



AAA Mediation.org™

Eileen M. Diepenbrock, Esq.

Sacramento, California

Current Employer-Title Diepenbrock Elkin Dauer McCandless LLP – Partner

Profession Attorney

Work History Partner, Diepenbrock Elkin Gleason LLP, 2011 – Present; Shareholder, Diepenbrock Harrison, 1994 – 2011; Associate, Petit & Martin, 1990 – 1994; Associate, Wolf Bloch Shorr and Solis-Cohen, 1988 – 1990; Associate, Diepenbrock Wulff Plant & Hannegan, 1987 – 1988; Judicial Attorney to Presiding Justice Robert K. Puglia, California Court of Appeal Third Appellate District, 1985 – 1987.

Experience Focus on construction law, government contract and business litigation.

Represented contractors; subcontractors and owners in construction delay claims; claims involving differing site conditions; extra work; construction defects; and professional negligence; mechanics' lien; bond and stop payment notice claims; and challenges to awards of public contracts.

Assisted legislators as an expert on legislation for the construction industry, including in 2016 for new lease-leaseback legislation in California. Drafted all manner of public and private construction documents. Representation includes: prime contractor in a complex, multi-party case involving delays and extra work in the construction of a \$50M water treatment facility; prime contractor in a default termination on the construction of a \$106M power plant project; the State of California in a default termination of a contractor on a \$19M project related to the State Water Project; contractor in prosecuting extra work claims related to the construction of a bridge; steel fabricator prosecuting extra work and delay claims on the new San Francisco TransBay Terminal; design builder in a hospital project; owner of a major hospital system in numerous extra work and/or delay claims; and numerous local public entities and school districts on a variety of construction disputes.

Represented parties in complex business disputes; including trade secret claims; unfair business practices; and ownership disputes.

Mediator Experience Mediated disputes between owners and contractors on public works projects; between owners and design professionals on private works projects; and between prime contractors and subcontractors on private and public works projects. Disputes include extra work claims, termination claims, differing site condition claims, delay claims, defective work claims, and a variety of other payment disputes.

Representative Issues Handled as a Mediator Mediated a dispute between the owner and prime contractor involving extra work claims related to the construction of a road for an irrigation district. The primary issues involved the calculation of quantities of fill and the quality of the fill. The case settled. Also has mediated a case between the same parties on another construction project involving the construction of a road and bridge. The contractor was default terminated, and the parties have competing claims with the contractor seeking to reverse the termination and be paid for extra work and the owner seeking to recover the excess costs to complete the project by a replacement contractor. The case settled.

Mediated a case between a prime contractor and the mechanical subcontractor involved in the construction of a hospital. The subcontractor sought to be paid for extra work. The prime contractor

asserted delay damages based on extended home office and field office overhead. The case settled.

Mediated disputes between prime and subcontractors related to utilities for a health care facility and related to changed conditions for civil work on a public works project. Both matters settled.

Mediated dispute between design professional and owner related to health care facility. The matter settled.

Mediator Style & Process Preferences

I am a firm believer in mediation, and I believe the proper preparation is required by all parties. I believe that mediation briefs should be succinct and persuasive and, absent a compelling reason otherwise, should be exchanged. I like to have the parties who actually were involved in the project or in the business relationship participating in the mediation to provide the first-hand history and context. I typically prefer joint sessions with presentations tailored to the complexity of the issue, rather than jumping in with private sessions. However, I believe the parties should make the final decision in that regard because it is their case. The mediator's role is to be prepared, listen carefully to the different sides, provide objective and candid advice, to identify where the areas of compromise are, to push the parties appropriately based on who they are and what the issues are. I do not like mediators who take over the case and substitute their judgment for the parties' counsel. The mediator's role is to be a facilitator, not an advocate.

Education

University of the Pacific, McGeorge School of Law (JD - 1985); University of Santa Clara (BA - 1982).

Professional Licenses

Admitted to the Bar: California (1985); U.S. District Court: Eastern District (1985), Northern District (1990), Central District (2010) and Southern (2010) Districts of California, Eastern District of Pennsylvania (1988), District of Colorado (2002); U.S. Supreme Court (1989).

Professional Associations

American College of Construction Lawyers; American Bar Association: Forum on the Construction Industry, Public Contract Law Section; Sacramento County Bar Association; Federal Bar Association; Associated General Contractors of America; Associated General Contractors of California: Legal Advisory Committee; The Beavers; Coalition for Adequate School Housing.

Recent Publications & Speaking Engagements

"The Potentially Catastrophic Design Error and the Ethical Response" (American College of Construction Lawyers, 2017)
"Lease Leaseback Delivery with Legal Confidence" (Associated General Contractors of CA, 2016-2017)
"Lease Leaseback Project Delivery" (Lorman, 2016)
"Construction Law: How to Plan for a Successful Project (Lorman, 2016)
"When is Enough, Enough? Considering when a Contractor Can Stop Work as a Result of Owner Changes" (AGC, LAC 2015)
"Alternative Project Delivery", Sections on Design Build and CM at Risk in Chapter 18 of Construction Subcontracting, A Comprehensive Practical and Legal Guide (ABA Forum on the Construction Industry, 2014)
"Stop Payment Notices, Bonds and Payment Issues" (Associated General Contractors of California, Shasta District, 2014)
"Current Issues in Public Contracting" (Central Valley City Attorneys' Association, 2014)
"Design-Build: Have We Perfected It, or is There Work Left to be Done?" (ABA Forum on the Construction Industry, 2012)
"Overview of Common Claims in Public Construction Projects" (Association of California Water Agencies, 2012)
"Issues in California Public Construction Contracts" (Various Cities, 2012).

Mediation Rate

\$6,500 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.