



Brian D. Esenwein, Esq.

Current

Cotten Schmidt,
L.L.P. – Founding
Partner

Practice

20

Cases

60+

Languages

English

Current Employer-Title

Cotten Schmidt, L.L.P. – Founding Partner

Work History

Attorney/Partner, Cotten Schmidt L.L.P. (and predecessor firms), 1992 - Present; Attorney/Partner, Brown Herman Scott Dean & Miles L.L.P., 1985 - 1992; Attorney/Associate, Harris Finley Creel & Bogle, 1983 - 1985; Auditor/Senior Associate, Arthur Young & Company, 1977 - 1980.

Experience as a Mediator

Have mediated over 60 cases. Commercial Disputes: Business divisions, shareholder, buy-sell agreements, breach of fiduciary duty claims, health care, employment, oil and gas, construction, and real estate disputes. Several mediations involving disputes among parties in failed business arrangements including real estate ventures, executive employment agreements and partnership dissolutions.

Health Care: Mediated claims between hospitals and physicians about provider agreements and between insurers and physician groups about payment and covered services under managed care agreements.

Real Estate: Mediated two disputes between landlord and tenant about lease renewal and property condition on termination. Has mediated at least four commercial contract construction claims. Mediated complex real estate and oil and gas issues about warranties of title and reservations from conveyances. Received varied and meaningful experience in serving as a neutral mediator since becoming a certified mediator in September 2005. Interested parties are encouraged to contact the independent references listed below.

Franchise: Mediated disputes between Franchisor and Franchisee regarding geographic restrictions, alleged violations, terminations, and final separations.

Representative Issues Handled as a Mediator

Mediated commercial contract disputes involving warranties relating to specially manufactured oil and gas drilling equipment. Mediated issues in real estate/oil and gas regarding alleged breaches of warranty and representation and pipeline easements. Mediated contracts for the assignment of oil and gas interests. Mediated health care disputes involving antitrust claims and federal self-referral statutes.

Mediated shareholder disputes regarding alleged competing businesses. Mediated alleged breach of fiduciary claims in different business contexts. Mediated contract construction cases involving damages and specific performance between commercial parties to failed real estate purchase agreement. Mediated insurance coverage and reimbursement issues.

Years of Practice as a Mediator

Total Number of Cases Mediated

60+

Mediation Experience as an Advocate or Party

Served as an advocate for both plaintiffs and defendants, in no less than 40 mediations during the past 20 years of 37 year law practice. Represented an investor in a material damage claim against a broker and brokerage firm. Represented consumers in claims against a manufacturer of high-end motorhome valued at \$250,000. Represented hospital in million-dollar claim against insurance company relating to sale of HMO. Represented beneficiaries in a Will contest claim where gross of estate was valued at approximately \$2 million. Represented multi-specialty physicians group in dispute with managed care organization involving physician practice management agreement and over \$1 million in unpaid management fees. Represented large corporation in negotiations with lender regarding loan covenants and environmental matters in financing dispute of over \$5 million. Represented physicians withdrawing from a large multi- specialty physicians' professional association. Represented a shareholder in a derivative claim involving claim of unfair business practices.

Mediation Philosophy

Mediation is often the single most important stage of an arbitration or lawsuit.

Accordingly, I believe the mediator should make every effort be the most prepared person participating in the mediation session. In addition to specialized training as a mediator, timely and proper pre-mediation review of party submissions and discussions with counsel (after receiving permission from all attorneys) are essential to the likelihood of a successful outcome. I have experienced few situations as an attorney that are more frustrating than feeling that my client and I wasted the time and money invested in a 4-8 hour ineffective mediation session where the mediator was not sufficiently familiar with the case, the parties, and the central issues in order to get the parties off to a quick and efficient start to the discussions. I strive to avoid forcing the parties to incur similar frustrations in the cases that I mediate.

The parties should be solution-focused and counsel should have carefully evaluated and discussed with their client the strengths and weaknesses of their client's claims/defenses. If necessary, I will take it upon myself to ensure that these goals are accomplished during the mediation I appreciate the fact that conflicts and personalities are diverse. It has been my experience as both an advocate in mediation and as a mediator that success in mediation can often be measured in ways that are broader than reaching a settlement.

I use my years of varied experience and diverse skills as a transactional lawyer, general corporate counsel, trial attorney, certified public accountant, arbitrator, and mediator to select the mediation process and style that will produce the most cost- effective and beneficial outcomes for the participants. I can best be described as a facilitative "broad" processing mediator. I encourage parties to identify their respective underlying interests (versus positions). Concurrently, I strive to help the parties generate and assess proposals (mutually-acceptable) designed to accommodate each side's most important objectives. At all times during the process, I remind the parties of their need to be flexible and willing to compromise if a settlement is to be reached. Parties need to remain mindful that absent creativity available through mediation, strangers to the dispute will often have the final say in what relief is granted or denied in an inflexible judicial environment.

As appropriate, I employ the techniques of an evaluative mediator and provide assessments of the strengths and weaknesses of a participant's positions. I sometimes use separate sessions with a participant's counsel to permit candid discussions outside the presence of the client. Service as an arbitrator presiding over dozens of disputes has provided added insight to both the fact-finder's and the Judge's perspectives and the difficulties they face in deciding a case that results in increased uncertainties to the parties. I believe and emphasize that the parties are empowered through mediation to settle their own disputes and shape their own relief. Both sides to a mediation will sense that I am serving as a catalyst and agent of reality to allow the parties to explore their real interests and needs. My expectation is that the parties and counsel will either settle or will have a roadmap for settlement following the mediation. I am committed to continue after the mediation session ends to assist the parties in further settlement discussions.

