

ADR RESOURCE GUIDE

WHAT MAKES A “GREAT” MEDIATOR

The most significant change in civil litigation over the last 25 years is the advent of mediation as a way to resolve civil disputes. With more than half of civil cases settled through mediation, selecting an effective mediator is as important as selecting experts.

Anybody can walk from room to room in search of a deal. Truth be told, many cases settle no matter who mediates, simply because the time is right. Bringing closure to the hard cases is where mediators earn their stripes. Here are three important factors to consider when selecting a skilled neutral.

Retired Judge vs. Active Practitioner: For most, the first mediation decision is whether to select a retired judge or a private practitioner. Judges usually work through mediation services and are most effective when a party needs to hear from someone who sat on the bench. However, this option is often more costly than hiring a private attorney who typically won't charge set-up and cancellation fees. Depending on the case, private attorneys are frequently the better choice. They usually practice in the area of law at issue and often charge less per hour, with no minimums. They are less likely to worry about future business because they maintain an active practice and only mediate part time. Because they already “swim in that pool,” they are quicker studies and can hone in on the crucial issues that are impediments to settlement. While personality and the ability to work the room are important, these qualities are not the exclusive province of retired judges.

Telling It Like It Is: Nothing is more frustrating than a mediator who stops short of exerting that extra bit of pressure needed to close the deal. Sometimes it's from fear they might offend one side or the other. Other times it's because

they see themselves as true neutrals who act as facilitators. The most frequent complaint heard after a failed mediation is that the mediator didn't push hard enough at that crucial point to settle the case. Mediators are hired because they have experience, and they should use it. Effective mediators know how and when to tactfully and respectfully call an argument stupid. Hire one who isn't afraid to say what needs to be said.

The Extra Mile: Will your mediator continue to chase the deal after an unsuccessful mediation? Understanding why the case didn't settle on the first try and then following up with phone calls and emails is frequently what it takes to get difficult cases to settle. Anybody can schedule a second mediation session. The hard work is figuring out what can be done to settle without a second session, or at least to make progress in the interim so that the next session is successful. Know whether your mediator will go the extra mile—or will be focused on the next mediation the moment you walk out the door. The continuing pursuit of settlement by a determined mediator can make the difference between a settlement or preparing for trial.

These days it seems like everybody with a low bar number or a judicial pension considers himself or herself a “mediator” and it is becoming harder and harder to identify truly gifted ones. Recognizing the intangibles that separate the good mediator from the great is fast becoming the mark of an exceptional attorney. ■

Courtesy of Ronald J. Cook of Willoughby, Stuart & Bening

Cook is a shareholder and ADR professional with San Jose-based Willoughby, Stuart & Bening. Mr. Cook specializes in insurance coverage and litigation, representing policyholders and advising attorneys in these matters.



American Arbitration Association

Dispute Resolution Services Worldwide

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The American Arbitration Association (AAA) is the leading provider of alternative dispute resolution (ADR) services worldwide. The AAA® can help parties design practical, well-balanced ADR programs and assist with resolution of disputes across a wide spectrum of matters.

With the largest roster of arbitrators and mediators of any third-party provider, the AAA also provides access to a large number of neutrals in California—from industry experts and attorneys to retired judges.

Neutrals With The Expertise You Need

The AAA's roster of neutrals includes experts in the fields of construction, real estate and environmental as well as other commercial matters, ranging from energy and intellectual property to healthcare, among many others. The AAA panel also includes experts in the management of employment-related disputes. So, no matter what industry is involved or what type of commercial dispute is at hand, the AAA has the right neutrals for the case.

AAA neutrals undergo continuous ADR training. As a result, AAA Panel members' knowledge of ADR can be as impressive as their knowledge of their respective industries and the law. With the AAA, parties can be sure to get neutrals to meet their needs for a broad spectrum of case types.

The Most Neutral Neutrals

At the AAA, neutral selection is of vital importance, particularly regarding issues of conflict. As the leader in the field, the AAA's Rules and Procedures provide parties with the added assurance that the neutral selected will be exactly that: Neutral.

The AAA's Panel of Arbitrators is also guided by and must adhere to the AAA's Code of Ethics for Arbitrators in Commercial Disputes.

Arbitration Services

The AAA's arbitration services not only include well-screened industry and other expert neutrals, but also use of the AAA's ADR industry-standard Rules and Procedures, which govern the various ADR processes. These Rules and Procedures detail the resolution process and ensure that all parties to a case will experience fair and equitable processes.

