



AAA Mediation.org™

**FN-336089 MN-336089 LN-336089,
Esq.**

Berkeley, California



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Current Employer-Title Welch ADR – Arbitrator, Mediator

Panelist Video <https://www.adr.org/videoresume?paramName=286172042>

Work History Welch ADR, 2002 – Present; Founding Executive Director (Berkeley Center for Law, Business and the Economy, Boalt Hall School of Law, Berkeley Law School), University of California Berkeley, 2005 – 2006; Litigation Partner and Co-managing Partner of San Francisco Office, Ropes and Gray, 2003 – 2005; General Counsel of Robertson Stephens, 1995-2001; Litigation Special Counsel, O'Melveny & Myers, 1992-1995; Litigation Associate, Shearman & Sterling, 1989 – 1992; Litigation Associate, Kecker & Brockett, 1988 – 1989; Law Clerk to the Honorable D. Lowell Jensen, U.S. District Court Northern District of California, 1987 – 1988.

Experience Thirty-five years' + experience, first as a commercial litigator, then as the General Counsel of a technology-focused investment bank, and currently, for the last 20 + years, as a full-time arbitrator and mediator. Served as the arbitrator in nearly 400 disputes, including as chair or panel member and as sole arbitrator. Practice has included a broad variety of industries and subject matters, including:

TRADE SECRETS AND INTELLECTUAL PROPERTY: numerous disputes arising from alleged theft of trade secrets in a range of industries, including technology, financial services, and freight hauling. Issues have included analysis of forensic examination data, technology use, and application of CUTSA. Numerous licensor-licensee disputes

TECHNOLOGY: expertise in AI; disputes concerning solar and renewable energy; fintech

ANTITRUST: led team of lawyers to defend company against allegations of price-fixing in the setting of IPO fees; while in private practice, worked on a team led by former head of the DOJ's antitrust division, William Baxter, to defend Fortune 50 company against allegations of monopolization and tying

CONTRACT DISPUTES: including issues of indemnification, fraudulent misrepresentation and fraud in the inducement, rescission, breach of the covenant of good faith and fair dealing

FINANCIAL SERVICES: disputes between lenders in failed real estate syndicate; M&A transactions, theft of trade secrets

PARTNERSHIP AND LLC DISSOLUTIONS: claims for breach of contract and fiduciary duty, fraud and rescission, valuation of partnership interests, business divorces in a range of industries, resolution of accounting issues

INVESTMENT DISPUTES: limited partnership issues in venture and hedge funds, inappropriate investments, claims of fraud in investment solicitation, inadequacy of disclosures, failure to comply with subscription agreement in private placement, application of FINRA rules

EMPLOYMENT: Discrimination, including disability, gender, race, sexual orientation and age, wrongful and constructive termination, wage and hour, including independent contractor misclassification, executive compensation, ERISA.

TECHNOLOGY COMPANIES: licensing disputes including breach of exclusive license, failure to pay royalties, theft of trade secrets, fraud and misrepresentation, breach of contract

DISCOVERY DISPUTES: particularly focused on e-discovery protocols and disputes

eCOMMERCE: unfair business practices, fraud, breach of contract

INTERNATIONAL DISPUTES: cross-border disputes including claims by Israeli investor, Japanese investor, Chinese vendors, Australian company against American executive

LEGAL ISSUES: including breach of fiduciary duty and duty of loyalty, indemnification and advancement, jurisdiction and arbitrability, trade secret law, FEHA issues, FLSA regulations, attorney's duties to clients, conflict of laws, application of Delaware and California state law, and many others

EMPLOYMENT DISPUTES: whistleblowing, trade secret theft, compensation disputes, breach of contract, ERISA violations, wrongful termination, FLSA claims, and discrimination claims including gender, race, disability, age and sexual harassment

CANNABIS: including product licensing, intellectual property, venture and seed funding disputes, disputes between founders, venture capitalists, and Boards (including claims of fraudulent misrepresentation and breach of fiduciary duty), grower-seller disputes, application of California regulatory scheme

DISTRIBUTION CONTRACTS: disputes between manufacturer and distributor

WINE INDUSTRY: dispute between winery and bottler; claims of breach of contract and negligence in the production/bottling of wine

GENERAL BUSINESS DISPUTES: including claims for tortious business conduct, attorney-client fee disputes, misappropriation of trade secrets, accounting and valuation.

