust Law/Civil Practice & Procedure Committee** (summary judgment; evidence); **University of Washington CLE Department** (trade secrets and non-competition agreements in the insurance industry; ADR); **Washington State Bar Association (Sections on Antitrust** (antitrust; product distribution), **International Law** (product distribution; negotiating and structuring

the international transaction), and **ADR** (negotiation; mediation; arbitration); **King County Bar Association** (various, principally ADR); **Federal Bar Association of the Western District of Washington** (federal practice and procedure; ADR); **U.S. Department of Justice Office of Legal Education** (mediation). Guest lecturer on alternative dispute resolution and business law at Seattle University Law School and University of Washington; guest lecturer on negotiations at San Diego State University EMBA program (2005, 2006).

PEER RECOGNITION/AWARDS & HONORS

ADR All Star, WSBA Dispute Resolution Section (1998-2002); Fellow, **College of Commercial Arbitrators** (2006-present); **Super Lawyer**, *Washington Law & Politics* (1999-present); Who's Who in America; Who's Who in American Law. Rated "AV" Preëminent by **Martindale-Hubbell** Law Directory.

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