



AAA Mediation.org™

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**Houston, Texas**



**Current Employer-Title** Marshall & Associates - Independent Arbitrator and Mediator

**Profession** Arbitrator, Mediator, Attorney

**Work History** Independent Arbitrator and Mediator, Marshall & Associates, 2016-Present; Partner, Marshall & Lewis LLP, 2006-2016; Partner, Marshall Law Firm, 2000-2006; Partner, Schechter & Marshall LLP, 1996-2000; Trial Partner/Associate, Baker Botts LLP, 1973-1996.

**Experience** Over 40 years of experience focused primarily on controversies that arise in the energy industry and associated construction industry.

In the oil and gas field, major litigation and arbitration matters have included contract construction disputes, breach of contract claims, take or pay obligations, force majeure provisions, royalty fee obligations, drilling practices, field and unitized development obligations, lease perpetuation disputes during primary and secondary terms, shut-in gas well clauses, continuous development clauses or paying quantities, plug and abandon duties, calculations of royalties and paying quantities, duties to surface owner as to conditions and access, clean-up at all stages of exploration and production; and all issues arising from EOR, fracking and tertiary recovery.

Energy industry experience includes extensive work on power plant construction, pipeline construction, cement plant construction, aluminum extrusion plant, refinery construction, terminal and tank farm construction. Representative power plant construction experience includes performance and efficiency of thermal power generation, contractor/owner disputes over change orders, delay excuses, delay damage calculation and quantities and quality of plant construction materials. In jurisdictions with regulated utilities, power plant construction experience includes prudency hearings on all aspects of construction and ratemaking. Experience in construction of nuclear steam generation, coal and natural gas power generation, raising issues of quality assurance/quality control, weld joint efficiency, critical path construction and cost engineering.

Experience in the energy field has been gained through dozens of jury trials, non-jury trials, administrative agency proceedings. Appointed to serve for three years as the hands-on operator/receiver of a bio diesel plant in receivership and management of a port terminal and tank farm oil storage facility.

## **Mediator Experience**

Mediations have been conducted in hundreds of cases, including almost every type of substantive dispute. However, mediation services have been repeatedly requested in specific practice areas related to career experience or to expertise gained as a mediator: energy, construction, tort/personal injury, commercial litigation, employment/FLSA, franchise and multi-party environmental litigation.

## **Representative Issues Handled as a Mediator**

### **Energy:**

Dispute regarding royalty interest payable to pooled mineral interest owners claiming miscalculation of gross production.

Settlement of determination of amount of acreage held by production under habendum clause when mineral interest owners claim failure of continuous drilling obligation resulted in forfeiture.

Resolution of claims among heirs with different interests in surface and minerals as to rights to bonus payments, royalties and leasing rights and duties.

Liability and damages claims brought by owners of industrial plant seeking to recover from third parties for disruption of essential supply of natural gas.

Settlement of liability, damages and insurance coverage claims brought by owners of substantial ranch acreage destroyed by fire started during drilling operations conducted without fire prevention measures.

Contract construction regarding rights and duties of owners of cooperative power plant.

### **Construction:**

Resolution of subcontractor claims for work performed prior to termination by Contractor engaged to refurbish dual-fired power plant.

Dispute among owner, architect, contractor, subcontractor and vendor as to liability and damages for defective multi-level parking structure for occupied high-rise apartment building.

Liability of owner for change orders duly submitted by contractor claiming owner unreasonably declined to agree to execute change orders.

Liability of contractor for delay in completing power plant when contractor asserts defense of force majeure clause in contract.

### **Tort/Personal Injury:**

Liability of owners and drivers of 18 vehicles in multi-car pile-up for deaths and injuries of drivers and passengers.

Resolution of Stowers Doctrine claim as to whether insurance company was reasonable in declining settlement offer within policy limits made on behalf of burn victims.

Settlement of apartment complex liability, damages and insurance coverage for contractor who crossed barrier and sustained injury from fall down elevator shaft.

Settlement of liability and damages when dozens of individuals in a neighborhood were impacted by chemicals released following train derailment.

### **Employment:**

FLSA Collective Action resolution of all opt-in claimants in claims of unpaid overtime prior to determination of whether employer could compel arbitration of each individual claim under arbitration clause in employment contract.

FLSA Collective Action resolved all opt-in and opt-out claims after certification and Notice.

Resolution of claims of employees who alleged termination due to refusing to work without enhanced precautions due to Covid-19.

Settlement of liability and damages of assaulted employee knowingly placed in jeopardy when employer sent her to the home of a known sexual predator.

