

MERRIL HIRSH, FCIARB
HIRSHADR PLLC
LAW OFFICE OF MERRIL HIRSH PLLC
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EMPLOYMENT

Principal, HirshADR PLLC and Law Office of Merrill Hirsh PLLC	Nov. 2017-present
Partner, Troutman Sanders, LLP (since merger)	2009-Oct. 2017
Partner, Ross, Dixon & Bell (Masback), LLP	1994-2009
Associate, Ross, Dixon & Masback, LLP	1989-1994
Trial Attorney, U.S. Dept. of Justice, Civil Division	1982-1989
Volunteer, Student Counsel, 40 hours/week, Harvard Legal Aid Bureau	1980-1982

EDUCATION

Harvard Law School, J.D., 1982 *Magna Cum Laude*
Oberlin College, B.A., 1979, with High Honors in Government, Comfort Starr Award for Excellence in Government (1979), *Phi Beta Kappa* (1978)

ILLUSTRATIVE EXPERIENCE

- Hearing Examiner for employment disputes, Architect of the Capitol (September 2019-)
- Hearing Committee member, DC Board of Professional Responsibility (Nov. 2, 2016-present (second term ends Nov. 2, 2022))
- Arbitrator, Financial Industry Regulatory Authority (2019-)
- Mediation Panel, DC Court of Appeals (2018-)
- Arbitration Roster of American Arbitration Association (2018-)
- Represented plaintiffs and defendants in cases in state or federal courts in over 40 states and in numerous arbitrations
- Co-counsel in case resulting in a completely favorable Delaware jury verdict in favor of insurer based on failure to obtain consent to a settlement and affirmance by the Delaware Supreme Court
- Lead counsel for the Financial Planning Association in its successful challenge to the SEC's "broker-dealer" rule in the U.S. Court of Appeals for the District of Columbia Circuit.
- Lead counsel for the Air Line Pilots Association in the arbitration involving one of the largest financial claims in its history.
- Lead counsel for insurer in first case ever to rule on whether entity insurance coverage for securities claims applies to claims arising from the insured's securitization of mortgages
- Successfully represented client in administrative law challenge concerning EPA regulation in the United States Court of Appeals for the District of Columbia Circuit
- Successfully represented client in NEPA challenge in the United States District Court for the District of Columbia

- Represented State of Nevada before the Nuclear Regulatory Commission in opposing the licensing of the Yucca Mountain repository
- Represented UPREIT contributor in arbitration seeking to enforce tax protection agreement entered into by one of the largest REITs in the world.
- Represented relators in novel False Claims Act case that obtained \$76.25 million in recoveries based upon allegations of price fixing for carbon fiber and in companion antitrust litigation
- Successfully represented the USA Track & Field Association in an antitrust challenge to its standards for competition
- Lead counsel for the many-year primary insurer in a 15-year coverage dispute involving scores of thousands of asbestos claims
- Obtained an \$87.5 million settlement, serving as plaintiffs' co-lead counsel on behalf of a group of telecommunication companies in litigation involving telephone rates
- Was part of a team that secured a jury verdict finding over 26,000 violations of the Federal False Claims Act relating to the purchase of oil off Government and Native American leases
- Lead counsel for the primary director's and officers' liability insurer in connection with what was at the time the nation's largest health care bankruptcy
- Represented two adult gay Eagle Scouts in 10-year litigation challenging the Boy Scouts' policy of excluding gays
- Lead counsel for inventor of the accordion-folded car shade in patent and Lanham Act challenge
- Substantially responsible for crafting the class action mechanisms used to settle \$2 billion of asbestos liabilities
- Represented a DSL service provider in an antitrust action against a competing incumbent local exchange carrier for unlawfully maintaining monopoly power in various telecommunications markets
- Lead counsel for the (then) Veterans' Administration in two-month trial concerning the constitutionality of fee limits
- Lead counsel for the U.S. Department of Education in eight-month Kansas City, Missouri school desegregation trial