Mediator Experience

Mediation experience includes both commercial and employment disputes. Recent representative matters include the following:

Dispute between two Fortune 500 companies over responsibility for payment for parts stolen by employee

Business divorce between two franchise owners

Business divorce between partners in a law firm

Breach of contract and fraud alleged by cannabis retailer against manufacturer

Dispute between two Fortune 100 companies over recompense for theft by employee; issues included respondeat superior, calculation of cost of goods, including the application of GAAP rules; contractual damages limitation

Dispute over fee charged by accounting firm for services rendered to obtain pandemic-related tax credits

Alleged wrongful termination by gender discrimination. The dispute between the financial institution and female sales executive. The amount in dispute: \$500,000.

Alleged contract breach between the purchase of machinery and distributor of machinery. The dispute between a distributor of specialty machinery manufactured in Europe and large processor of agricultural products. The amount in dispute: \$1,000,000.

Tripartite dispute between large grocery chain, product distributor and insurer based on breach of contract due to failure to pay for contaminated, recalled products. An additional issue of whether insurance policy covered the breach of contract. The amount in dispute: \$1,462,000.

Dispute was over failure to take delivery under contract. Parties were food distributors. Mediation occurred after arbitration award and vacatur motion. Amount in dispute: \$700,000.

Representative Issues Handled as a Mediator

Business divorces, including valuation of the partnership.

Application of the law, including issues such as respondeat superior and the application of GAAP principles.

Employment issues including the basis of termination and performance related or discrimination; gender discrimination and compensation plan disputes.

Contractual issues including fraudulent inducement, the authority of an agent, enforceability of contract when products are defective, unconscionability.

Damages issues including mitigation and interest calculation. Insurance coverage issues including policy language, the scope of coverage. Risks of vacatur after an arbitration award.

Mediator Style & Process Preferences

Most cases settle, but they won't settle until the timing is right. That means the parties (and their counsel) must have the information needed to assess the strengths and weaknesses of their case and the range of settlement, from optimal ("I'm thrilled!") to acceptable ("I can live with this"). I ask initially if the parties have all the information they need, and if not, how I can facilitate obtaining the information.

Preparation is central - in fact, most of the work in the mediation is accomplished through pre-mediation discussion and preparation, first, of both counsel, and then, confidentially with each counsel privately. The approach I utilize is having the parties exchange briefs and submit confidential statements to me. Often a dispute can be resolved through these discussions, particularly when the parties have a sense, guided by the mediator, of their potential exposure/recovery.

Pre-mediation discussions include not only the strengths and weaknesses of the case but the range of settlement, the possibility of a structured settlement (particularly where there is an ongoing relationship) and the party dynamics. I want counsel to tell me how I can be most useful to their client. What does each counsel think are the obstacles to achieving a settlement? I will assess with counsel whether a joint session is useful. I will read every document and exhibit associated with the case to understand it thoroughly before entering the session. At the session itself, I work with each side in caucus to gain an understanding of what they believe the strengths and weaknesses of each side's case is.

I do not start with numbers, but with a thorough understanding of what the parties believe and what they seek to accomplish. When it is time to get to the numbers, I work through them on each side, including the costs of proceeding in arbitration, both monetarily and regarding time expended. I bring my strong evaluative skills, from having served for 20 + years as an arbitrator. I also bring my

good listening and emotional skills so that each party feels they are being heard and understood. I work patiently and do not give up until all avenues are exhausted, which typically (although not always) means after the session has concluded. The mediation is not over until it is reduced to a written settlement agreement.