### **Franchise:**

Resolution of rights of Franchise Area Developer of franchises as to subsequent fees paid by those franchisees developed by developer's efforts.

Settlement of contract construction, liability and damages by franchisee when right to maintain grocery store kiosk was misrepresented by franchisor.

Resolution of claims that franchisor imposed onerous restrictions and remodeling to force forfeiture of profitable location.

## **Mediator Style & Process Preferences**

The success of a mediation is generally measured simply by whether the process ends in a resolution. After all, the parties mired in a dispute do not value the days or weeks devoted to a mediation process based on the daily buffet, the conveniences of the facility or the skill of the videoconference service. Even when the mediation is a success and resolution is achieved, the

mediator is personally judged by more complex standards than a simple “win or lose” evaluation. When the mediation is concluded, the parties to a dispute ideally should be left with a sense of satisfaction that mediation was a valuable, necessary process and that it was conducted by a professional mediator fully vested in helping the parties achieve a resolution. Mediators are stewards of the mediation process as a means of dispute resolution and should, therefore, endeavor to deliver to the parties both a lasting truce and a lasting confidence that they chose wisely to engage in the mediation process. The preparatory job of the mediator invariably requires the same basic tools to start the process and build toward resolution. At the outset, the mediator is a stranger to the conflict, though usually not to the territory. The mediator must become thoroughly educated about the entirety of the dispute, including objective facts and personal or subjective dynamics of the dispute. The parties should sense that the mediator has been converted to a local, no longer a stranger in town. Nothing is more unsettling than a courtroom hearing where it is apparent that the judge has not read the motions or briefs. The same loss of confidence, or even respect, ensues when a mediator cannot speak the language of the transactions at issue or recall the claims and defenses painstakingly spelled out by counsel for the parties. At the outset, the role of the mediator should be facilitative, guiding the parties to surface candidly their views of the cause of the dispute, the merits of the parties’ positions and the possible array of solutions. It should be clear that the mediator is listening to the wisdom offered by the parties who have lived the dispute. Parties in all types of litigation often must engage in the mediation process because they have lost confidence in the wisdom of showing the opposing side willingness to compromise or their bottom line. The adversarial process is a natural inhibitor of candid communication between opposing counsel. Through listening, the mediator may learn that the parties share a workable resolution – but they simply cannot afford to unveil it. If the parties cannot provide the mediator with the solution, simply giving up or declaring an impasse is not an option – this would mean that the mediator was merely a messenger. The worst that can be said of a mediator is that they were merely a messenger. The mediator must be prepared to move to an evaluative strategy. When a party asks, “what would you suggest,” the mediator must be sufficiently prepared and qualified to propose a range of suggestions or some reasoned approach to moving the negotiation forward. A mediator who stays entirely in the facilitative mode, even when the parties ask for ideas, earns the dreaded insult that the mediator is “just a messenger.” An evaluative strategy does not require a mediator to indulge in second-guessing or undermining an attorney’s ambitious case evaluation. Instead, the mediator’s domain is the realistic identification of risk, disadvantages of delay, benefits of resolution, impact of uncertainty and alternative ideas for resolution. The evaluative strategy will empower the mediator to guide the discussion of resolution toward the range of options that are truly possible. As the mediation proceeds through offers exchanged during shuttle diplomacy, the mediator must deftly balance patience, persistence and principle.

<b>Education</b>	University of Texas (JD-1973); University of North Texas (BA-1971).
<b>Professional Licenses</b>	Admitted to the Bar: Texas (1973); US District Court: Southern District of Texas (1975), Eastern District of Texas (1978), US Court of Appeals: 5th Circuit (1975).  Board Certified as a Civil Trial Law Specialist by the Texas Board of Legal Specialization (1994-Present).
<b>Professional Associations</b>	American College of Trial Lawyers, Fellow; Center for American and International Law - Institute for Energy Law, Advisory Board; American Law Institute; American Board of Trial Advocates; Federal Bar Association; Texas Association of Civil Trial and Appellate Specialists; Houston Bar Association; Houston Bar Foundation.
<b>Recent Publications &amp; Speaking Engagements</b>	ABA panelist/speaker, “Mediation of Insurance Coverage and Complex Coverage in Place Agreements.”
<b>Locations Where Parties Will Not be Charged for Travel Expenses</b>	Houston, Texas San Antonio, Texas Galveston, Texas Dallas, Texas Austin, Texas
<b>Mediation Rate</b>	\$3,500 Per Day

<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Houston, TX

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.