SELECTED PUBLICATIONS

- "A Revolution That Doesn't Offend Anyone: The ABA Guidelines on the Appointment and Use of Special Masters in Civil Litigation," American Bar Association Judicial Division JUDGES JOURNAL (Fall 2019) at 30.
- "Special Masters: A Consensus Proposal for a New Approach to Civil Litigation," ALTERNATIVES (International Institute for Conflict Prevention and Resolution) (December 2018) 169.
- "Special Masters: Helping Judges' Reach Exceed Their Grasp," ALTERNATIVES (International Institute for Conflict Prevention and Resolution) (June 2017), available at <http://altnewsletter.com/sample-articles/special-masters-how-to-help-judges-extend-their-reach-and-exceed-their-grasp.aspx>
- "We've Just Made Peace, Let's Address the Next War: Taking Some Care To Get Dispute Resolution that Works for You," TROUTMAN SANDERS PRIVATE EQUITY QUARTERLY, Summer 2016 (available at <https://sites-troutmansanders.vuturevx.com/32/1244/landing->

[pages/we-just-made-peace--let-s-address-the-next-war--taking-some-care-to-get-dispute-resolution-that-works-for-you.asp](#)), reprinted in *LAW 360*, September 1, 2016.

- “Writing Arbitration Clauses to Get the Arbitration You Want,” *Law 360* (August 9, 2016) (with Nicholas Schuchert), available at <https://merrilhirsh.com/writing-arbitration-clauses-to-get-the-arbitration-you-want/>.
- “Special Masters: A Different Answer to a Perennial Problem,” *ABA THE JUDGES JOURNAL* (with James Rhodes and Karl Bayer), v. 55 No. 2 (Spring 2016) at 26, available at http://www.troutmansanders.com/files/Uploads/Documents/JJ_SP16_v55n02_HirshRhodesBayer.pdf
- “Overlitigation is Killing Us: How In-House Counsel Can Get the Service They Deserve,” *CORPORATE COUNSEL* (May 2016), available for download from Lexis, <https://www.law.com/corpcounsel/almID/1202758108289/>
- “Getting It Right: The Other Challenge for Arbitration,” *D.C. BAR LITIGATION SECTION QUARTERLY UPDATE* at 16 (Winter 2015/2016), available at <http://www.dcbar.org/sections/litigation/loader.cfm?csModule=security/getfile&PageID=44925>
- “Getting to Yes ... or No: Dispute Resolution that Resolves Disputes,” *ALTERNATIVES* (International Institute for Conflict Prevention and Resolution), v. 33 No. 7, at 1 (July/August 2015), *reprinted in* *International Arbitration Journal* (Oct. 2015) <http://int-arbitration.livejournal.com/46379.html>
- Special Masters: How To Make the Best of Both Worlds (multi-part posting on Karl Bayer’s Disputing blog, beginning November 2014) <http://www.disputingblog.com/special-masters-how-to-make-the-best-of-both-worlds-part-i/>
- “How to Hold Down Costs of Adjudication: Even in the US,” *TerraLex Connections* (October 2014)
- “Background of the Illinois Brick Decision,” Appendix, *ABA Section of Antitrust Law’s Indirect Purchaser Litigation Handbook* (August 8, 2007).
- Reverse Payment Settlements, *ANTITRUST* (Summer 2007)
- “I Didn’t Say Orphan Often: The Benefits of a Bright-Line Rule Banning Brand to Generic Payments in Hatch-Waxman Patent Settlements,” *ABA Antitrust Health Care Chronicle*, Vol. 19, No. 2 (Summer 2005).
- “Are False Positives Really So Negative? A Response to Kevin McDonald,” *ANTITRUST*, Vol. 17 No. 3, at 83 (Summer 2003).
- “The Essential Facilities Doctrine: Keeping the Word ‘Epithet’ from Becoming One” (March 21, 2003), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=389200&rec=1&srcabs=1125368&alg=7&pos=1
- “In Re High Fructose Corn Syrup: A New Form of Chicago School Education,” *Findlaw.com* (November 1, 2002).
- “Can an Insurer and an Insured Settle an Insurance Policy?,” 11 *Mealey’s Litig. Rep.* at 15.
- *ABA’s Antitrust and Telecommunications Practice Guide*, Sherman Act Section 2 Chapter, Co-Author.