Mediation Services

Whether mediation is required by contract or parties simply want to submit an existing dispute to mediation, AAA Mediation Services provides expert mediators and superior administrative support for parties' disputes. AAA mediators are well trained in the mediation process and are respected professionals with expertise in business, industry and law.

Additionally, the AAA provides a user-friendly online database of mediators that gives parties 24/7 access to an extensive list of well-screened, expertly trained neutrals free of charge. The website also allows parties to expedite cases by submitting scheduling requests for the mediator directly to the AAA. To access the database, visit www.aaamediation.com.

Call An AAA Representative Today

Establishing resolution protocols before a dispute arises can help maintain relationships as well as prevent and minimize the impact of disputes if or when they occur. There are several AAA Regional Offices in California ready to help. Whether it's help with contract clause drafting, case filing, case management inquiries, or any other arbitration or mediation need, give AAA a call today.

And, when you're looking for the right neutral in California, there is no better source than the nation's largest, full-service alternative dispute resolution provider: The American Arbitration Association.



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ADR Services, Inc. is California's second-largest alternative dispute resolution provider, and we aim to provide superior service and enhanced value when resolving your disputes.

ADDED VALUE ADR

ADR Services, Inc. works hard to bring added value to our clients in dispute resolution. For the past 16 years, our firm has offered California's most awarded panel of neutrals at reasonable billing rates and low administrative fees, bringing substantial savings to law firms and our corporate clients.

EFFECTIVE NEUTRALS

We selectively recruit mediators and arbitrators at the top of their profession, and their commitment to resolution has earned them accolades on lists such as the Daily Journal Top Neutrals, SuperLawyers, and Best Lawyers.

PROFESSIONAL RESOURCE

In the process of selecting the best mediator, arbitrator, or discovery referee for your case, information regarding the background of the ADR professional is crucial. In addition to maintaining specialty panels by area of practice, ADR Services, Inc. can provide detailed information about the types of cases and fact patterns an individual neutral has handled. Likewise, we can research our neutrals' backgrounds to suggest the neutrals best suited for your case.

CLIENT-DRIVEN

We strive to exceed the expectations of our clients, be they corporate, in-house, or outside counsel, and matters referred to our office receive the highest level of professional attention. Our friendly, efficient, and professional staff responds to all inquiries same-day. Our conference room environment is designed to be warm, comfortable and conducive to settlement.

CONVENIENT LOCATIONS

We are able to schedule matters at our beautifully decorated offices in San Francisco, Silicon Valley, Downtown Los Angeles, Century City, Orange County, and San Diego, or any other location convenient to the parties.



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More panelists and complete bios are
available at www.arc4adr.com.

Amy Newman, President • Steven Davis, Esq., CEO

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CONFLICT RESOLUTION SERVICES AVAILABLE INTERNATIONALLY

A full-service provider since 1987, ARC offers retired judges and attorney neutrals who resolve a wide range of civil disputes, including family, probate and e-discovery.



DANIEL BEN-ZVI

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Daniel Ben-Zvi is a "Distinguished Fellow" with the International Academy of Mediators and 1 of 32 "Power Mediators" [Hollywood Reporter]. Judge Pro Tem. He's mediated over 1,700 disputes. Co-Author of the book, "Inside the Minds—Alternative Dispute Resolution". Active Speaker on ADR. 20 years as multi-state trial lawyer and admitted to 5 State Bars. A "warrior-turned-peace-maker" with a unique blend of persistence and creativity to end bitterly fought lawsuits [Daily Journal]. Practice includes business, real estate, entertainment, intellectual property, construction, employment, personal injury, wrongful death, professional liability, franchises, estates, lemon law, and class actions. Chairman, since 2004, City of Los Angeles' Annual Mediation Day; Diplomat Member, California Academy of Distinguished Neutrals.



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I believe in finding creative solutions to conflict. I bring extensive experience as a jurist and practicing attorney to each mediation and arbitration matter.

In all disputes I pledge to read and consider all information presented, have knowledge of and/or research all applicable law, carefully listen to all statements/comments made by the parties and articulate in clear and concise language the reasons for my opinion or ruling.

I have mediated and arbitrated matters in a wide range of issues including civil rights, construction, family law, insurance coverage, personal injury, wrongful death, real property, construction, and wage and hour class action suits.

HON. ISABEL R. COHEN
Retired Judge

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Over 20 years judicial experience. Served six years as a family law judge in Central District, Los Angeles Superior Court. Private judge, mediator, special master, discovery referee, arbitrator, and parenting plan coordinator.