Technology Proficiency	Proficient in the use of Zoom and other web-based platforms; have conducted dozens of remote hearings. Proficient in the use of AI. Completely green and digital office.
Education	University of California at Berkeley, Boalt Hall School of Law (JD, Order of the Coif-1987); Antioch College (BA, Anthropology-1973)
Professional Licenses	Admitted to the Bar: California (1987); U.S. District Court: Northern (1987) and Central (1990) Districts of California; U.S. Court of Appeals, Ninth Circuit (1987). Active Member of California Bar # 129921.
Professional Associations	College of Commercial Arbitrators (President-elect, Member of Executive committee and Fellow); FCI Arb (Fellow, Chartered Institute of Arbitrators); President, California Arbitration, Inc.; National Academy of Distinguished Neutrals; Co-Chair of the ABA Dispute Resolution Section's Annual Arbitration Training Institute, 2018-2020; Panelist on CPR's Banking and Finance and General Counsel Panels; Council Member, ABA Dispute Resolution Section, 2017-2020; Co-chair, Arbitration Committee of the ABA's Dispute Resolution Section (2015-2016); California State Bar Standing Committee on Alternative Dispute Resolution: Chairman, 2013-2014; (member of that committee from 2009-2014, including chairing committee on Ethics and Standards); Berkeley Law School (Boalt Hall) Alumni Association (Board of Directors; Past President; Past Executive Committee).
Recent Publications & Speaking Engagements	<p>PUBLICATIONS: Co-author, "Understanding -and Avoiding - Vacatur and Applications for Vacatur", 77:1 Dispute Resolution Journal (2023); "A Litigator's Guide to Vacatur" California Litigation (September 2023); Co-author, "Motions" in the College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration, Fourth Edition; "Ethical Conflicts of In-House Counsel," ACC DOCKET, February 2004; "Pandora's Box," article on waiver of attorney-client privilege in context of regulatory investigations, DAILY JOURNAL, September 8, 2003; "Up the Ladder Reporting," article on SEC attorney conduct rules, DAILY JOURNAL EXTRA, July 21, 2003.</p> <p>SPEAKING ENGAGEMENTS: "Dealing with Difficult Behaviors in Arbitration," 2024 ABA Dispute Resolution Conference; "Why Courts Vacate Awards and How to Prevent It," 2023 AAA Panelist Conference; "Winning Attorneys Fees in Arbitration," 2023 BASF Presentation; "Handling Difficult Parties, Counsel, and Witnesses in Arbitration," 2023 AAA Presentation; "Reasoned Awards," 2023 ABA Dispute Resolution Annual Meeting; Co-Chair, 2018, 2019 and 2020 ABA Arbitration Training Institute; Panelist: "Awards and Post Awards", 2020 and 2019 ABA Arbitration Training Institutes; "Managing the Hearing" 2016, 2017, 2018 and 2022 ABA Training Institute; 2021 AAA Panelist Conference: Speaker on "Delay Tactics in Arbitration;" Panelist, "Jurisdiction and Arbitrability", 2018 ABA Dispute Resolution Conference; Panelist, "Writing Awards", 2017 ABA Dispute Resolution Conference; Panelist, "Dispositive Motions in Arbitration", Panelist: US ADR Landscape Today, 2019 Florence Chamber of Commerce, Florence, Italy; 2016 ABA Dispute Resolution Conference; Panelist, "Effective Advocacy in Arbitration", California State Bar Annual Meeting, September 2014, "Conducting an Effective and Efficient Arbitration," California State Bar Annual Meeting, October 2013 and September 2010; Panelist, ABA Annual Convention "Preventing a Runaway Arbitration"; Frequent Lecturer on "Ethics in the Corporate Context"; PLI "Understanding the Securities Laws", 2004-07; Panel Moderator on Post-Enron Regulation, ACC Gala, April 2005; California Governor's Conference on Women and Families, November 2004; Panel on Broker-Dealers and Investment Advisers, ABA Business Law Section, April 2004; Women Corporate Counsel Conference, September 2001.</p>
Locations Where Parties Will Not be Charged for Travel Expenses	San Francisco Bay Area, including South Bay, San Francisco, East Bay, Marin County

Mediation Rate	\$750 Per Hour
Languages	English
Citizenship	United States of America
Locale	Berkeley, 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.