SELECTED PRESENTATIONS AND SPEAKING ENGAGEMENTS

- Moderator and Presenter, “Creativity for Crisis: How Can ADR Masters Assist Courts Post-Pandemic?,” scheduled for Spring Conference of the ABA Section of Dispute Resolution, April 15, 2021.
- Moderator and Presenter, “Careers Beyond the Bench and Bar: Arbitration, Mediation, and Special Masters,” ABA Judicial Division Webinar, November 11, 2020.
- “An Update on ABA Guidelines on the Appointment and Use of Special Masters,” Academy of Court Appointed Special Masters Annual Meeting, October 23, 2020.
- “Ethics for Special Masters: What Are the Problems and What Are the Rules?” Academy of Court Appointed Special Masters Annual Meeting, October 23, 2020.
- “A Brainstorming Session: Using Special Masters to Help Deal with the Courts Deal with the Challenges of the Pandemic,” a presentation for the ABA Judicial Division (May 28, 2020), available at https://www.americanbar.org/groups/judicial/conferences/lawyers_conference/committees/special-masters/
- A Tool to Help Courts: Special Masters, a presentation for the Ohio Supreme Court Dispute Resolution Conference (recorded March 10, 2020), available at https://www.youtube.com/watch?v=kF9CJUvMgQo&list=PLMMZAktESmQrN3Qd9F5ZHL_5wiAh55ml&index=3&t=0s
- “New Thinking on an Old Idea: How the ABA Guidelines on Special Masters Could Assist Judicial Administration in Florida,” Tampa, FL, January, 14, 2020.
- “Special Master Resources,” An ABA Judicial Division Gavel Talk, posted September 24, 2019, available at https://www.americanbar.org/groups/judicial/publications/gavel_talks/special-masters-resources/
- “Introduction to Special Masters,” An ABA Judicial Division Gavel Talk, posted September 10, 2019, available at https://www.americanbar.org/groups/judicial/publications/gavel_talks/introduction-to-special-masters/
- “Avoiding A Game of Thrones in the Courtroom: Fostering Civility and Best Practices,” ABA Annual Meeting, San Francisco, Aug. 8, 2019.
- “A Tool for Modern Litigation: Mastering the Challenges,” (2019 Iowa Judges Conference Des Moines, June 10, 2019)
- “A New Approach to the Use of Special Master in Civil Litigation: the ABA Guidelines,” (Academy of Court Appointed Masters. Annual Meeting. Chicago, April 12, 2019).
- “A New World for ADR: The ABA’s Guidelines on the Use of Special Masters in Civil Litigation,” (ABA Section of Dispute Resolution, Spring Meeting, Minneapolis, April 11, 2019)
- Presentation in Support of ABA Resolution 100, adopting Guidelines on the Appointment and Use of Special Masters in Federal and State Court Civil Litigation, and Recommending the Amendment of Bankruptcy Rule 9031 (ABA House of Delegates, January 28, 2019)
- “Rethinking Our Approach to Civil Litigation: Proposed ABA Guidelines on the Use of Special Masters, ABA webinar. Scheduled October 11, 2018 at 1:00-2:30.
- “Rethinking Our Approach to Civil Litigation: A Proposed ABA Black Letter on Special Masters” (ABA Annual Meeting, Chicago, IL, August 2018)

