



AAA Mediation.org™

Merlyn Clark, Esq.

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Primary Areas of Expertise

Employment Law Disputes
Commercial Contract Disputes



Current Employer-Title Hawley Troxell Ennis & Hawley, LLP – Partner

Profession Attorney - General Civil Trial and Appellate Litigation (Business Entities, Contracts and Commercial law, Public Contracting Law, Constitutional Law, Real Estate, Eminent Domain, Natural Resources, Environmental, Public Land Use Law and Employment); Arbitrator, Mediator - Commercial Law, Employment Law, Construction Law

Work History Partner, Hawley Troxell Ennis & Hawley LLP, 1979 – Present; Partner, Clark Curtin & Creason, 1968 – 1979; Partner, Blake Givens Feeney & Clark, 1966 – 1968; Associate, Blake Givens & Feeney, 1964 – 1966. Prosecuting Attorney, Nez Perce County, Idaho, 1966 - 1970.

Experience Engaged in the practice of law since 1964, providing legal advice to clients, including many major corporations, on business matters and representing clients in civil litigation involving employment law, insurance law, personal injury, property damage, wrongful death, product liability, real estate, professional liability, securities fraud, commercial contracts, construction law, environmental natural resources, eminent domain, municipal law, and public education law. Has served as Special Deputy Attorney General on select matters for the Idaho Department of Correction, Idaho Department of Health and Welfare, Idaho Department of Administration, Idaho Department of Risk Management, State Board of Land Commissioners, Idaho Department of Lands, State Board of Tax Appeals, the Idaho Supreme Court and certain Justices of the Idaho Supreme Court. Has taught negotiation skills and Mediation Advocacy Skills at University of Idaho College of Law and the Straus Institute for Dispute Resolution, Pepperdine University School of Law. Also taught Effective Arbitration Advocacy at Northwest Institute for Dispute Resolution, University of Idaho College of Law. has taught lawyers and judges on the law of evidence and annually teaches arbitration law and practice to law students at the University of Idaho College of Law, Boise Campus.

Mediator Experience Has been a mediator for public and private parties since 1989. Received the designation of Certified Professional Mediator from the Idaho Mediation Association in 1995. On the roster of approved mediators for the United States District Court of Idaho and all Idaho state courts. Has mediated more than 700 civil actions. These have included multi-party and complex cases asserting claims for insurance coverage, bad faith claims, personal injuries, wrongful death, property damage, product liability, premises liability, real estate, securities fraud, brokerage contracts, NASD regulations violations, commercial contracts, sales, secured transactions, construction disputes, environmental degradation and remediation, natural resources, federal use permits, water rights, professional

malpractice (medical, real estate, legal, and accounting), hospital contracts, health care contracts, non-compliance with the Americans With Disabilities Act, workplace, labor, and employment disputes.

Representative Issues Handled as a Mediator

Insurance cases have involved issues relating to coverage, exclusions, first party and third party bad faith adjustment, fraud, and uninsured and underinsured motorist issues. Personal injury and wrongful death cases have involved issues of negligence, negligence per se, gross negligence, recklessness, strict liability, noncompliance with statutes and regulations, Dram Shop laws, and compensatory damages resulting from economic losses and non-economic losses from injuries, disfigurement, emotional distress, permanent physical or mental impairment, loss of enjoyment of life, the restrictions of statutory caps, and punitive damages. The workplace and employment disputes have involved issues of alleged breach of contract, constructive discharge, negligent and/or intentional infliction of emotional distress, slander, wrongful discharge, sexual harassment, age, gender, race, and/or religious discrimination, hostile work environment, statutory violations of civil rights laws, Americans With Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Fair Labor Standards Act, the Equal Protection Clause of the Fourteenth Amendment, and the Idaho Human Rights Act. Some cases have involved actions by the EEOC on behalf of the employee concerning compliance with federal laws. A labor case between a municipality and police union involved issues of compensation and benefits. Construction cases have involved claims for breach of contract, negligent engineering and design, negligent construction management, negligent supervision of engineers, professional malpractice, faulty design, faulty construction, delays, unauthorized or undocumented changes, force majeure, changed circumstances, and equitable adjustment. Professional malpractice disputes have involved medical malpractice, legal malpractice, Realtor and real estate salesmen malpractice, accountant malpractice, and securities broker malpractice and breach of NASD Rules.

