



## Thomas I. Elkind, Esq.

### Specialties

- Banking
- Business/Commercial
- Construction
- Construction Defect
- Employment
- Estates/Probate/Trusts
- Financial Markets
- Real Property

### Fun Facts

I started climbing mountains when I was a teenager and have never stopped. I climbed all 46 Adirondack peaks over 4000 feet high. After law school I climbed the Matterhorn, in Switzerland, 14,000 feet. I recently returned from a Himalayan trek to Everest Base Camp in Nepal where I hiked to over 17,000 feet.

My wife and I have traveled extensively for more than 40 years. We try to get off the beaten track as much as possible. We visited China in 1978 when few tourists were going there. We hiked the Inca Trail to Machu Picchu in Peru. We have been to Patagonia and have hiked in the Torres del Paine National Park there.

I enjoy good food and wine. Between college and law school, I lived in Paris and took cooking lessons. I love to discover new recipes and see how they turn out...

**Q. How did your years in private practice litigating construction disputes influence your decision to become a full time mediator and arbitrator?**

**A.** I learned very early in my career that judges hate trying construction cases because they take so long and involve so many facts. One federal judge even told the lawyers that he would never get to our case, so we should mediate it instead, and we did, successfully. I then realized that he had done my client a favor, since the mediation was faster and cheaper than trying the case, and the result left everyone more or less satisfied. I then decided to take the training to become certified as a mediator.

**Q. Can you give us a brief glimpse into what you see are the highlights of your career to date, whether ADR or litigation?**

**A.** I had a successful career as a litigator, with several of my case decisions making new law in the real estate/construction area. However, I have found it more satisfying to help parties find solutions to their disputes through mediation. Whenever one or both parties tell me that their dispute cannot be settled and they later reach a settlement I feel better than winning in court.

**Q. What is the toughest construction dispute that you ever had to mediate/litigate?**

**A.** It was probably my first construction case; I was a junior associate and was given complete control over the case. It involved the construction of 20 buildings in Lincoln, MA that comprised the first cooperative housing project built in Lincoln. My firm represented the owner/developer. Shortly after the project was completed all 20 roofs began to leak. The contractor and the architect were sued, and the contractor's surety was also brought in. The case involved over 20 depositions and numerous motions, but it was eventually settled by the surety paying to repair the roofs. In the process, every document created for the project was reviewed, and this was before there were any of the computerized systems we now use to manage documents in litigation.

**Q. You must have come across some very difficult personalities in the construction industry. How do you deal with these personalities in an ADR context?**

**A.** I think the key to any successful mediation is for the mediator to show respect and understanding to all the parties. No matter how difficult one person may be, the mediator cannot let that affect how the mediator manages the process. I find that most of these situations are caused by the parties' emotional venting about perceived wrongs that occurred in the past. My response to those remarks is to try to focus the parties on what their interests are for the future rather than on whatever occurred in the past that brought them to this point.

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For more information or to set a case, please contact  
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### Fun Facts (cont.)

... I also have a favorite winery in California that only sells its wines as futures. For many years I put together an order each year for all those in my law firm who wanted to buy these wines.

# JAMS NEUTRAL spotlight

## Thomas I. Elkind, Esq.

**Q.** How important is your community service to you and how has it affected your life?

**A.** I have always felt that some kind of community service is an essential part of being a lawyer. So, when opportunities arose to assist my community, I tried to do what I could to participate. My two major community service efforts have involved institutions that are very important to me and that I spend a lot of my leisure time enjoying: the West Suburban YMCA and the Newton Commonwealth Golf Course. Because no one on the YMCA board had any knowledge of construction I was asked to join the board and I became the head of the building committee. I am now a trustee, and I still play squash at a beautiful and thriving Y.

**Q.** If you could spend an hour with anyone in history, living or not, who would that be and why?

**A.** Mahatma Gandhi. Gandhi succeeded in obtaining independence for India without a war, and worked to prevent violence between Hindus and Muslims after the partition of India and Pakistan. Gandhi was a lawyer and the consummate negotiator and mediator. If Gandhi was a mediator today, everyone would want him to mediate their disputes!

**Q.** What is your favorite place on earth?

**A.** I love to travel, and have been to many amazing places, but the place I try to return to as often as i can is Aspen, Colorado. I have great memories of skiing there with my wife's extended family for more than 20 years, and of visiting my parents who spent a couple of summers there in the '90s. I love skiing, hiking, golf and biking, and Aspen is a beautiful place to do all of that.



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