- The ABA Black Letter on Special Masters (Academy of Court-Appointed Masters Annual Meeting. New Orleans, LA) (April 14, 2018)
- “Change on the Horizon: The ABA’s Consideration of a Different Approach to Using Special Masters in Civil Litigation” (Spring Meeting of ABA Business Law Section, Orlando, FL, April 13, 2018).
- “Special Masters and How They Can Save You and Your Clients Time and Money” (District of Columbia Bar, March 20, 2018)
- “Special Masters: A Way of Bringing Alternatives into Judicial Dispute Resolution,” (ABA Dispute Resolution Section, Spring Meeting April 2017, San Francisco, CA)
- “Report on the ABA Judicial Division, Lawyers’ Conference Committee on Special Masters,” (Annual Meeting of the Academy of Court-Appointed Masters, March 31, 2017, San Diego, CA)
- “Special Masters,” (William B. Bryant American Inn of Court, Washington, DC, moderator, Oct. 18, 2016)
- “Strategies for In-House Counsel To Reduce Litigation Costs” (Strafford Continuing Education Webinar, Oct. 13, 2016)
- “Is There a Better Way? Strategic Use of Special Masters To Improve Judicial Efficiency and Reduce Litigation Cost” (ABA Annual Meeting, San Francisco, CA, August 2016)
- “Antitrust: The Business Case” (2010)
- Developments in U.S. Antitrust Law, London UK (2009)
- “The FTC v. Cephalon case: What does it mean for future brand-generic patent settlements?” ABA Section of Antitrust Law
- “A Dickensian View of Pharmaceutical Antitrust: Bleak House or Great Expectations?” Generic Drug Summit, Institute for International Research (June 19, 2008).
- “Overturning the SEC ‘Broker Dealer Rule’ – What to Expect Going Forward,” 2008 fi360 National Conference (May 8, 2008).
- “Should We Allow Brand Companies to Pay Generics to End Patent Challenges: James J. Kirkpatrick Meet Shana Alexander,” Law Seminars International, Seminar on Pharmaceutical Antitrust (April 24, 2008).
- “February In-House Counsel Antitrust Update,” ABA Section of Antitrust Law (March 3, 2008).
- “The SEC’s Regulation of Fee-Based Brokerage Accounts: A Case Study in Administrative Law,” ABA Administrative Law Conference (October 25-26, 2007).
- “A General Practitioner’s Guide: What to do if Your Client has an Antitrust or Intellectual Property Issue,” Ross, Dixon & Bell, LLP (April 24, 2007).
- “Paying Off Generics to Prevent Competition with Brand Name Drugs: Should it be Prohibited?” Testimony before the Senate Judiciary Committee (January 17, 2007).
- Law Seminars International, Seminar on International Cartels (September 8, 2006).
- “In-House Counsel Antitrust Update,” ABA Antitrust Section, Corporate Counseling Committee (June 28, 2006).
- ABA Antitrust Health Care Conference (May 12, 2006).
- Telecommunications Program (ABA Antitrust Section, Spring Meeting, April 1, 2005).

OTHER DISTINCTIONS

Chosen as Member of Academy of Court Appointed Masters (2020)
Fellow of the Chartered Institute of Arbitrators
Academy of Court Appointed Masters Civil Justice Award (2017 & 2019)
Had work featured in “The Master Plan, Judicial Division leads effort to increase the use of special masters,” ABA Journal, June 2019, at 86-87.
Member ABA Dispute Resolution Section Council, 2020-21
ABA Judicial Division Representative on ABA Dispute Resolution Section Advisory Committee, 2020-21
Member Executive Committee, ABA Judicial Division Lawyers Conference (Aug. 2017-present)
Co-chair and Chair ABA Judicial Division, Lawyers Conference Committee on Special Masters (2017-present)
Convener, ABA (Judicial Division and Litigation, Business Law, Dispute Resolution Torts Trial and Insurance, Antitrust and Intellectual Property Law Section) Special Masters Black Letter Working Group (2017-19)
Delegate Member 2017 District of Columbia Judicial and Bar Conference
Master William B. Bryant American Inn of Court, Washington, DC
Member Joint College Commercial Arbitrator/International Mediation Institute/Straus Institute for Dispute Resolution International Task Force on Mixed Mode Dispute Resolution Processes
Selected for inclusion in Washington DC Super Lawyers (2012-17).
Named to Superlawyers’ Blue Ribbon Panel for evaluating DC lawyers (2013).
2007 “Lawyer of the Year,” Compliance Reporter
2007 “Lawdragon 3000” Leading Lawyer

SELECTED TRAINING

Certificate for Training in Appellate Mediation, DC Court of Appeals (May 2018)
Trained in Arbitration, American Arbitration Association (2018)
Certificate for Training in Mediation, The Center for Alternative Dispute Resolution (2017-18)
Fundamentals of Arbitration programs, College of Commercial Arbitrators (2015, 2016, 2017)
Certificate: Arbitrating in a Digital World, American College of e-Neutrals (December 2017)
Diploma in International Arbitration, Chartered Institute of Arbitrators (Nov. 24, 2014)

BAR ADMISSIONS

District of Columbia Court of Appeals, December 1982
United States Supreme Court
United States Courts of Appeals for the 3rd, 4th, 5th, 7th, 9th, 10th and D.C. Circuits
United States District Courts for the District of Columbia and Colorado
United States Court of International Trade

OTHER MEMBERSHIPS

ABA, Judicial Division Lawyers Conference; Dispute Resolution, Litigation and Antitrust Sections

OTHER INTERESTS

Bridge (Diamond Life Master)
Classical and Show Music