A value-added mediator can help all Parties better appreciate that although he or she need not agree with the views held by their opponent, the disputed issues need to be viewed and evaluated as those issues are and not as that Party sees itself.

Understanding that mediation should be a cost-effective avenue for parties to resolve their differences, I have intentionally elected to maintain my hourly rate for mediation services below my standard billing rate for legal services.

Mediation References

Douglas R. Hudman, Esq., drh@hjpllp.com, 817-335-1050; John B. Shipp, Esq., john@shippmediation.com, 214-543-4095; Caroline

Harrison, Esq., charrison@phamharrison.com, 817-632-6311; David B. Dowell, Esq., bdowell@namanhowell.com, 817-509-2025; William David Holliday, Esq., holliday@williamhollidayattorney.com, 214-686-6381; John L. Price, Esq., jprice@fairchildlawfirm.com, 936-598-2981; David D. Disiere, Esq., disiere@mdjwlaw.com, 713-632-1776; Bobby G. Pryor, Esq., bpryor@pryorandbruce.com, 972-771-3933; Laura Canada Lewis, Esq., llewis@canadalewis.com, 469-664-0120. Additional references are included on my Curriculum Vitae that is available on firm's website at www.cottenschmidt.com.

Alternative Dispute Resolution Training

AAA ACE Cybersecurity; AAA ACE 19 Case Finances: What Arbitrators Need to Know, 2019; ACE 18 - Arbitrator Performance and Demeanor ~ Meeting Participant Expectations, 2018; AAA Red Flag and Risk Areas (ACE014), 2017; Administered vs. Ad Hoc Arbitration - Which Should You Choose?, 2017; AAA Dispute Resolution 2.0: Non-Traditional Options for Avoiding and Resolving Construction Disputes, 2015; AAA Panel Dynamics: Staying On Course When Things Don't Go As Planned, 2015; AAA Construction Conference: Keeping Arbitration Lean (Santa Monica, CA), 2015; AAA Arbitration-It's Not Just "Litigation Lite" -Making Rulings on Evidentiary Objections, 2015; AAA Managing a Successful Arbitration, 2014; AAA The DNA of Micro-Communication in ADR, 2013; AAA What We Have Here is a Failure to Communicate, 2012; AAA Advanced Mediator Training Series: Managing the Dynamics of a Multi-Party Case, 2012; AAA Regaining Speed and Economy in Dispute Resolution, 2011; AAA The Ethics Behind "Better, Faster, Cheaper" in ADR, 2011; AAA Healthcare Payor Provider Arbitration Rules Training 2011; AAA, Efficient ADR - Saving the Client's Money Through Technology and Common Sense, 2010; AAA ADR Strategies That Save Time and Money, 2010; AAA Advanced Mediator Training, 2009; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2008; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2007; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2007; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007; NASD, Chairperson Training, 2007; AAA Arbitrator I Training: Fundamentals of the Arbitration Process, 2006; NASD, Arbitrator Training, 2006; AAA, 40-Hour Basic Mediator Training, 2005; American Health Lawyers Association, Arbitration Workshop, 2002; American Health Lawyers Association, Advanced Dispute Resolution Training, 2002; American Health Lawyers Association, Advanced Mediation Techniques, 2002; American Health Lawyers Association, Mediator Training Workshop, 1999.

Professional Licenses

Admitted to the Bar: Texas, 1983; Texas Supreme Court, 1983; U.S. District Court: Northern District of Texas, 1983; U.S. Court of Appeals: Fifth Circuit, 2018; U.S. Tax Court, 1986; U.S. Supreme Court, 2020. Certified Public Accountant: Texas, 1979.

Professional Associations

Eldon B. Mahon Inn of Court (Emeritus status); State Bar of Texas; Texas Bar Foundation (Fellow); Texas Bar College - Tarrant County Bar Association (Audit Committee, Past Chairman; Finance Committee, Past Chairman); Texas Society of Certified Public Accountants; American Health Lawyers Association (past member); Texas Society of CPA's (Fort Worth Chapter, past member); Fort Worth Business and Estate Planning Council.

Education

Baylor University (JD, top 15% of class-1982); Texas Tech University (BBA, Accounting, with honors-1977); Member of the Texas State Bar College (Multiple Years).

Awards and Honors

Texas' Best Lawyers, multiple years; Martindale Hubbell, 27 years; Highest possible rating in both legal ability and ethical standards as voted by members of the Bar and Judiciary. Professional and ADR references listed at www.cottenschmidt.com - Attorney Brian D. Esenwein - Detailed Curriculum Vitae.

Publications and Speaking Engagements

Speaker, Arbitration Presentation - Best Practices - Mahon Inn of Court - 2015; "2009 Arbitrator Roundtable", State Bar of Texas; "Compliance Programs for Health Care Providers", Lorman Education Services, 2000; various estate planning/administration topics; "Negotiation Ideas, Approaches, and Real World Examples", Fort Worth Chapter of CPA's.

Compensation

\$2,600 Per Day

Languages

English

Citizenship

United States of America

Locale

Fort Worth, TX

The AAA provides mediators to parties on cases administered by the AAA under AAA mediation procedures. Mediations that proceed without AAA administration are not considered AAA mediations, even where parties select a mediator who is a member of an AAA mediation roster.