



AAA Mediation.org™

FN-1617146 MN-1617146 LN-1617146, Primary Areas of Expertise
Esq.

Cryptocurrency
Franchise
Healthcare

Newport Beach, California



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Current Employer-Title Callahan Dispute Resolution

Panelist Video <https://www.adr.org/videoresume?paramName=818430861>

Profession Attorney, Arbitrator, Mediator

Work History Arbitrator-Mediator, Callahan Dispute Resolution, 2005-Present; Attorney, Callahan Law Corporation, 1993-2015; Partner, Lobel Winthrop & Broker, 1986-1993; Associate, Buchalter Nemer Fields & Younger, 1985-1986; Associate, Allen Matkins Leck Gamble & Mallory, 1983-1985; Associate, Kindel & Anderson, 1982-1983.

Experience BUSINESS DISPUTES: 30 years experience as a business litigator, including 20 years involving bankruptcy reorganizations, insolvency and related litigation (e.g., preferences, fraudulent transfers, and contested plan confirmation). 20 years experience as a commercial mediator. 15 years experience as a commercial arbitrator. Appointed to over 125 arbitrations, several as Panel Chair. Appointed to over 1,000 mediations.

BUSINESS SALE/SEPARATION/MISMANAGEMENT DISPUTES: Arbitration examples: (a) involuntary dissolution and final accounting; (b) breach of finder's agreement concerning the sale of a licensed cannabis business; (c) failed stock purchase transaction concerning the sale of assets; (d) dispute between a withdrawing partner and the partnership concerning the "buyout" payment due him; (e) dispute between manufacturer / distributor and independent sales representative over commissions due for worldwide territory; and (f) partnership dispute concerning breach of fiduciary duty and defalcation of partnership property.

CRYPTOCURRENCY: Arbitration examples: (a) investment dispute concerning the purchase of real property to be developed into a mining operation; (b) dispute concerning the purchase of specialized equipment for use in a mining operation; (c) dispute between an exchange and a wallet owner concerning the parties' rights and obligations regarding the transfer of unsupported currency;

(d) dispute between a customer and an exchange concerning the parties' rights and responsibilities when an outsider accessed the customer's wallet and emptied it.

DISCOVERY REFEREE: Experience deciding discovery disputes in the role of Arbitrator, including ESI search term and clawback disputes. Special appointment as discovery referee to conduct in camera review and report back to the arbitral panel.

FRANCHISE: Arbitration examples: (a) franchise termination dispute in which the franchisor sought injunctive relief for unfair competition under the Lanham Act and infringement of the franchisor's trademark rights; (b) dispute between a franchisor and a franchisee investor seeking rescission based on failure of consideration, fraud and breach of contract; (c) dispute between franchise owners regarding alleged improper transfers and withdrawals by the managing owner. Mediation experience - several matters concerning performance issues.

FRAUD: Mediation and litigation experience in the context of nondischargeability and objection to discharge claims under Sections 523 and 727 of the Bankruptcy Code.

HEALTHCARE: Arbitration experience as Panel Chair in a payor / provider dispute over whether services were medically necessary or compensated at the proper rate. Attorney experience representing a hospital in an audit review by a health insurer of unreimbursed services.

INTELLECTUAL PROPERTY: Arbitration examples: (a) dispute involving claims of alleged patent infringement through reverse engineering; (b) dispute between a licensor and the exclusive licensee of intellectual property (characters in a popular streamed video) for the design, manufacture and sale of various products using the characters and other elements portrayed in the video concerning the allegation that the licensee did not use commercially reasonable efforts to develop, promote and sell the licensed products.

PROBATE: Examples: Arbitrator in trustee accounting, misconduct and defalcation dispute; Mediator in several cases involving disputes between beneficiaries or beneficiaries and the trustee; Attorney Advocate in a financial elder abuse case.

REAL ESTATE: Substantial attorney and arbitration experience in real estate disputes. Arbitration example: Panel member in a dispute among partners in a family partnership with commercial real estate holdings re claims against Manager for breach of fiduciary duty, and expulsion.