Mediator Style & Process Preferences

My mediation style is proactive rather than facilitative. I encourage active participation by the parties and stress that mediation is a voluntary process of self-determination to reach an acceptable resolution of the dispute while the parties are still in control of the outcome. I adhere to the Idaho Mediation Association Standards of Practice for Idaho Mediators, the Standards of Conduct for Mediators promulgated by the American Arbitration Association, American Bar Association and Association for Conflict Resolution, and court rules governing court ordered mediations.

Technology Proficiency

Zoom communications

Education

University of Idaho (JD-1964).

Professional Licenses

Admitted to the Bar: Idaho (1964); U.S. District Court: District of Idaho; U.S. Court Appeals, Ninth Circuit; U.S. Court of Federal Claims; U.S. Supreme Court.

Professional Associations

Idaho Mediation Association (Certified Professional Mediator); American Bar Association (ADR Section; Litigation Section); American Bar Foundation (Fellow); Idaho State Bar (ADR Section, Governing Council; Litigation Section; Past Commissioner; Evidence Committee, Past Chair); Idaho Law Foundation (Past Director, Past President); Idaho Association of Defense Counsel; American Inns of Court Foundation (Master of the Bench; Past President); American College of Trial Lawyers (Past State Chair); American College of Civil Trial Mediators (Fellow); University of Idaho College of Law Advisory Council (Emeritus); The Sedona Conference (eDiscovery Working Group).

Recent Publications & Speaking Engagements

"Avoiding Traps in Arbitration," Idaho State Bar ADR Section, 2011; "Twombly Shifted Federal Pleading Standards from Conceivable to Plausible," Idaho Trial Lawyers Association, 2010; "Building a Case from Discovery to Trial and Beyond: Evidence," Idaho State Bar Young Lawyers Section, 2006; "Trial Evidence for Judges: Management of a Trial," "Witnesses and Examination of Witnesses," "Exhibits, Demonstrative Evidence and Illustrative Aids, Tests, Analyses and Experiments," "The Exclusionary Rules," and "The Hearsay Rules," The Bench Guide by West Publishing Co. for the Idaho Judiciary, 1996-2010; "Qualifications for Expert Testimony of Real Estate Values," THE ADVOCATE, Idaho State Bar, December 1997; "Technology in Mediation," ADR REPORT, Pike & Fisher, Inc., November 26, 1997; "Suggestions on How to Mediate Settlement Conferences," ADR REPORT, Pike & Fisher, June 25, 1997; "New Court Programs Push Counsel Towards Mediation - Learn How to Effectively Represent Your Clients Through the Process," THE ADVOCATE, November 1996; "The Impact of Daubert on the Admissibility of Expert Opinion," THE ADVOCATE, April 1996; "Summary Judgment: Trial by Paper," THE

ADVOCATE, February 1996; "Wetlands: Compensation for 'Taking' by Denial of the Section 404 Permit," 29 IDAHO LAW REVIEW 41, 1993; "The Real Estate Contract," chapter two, THE REAL ESTATE PRACTICE HANDBOOK, Idaho Law Foundation, 1988; "Idaho Rules of Evidence: Their Effect on Idaho Law," 22 IDAHO LAW REVIEW 1, 1985; "Water Pollution Law in Idaho," IDAHO LAW REVIEW, 1964. Annually teaches lawyers and judges on law of evidence and civil procedure. Instructor, U.S. Courts and Northwest Institute, Arbitration Law and Practice Training, May 22-23, 2012.

Locations Where Parties Will Not be Charged for Travel Expenses	Ada County, Idaho
Mediation Rate	\$350 Per Hour
Languages	English
Citizenship	United States of America
Locale	Boise, ID

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.