



AAA Mediation.org™

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Sacramento, California



Current Employer-Title Mediator, Arbitrator, Referee and Special Master

Profession Attorney at Law since 1970; Arbitrator, Mediator and Referee since 1988

Work History Solo Practice, 2008 – Present; Partner, Malovos & Mendoza LLP, 2003 – 2008; Shareholder, Livingston & Mattesich, 2000 – 2003; Faculty (Summer College of Trial Advocacy), Hastings College of the Law, 1997 – 2000; Partner, Graham & James, 1997 – 1999; Shareholder, Weintraub Genshlea & Sproul, 1984 – 1997; Adjunct Professor of Law, University of California at Davis, 1982 – 1985; Supervising Assistant/Assistant Public Defender, Sacramento County, 1972 – 1984; Deputy Attorney General, State of California, 1972; Captain, U.S. Army, 1970 – 1971; Counsel (Department of Employment), State of California, 1969.

Experience Over 40 years as a trial lawyer and civil litigator involving hundreds of cases in court or in arbitration. Deposed countless individuals and appeared in court on numerous law and motion matters. Extensive experience in complex business and commercial litigation covering all areas of business and commercial law, including construction, real estate (residential and commercial), banking and financial services, contracts, employment (wrongful discharge and discrimination), partnership and corporation dissolution, intellectual property, trade secrets, trademarks, unfair competition, fraud, business torts, defamation, fiduciary duties, product liability, insurance coverage, legal and accounting malpractice, broker liability, attorney/client disputes, anti-trust and RICO. Past clients include a wide variety of small and large businesses and individuals in trial, appeal, mediation and arbitration.

Extensive construction experience in all areas of construction law, including contracts, defects, insurance coverage, design-build, owner-builder, subrogation, contract claims for overruns, design errors, critical path scheduling, acceleration, delay, mechanics' liens, stop notices, payment and performance bonds, liquidated damages, surety, claims accounting, public works, indemnity, licensing and employment. Past projects include small and large-scale commercial, residential, high-rise office buildings, bridges, highways, concrete structures, soils issues, windows, water leaks, steel frame structures, water-delivery systems and a variety of smaller projects.

Past clients include owners, public agencies, developers, architects, engineers, general contractors, subcontractors, specialty subcontractors, suppliers, vendors and banks. Teaching experience in all aspects of trial practice for Hastings College of Law, Davis Law School, and Continuing Education

of the Bar. Recognized as a Northern California Super Lawyer for Alternative Dispute Resolution.

Mediator Experience

Have served as a mediator in well over 300 business cases involving commercial disputes of all kinds, construction claims (both public and private works), professional malpractice claims, construction defect cases, employment disputes, partnership and corporation dissolution matters, intellectual property cases and other related disputes. Most construction claim cases involve the owner, the general contractor and one or more subcontractors. Some also involve the architect and engineers, suppliers, banks, title companies and other interested parties. Most construction defect cases involve the owner, the general contractor and some or all of the subcontractors and suppliers. Most employment cases involve the employee, supervisor and owner. Most other business disputes involve the principals of the respective business. Almost all of these cases further involve the use of expert witnesses, such as claims analysts, malpractice professionals, accountants, schedulers and/or individuals with specific knowledge of the industry. Am accustomed to dealing with many parties in a mediation.

The amount of damages at issue in the cases handled has ranged from a few thousand dollars to millions of dollars. The complexity of the case does not necessarily relate to the amount at issue, in the sense that some of the most complicated cases involved very little money.

Representative Issues Handled as a Mediator

The types of cases handled as a mediator include employment (wrongful discharge and discrimination), construction claims and defects, partnership and corporation dissolutions, breach of contract, real estate (residential and commercial), professional malpractice and traditional business disputes. As a judge pro tem for the Superior court, mediated and settled virtually every kind of business case.

Mediator Style & Process Preferences

My role is clear. It is to listen very carefully to the parties and to their counsel. I must learn each party's position and, more importantly, each party must know that I understand their position. Only then can I be effective in offering some ideas for settlement. As a mediator, there are three important rules that I follow, i.e., to listen, to listen and to listen some more.

I expect the parties and counsel to come to mediation in good faith with an earnest desire to resolve their differences. I expect the actual individuals with full settlement authority to physically attend (as opposed to being available by phone). Expert witnesses are always welcome, at the discretion of counsel. I expect the parties to set aside a sufficient time to allow the process to work. Usually, this is a full day but can be several days, depending on the complexity of issues and number of parties.