Mediator Experience

Over 1000 disputes mediated covering a broad variety of subject matters, including contract interpretation, accounting, asset valuation, asset tracing, title/ownership and lien priority disputes, intellectual property right disputes, employment disputes, wills and trust disputes, view and lot line disputes between neighbors, partnership disputes, disputes involving claims of fraud and breach of fiduciary duty, and catastrophic workplace injury disputes. Examples include:

- commercial disputes involving breach of contract, fraudulent inducement, mistake, force majeure defenses, warranty issues, insurance coverage issues, contract interpretation, accounting, asset valuation, asset tracing, breach of express and implied warranties, and/or title and ownership disputes.
- business tort disputes involving fraud, misappropriation, breach of fiduciary duty, mismanagement, unfair competition, trade libel, interference, aiding and abetting, and/or general negligent.
- business separation / succession disputes, such as partnership dissolution, account and division of assets, orderly liquidations, out-of-court and in-court restructurings, and forced buy-sell.
- inheritance disputes, including trustee breach of fiduciary duty, accounting, interpretation of wills and trust instruments, undue influence, claims for surcharge, and questioned documents.
- real estate disputes (commercial) involving financing, lien priority, purchase and sale obligation, specific performance, foreclosure, development, entitlement, partition, leasing, lease cancellation, receiverships and bankruptcy.
- real estate disputes (residential) involving view and property line disputes between neighbors, foreclosure, leasing, and homeowner association enforcement of CC&Rs.
- bankruptcy disputes including objections to discharge, challenges to plan confirmation, classification of claims, preferences, fraudulent transfers, property belonging (not belonging) to the debtor's estate, plan negotiation, plan implementation and "related to" litigation affecting the debtor and/or its bankruptcy estate.
- intellectual property disputes, including patent rights, trade name rights and licensing rights and

obligations.

- employer-employee disputes involving wage, discrimination, hostile workplace and failure to accommodate claims.
- personal injury / premises liability claims, including asbestos exposure disputes concerning claim allowance under bankruptcy court approved asbestos settlement trust plan distribution procedures.

Representative Issues Handled as a Mediator

Duty Issues- defined by contract; imposed or implied by law; undertaken by status as an attorney, broker, officer, director, partner, managing member, employer, employee, agent or representative.

Money Issues - accounting for money; tracing the use or disposition of funds or other assets; assessing the monetary value of property, goods, services or other benefits bestowed or received; assessing the monetary value for loss of or damage to tangible or intangible property/property rights; understanding the current or historical financial condition of a business or business venture.

Conduct Issues - negligent acts and omissions; tortious conduct in the form of fraud, trespass, misappropriation, infringement, conversion, transfer and concealment of assets; unfair business conduct in terms of not performing as agreed or engaging in conduct aimed at obtaining an unearned advantage or unjust enrichment.

Valuation Issues - assessing the value to be ascribed to real or personal property, goods, services or other benefits received or bestowed; assessing the value of a partial ownership interest in property, a business, a trust or other assets.

Offset Issues - assessing the effect of competing claims.

Mediator Style & Process Preferences

Perspective: No matter what the dispute, most parties come to mediation because they want to achieve a negotiated resolution and appreciate that they need a little help; that for whatever reason, private efforts to negotiate a resolution have not been possible or have not been successful.

Context: The litigated dispute where parties have engaged attorneys, the parties' disputes have been defined in terms of legal claims, counterclaims and defenses, and the value, allocation, payment or division of money and/or property is a key factor to any settlement that might be achieved.

Approach: (a) learn as much about the dispute before the mediation, (b) confer privately with the parties' counsel in advance of the mediation on what they would like to try to achieve at the mediation, (c) walk into the mediation with an action plan on how to get the parties started with constructive dialogue about the dispute in terms of what they think it might take to get it resolved, (d) walk into the mediation with an action plan on how to help the parties start the process of exchanging proposals and counter-proposals, and (e) walk into the mediation with an understanding of when and where impasse might occur and have an action plan for how to work through that event and keep the negotiation rolling forward.

Core Philosophy: Of the many dispute resolution procedures available to disputing parties, mediation is by far the most efficient and economical. It may also provide the best outcome if the cost of the litigation and arbitration alternative and the lost opportunity cost associated with delayed outcomes in litigation are factored in.

Education

Pepperdine University, School of Law (LLM in Dispute Resolution-2007); University of California at Berkeley Law School (JD-1982); University of Southern California (BA, cum laude-1974).

Professional Licenses

Admitted to the Bar: California (1982), Massachusetts (1998-inactive), District of Columbia (1998-inactive); U.S. District Court: Central, Eastern, Northern, and Southern Districts of California; U.S. Court of Appeals: Ninth Circuit; U.S. Supreme Court.

Professional Associations

College of Commercial Arbitrators, Fellow; National Academy of Distinguished Neutrals, Mediation and Arbitration Panels; Pepperdine School of Law - Straus Institute, Adjunct Professor and Skills Trainer (2010-Present); American Arbitration Association University, Faculty Member (2010-Present); Orange County Bar Association, Member (1982-Present), Board of Directors (2014-2016), ADR Section Chair (2013), Board of Directors of the Masters Division (2021-2022); ADR Committee of the Business Litigation Section of the California Lawyers Association, Member (2016-2021) and Vice Chair (2020-2021).

Recent Publications & Speaking Engagements

PUBLICATIONS:

Frequent writing on various dispute resolution topics. Recent ADR articles include:

"Five Things Litigators Must Know Before Stepping Into An Arbitration" (Advocate Magazine, September 2021); "Arbitration Clauses: Hot Questions & Cool Answers" (OC Lawyer, February 2017); "Arbitration Clauses: A Contemporary Look at Advanced Drafting Considerations" (OC Lawyer, April 2017); "Facework in Mediation" (OC Lawyer, November 2016); "Effective Use of a Forensic Accountant in Mediating Commercial Fraud Disputes" (Ch. 16 of Fraud and Forensics, ABI, 2015); "Mediation Advocacy: Negotiation Tips and Perspectives" (OC Lawyer, July 2015); "Piercing the Veil of Mediation" (LA Daily Journal, May 8, 2015); "Mediation Confidentiality: For California Litigants, Why Should Mediation Confidentiality be a Function of the Court in Which the Litigation is Pending?" 12 Pepp. Disp. Resol. L.J. 63 (2012); "It Takes Two to Tango: How to Get the Most Out of Mediation" Daily Journal Verdicts and Settlements (May 27, 2011); "What to Do When the Threat of Bankruptcy Becomes an Issue in Mediation" (ABA Litigation Section, Vol. 14, Issue 3, 2010); "Truth or Dare: California's New Ethics Standards for Private Arbitrators" (California State Bar, Business Law News, Issue 1, 2008); "California's New Ethics Standards: a Hot Bed of Controversy," 5 J. Am Arb. 295 (2006).

SPEAKING ENGAGEMENTS:

Frequent speaker and trainer for the last 25 years. Recent speaking engagements include:

Arbitrator Level I Training (AAA, 2021 and 2022); "Arbitrator Ethics: Ensuring the Integrity of the Process" and "2021-2022 Recent Developments in Arbitration (ABA Arbitration Institute, 2022); "You're Not in Kansas Anymore: Seven Things Court Litigators Should Know Before Stepping Into an Arbitration" (California Lawyers Association Section 2021); "The Queen's Gambit: Skills, Techniques and Strategies for Seeing Three Moves Ahead in Mediation" (California Lawyers Association 2021); "Everything You Always Wanted to Know About Arbitrator Ethics and Party Recourse" (OCBA,-2020); "Arbitration Theory and Practice" (Pepperdine School of Law, 2016, 2017, 2018, 2019, 2020, 2021); "Contributing and Creating Value in Mediation – What Are Effective Techniques that Work to Get the Negotiation Started, Advance the Ball and Keep it Rolling Forward?" (AAA Brown Bag Program, 2019); "Recent Developments in Arbitration and Mediation" (OCBA-ADR Section, 2013, 2014, 2015, 2016, 2017, 2018, 2019); "Value Added Mediation" (SCMA Advanced Track, 2018); "Essential Skills for the New Mediator!" (AAA, 2013, 2014, 2015, 2016, 2018, 2019); "Settlement Building Techniques and Mediator Influence" (U.S. District Court Advanced Training Seminar, 2017); Advanced Arbitration Skills Institute" (USC 2016 and 2017); "Mediation Theory and Practice" (Pepperdine School of Law, 2010, 2011, 2012, 2014, 2016); "Impasse: Mediating in the Red Zone" (AAA, 2015); "E-Discovery: Arbitration in a Digital World" (AAA, 2015); "Lying for the Sake of the Deal" (ABA Dispute Resolution Section, 2015, AAA/ICDR, 2016); "Conducting Research & Investigations: The Arbitrator's Authority" (AAA, 2014); "Principled Deliberations: Decision-Making Skills for Arbitrators" (AAA, 2014); "Are Your Secrets Safe in Mediation" (OCBA, 2012); "Follow the Money: Tips, Strategies and Special Issues Associated with Settling Insured Claims" (OCBA-ADR Section, 2012); "The Well Wrought ADR Clause" (ABA-Dispute Resolution Section, 2012); "Economy, Speed and Justice: What Neutrals, Forum Providers, Advocates and Parties Can do to Control and Reduce the Cost of ADR Processes (OCBA-ADR Section, 2012).

Please see website for complete listing (www.callahanadr.com).

Mediation Rate

\$700 Per Hour

Languages

English

Citizenship

United States of America

Locale

Newport Beach, CA

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.