My approach is to request and receive mediation briefs prior to the mediation. I then try to talk to all counsel confidentially before mediation by phone to gain as much information as possible, so as to not waste time at the mediation. I also request that all counsel prepare a form of agreement prior to coming to mediation, leaving the final terms of settlement blank. This serves a very real purpose in having such an agreement ready when settlement is achieved and serves to put the parties and their counsel into a positive frame of mind to achieve settlement.

I do believe in the merits of an opening session with all parties and counsel. At the outset, I set the ground rules and summarize my understanding of the case, so that counsel and the parties can know exactly what I know and what I don't know. I then invite counsel to make any statement they deem appropriate. In the process of further informing me of the facts and various positions, Some counsel choose to say nothing in the general session and that is perfectly acceptable.

it is my hope that the parties can talk and share their positions, through counsel, so that the other side can clearly hear and understand. For most litigants, the mediation actually turns out to be their "day in court" and it is vitally important that they be heard.

I respect the confidentiality and privacy of the mediation process and never repeat any information gained in private meetings without the express approval of the party and counsel. Also, I very rarely ask to meet with attorneys alone and without their clients present.

Virtually all civil cases eventually settle, it is just a question of when settlement will happen. I believe that most cases can actually settle quite early in the process, especially when dealing with experienced counsel who can pretty much predict the likely evidence that will be admissible in the case. Extensive discovery is not always required. However, there are some cases that require some discovery before they are "ripe" for settlement discussions. In those cases, it is often helpful to agree

on the specific discovery needed in a teleconference early in the process at the same time as setting the date for the mediation. This allows the parties to reduce their expenses while participating in the mediation process.

When parties and counsel meet in good faith and spend the time in earnest dialogue and private sessions, settlement almost always occurs. There is something very special about the investment of time and energy by the participants throughout the day that results in movement and eventual agreement. It is pure joy to watch this occur, especially in the very difficult cases.

Education	Hastings College of the Law (JD, American Jurisprudence Award, Wills -1969); Stanford University (AB, Philosophy, Honors Tutorial Program -1966).
Professional Licenses	Admitted to the Bar: California (1970); U.S. District Court: Northern (1970) and Eastern (1984) Districts of California; U.S. Court of Appeals, Ninth Circuit (1970); U.S. Supreme Court (1984).
Professional Associations	Sacramento County Bar Association (Past President ; ADR Section, Chair; Construction Section, Founding Chair; Fee Arbitration Committee, Panelist); American Bar Association (Section of Litigation; Construction Law Forum; House of Delegates, Past Sacramento Bar Delegate); Anthony M. Kennedy American Inn of Court (Past Member and Master of the Bench Emeritus); Stanford University Alumni Association; Hastings Law School Alumni Association (Sacramento Chapter, Past President; Past Member of the Board of Governors of the Alumni Association); Legal Services of Northern California (Past President, Board of Directors).
Recent Publications & Speaking Engagements	Author, the Mediator's Proposal, When and How It Should Be Used, 2012, ExecSense eBooks. Speaker, Alternative Dispute Resolution, AIA Contracts, Lorman Seminar, Sacramento, March 1, 2006, Oakland, April 11, 2006; speaker, "Creating a Culture For ADR Acceptance," California State University at Sacramento, October 8, 2004; chair and panelist, "Ten Worst Mistakes Lawyers Make At An Arbitration," American Arbitration Association, September 12, 2001; chair and panelist, "ADR, California Law for Design Professionals," July 27, 2001; chair and panelist, Civility in Daily Practice Seminar, January 27, 2001; chair and panelist, Advanced Construction Law in California Seminar, March 7, 2000; lecturer, Mediation and Arbitration Seminar, Council on Education in Management, December 13-14, 1999; chair and panelist, California Construction Law Seminar, National Business Institute, January 28, 1998; chair and panelist, Advanced Construction Law in California Seminar, National business Institute, March 27, 1997; chair and panelist, ADR Influx Seminar, American Arbitration Association, Sacramento, November 8, 1995; panelist, Effective Direct and Cross Examination Seminar, Continuing Education of the Bar, Sacramento, San Francisco, and Yosemite, October and November 1995; panelist, What Can Go Wrong on a Commercial Lease, Construction and Development Project Seminar, Sacramento County Bar, September 1993; chair and panelist, Everything You Ever Wanted to Know about Alternative Dispute Resolution Seminar, American Arbitration Association, Sacramento, May 19, 1993; sole presenter, Alternative Dispute Resolution Seminar, Sacramento County Bar, May 17, 1993; panelist, California Construction Law Seminar, National Business Institute, Sacramento, September 27, 1991; panelist and demonstrator, Effective Direct and Cross Examination Seminar, Continuing Education of the Bar, Sacramento, September 10-11, 1991.
Mediation Rate	\$5,000 Per Day
Languages	English
Citizenship	United States of America
Locale	Sacramento, 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.