Former member of CJA Executive Committee & CJA Ethics Committee. Former chair of Center for Judicial Education & Research (governs continuing education of California Judges). Former member of Planning Committee for, and faculty of, Continuing Judicial Studies Program (taught family law and jurisprudence). Former LACBA Trustee. Served on numerous family law panels.

Graduate of NYU Law School.

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**WILLIAM B. FITZGERALD**

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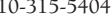
Mr. Fitzgerald is a member of the Large Complex Case Panel of Neutrals of the American Arbitration Association and the California Panel of Neutrals of CPR International Institute of Dispute Resolution. A former litigation partner of Morgan, Lewis & Bockius, he has broad ADR experience in complex disputes in commercial, real estate, partnership, healthcare, and in many other fields. He has lectured on ADR in many national forums. See website above for complete details.

College of Commercial Arbitrators
American College of Trial Lawyers.
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Judge Cohen specializes in Mediation & Arbitration of Employment disputes, Probate matters, Property Management, Real property and Construction related disputes. In addition to holding an MBA with a major in Finance & Economics, Judge Cohen holds two contractor's licenses and a Real Estate Broker's license. He is an approved neutral with the EEOC, DFEH, DOI and CSLB. Judge Cohen is available to review current litigated matters for risk assessment or preside over your dispute in Mediation or Arbitration. For more information, please visit our website (www.Litigationbusters.com) or call 310-315-5404.

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Federal Arbitration, Inc. offers arbitration and mediation services by former federal judges and experienced commercial attorneys. Our neutrals have the highest credibility in the profession.

FedArb arbitration services integrate the advantages of arbitration with the advantages of ADR: maximum flexibility in judge selection and procedure, enforceable deadlines, application of the law as a court would rule, and an optional appellate process.

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Member: AAA Commercial Panel of Arbitrators, American Health Lawyers Association ADR Panel, Mediation and ENE Panels of U.S. District Court N.D. Cal., Kaiser Permanente Arbitration System, The Mediation Society, American Bar Foundation (Fellow), ABA Health Law Section, ABA TIPS Employee Benefits Committee (Former Chair).

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THE RESOLUTION EXPERTS®

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Founded in 1979, JAMS, The Resolution Experts, is the largest private provider of alternative dispute resolution services. With Resolution Centers worldwide, JAMS and its more than 260 full-time, exclusive mediators and arbitrators, known as neutrals, are responsible for resolving the world's most important cases. Based on past results, JAMS takes pride that almost all of the cases mediated, even the most complex ones, are successfully resolved.

AREAS OF EXPERTISE:

Antitrust, Bankruptcy, Business, Class Action, Commercial, Construction, Construction Defect, E-Discovery, Education, Employment, Engineering & Construction, Environment, Family, Federal, Financial Markets, Franchise, Healthcare, Insurance/ Reinsurance, Intellectual Property, Landlord/ Tenant, Lender Liability, Professional Malpractice, Marital Dissolution, Mass Tort, Partnership, Personal Injury, Probate, Product Liability, Public Policy, Real Estate, Securities, Toxic Tort, Trusts & Estates.

ADR OPTIONS:

Facilitative and evaluative mediation, binding arbitration, neutral case evaluation, settlement conference, mini trial, summary jury trial, neutral expert fact finding, special master, discovery referee, class action settlement adjudication, project neutral and dispute review board services.

EDUCATIONAL PROGRAMS:

JAMS offers select seminars, workshops and external educational programs that aid organizations and individuals in resolving their own disputes. JAMS also provides training in conflict prevention and dispute resolution. As an accredited CLE provider in California and many other states, JAMS conducts hundreds of complimentary ADR workshops and CLE programs each year. Each program is tailored to meet the needs and experience level of the specific audience, and CLE credit is provided where applicable.

LOCATIONS:

Resolution Centers nationwide including Atlanta, Boston, Chicago, Dallas, Denver, Greenbelt, Minneapolis, Inland Empire, Las Vegas, Los Angeles, New York, Orange, Philadelphia, Sacramento, San Diego, San Francisco, Santa Monica, Santa Rosa, Seattle, Silicon Valley, Walnut Creek and Washington, DC.



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Judicate West is one of California's leading providers of dispute resolution services. With six offices from San Diego to San Francisco, we feature a select panel of neutrals consisting of former judges and skilled professional attorney mediators and arbitrators. Since 1993, Judicate West has grown both in size and reputation by consistently delivering for our clients "results beyond disputeSM." Our team of highly trained, knowledgeable and experienced case management professionals serve you by handling all the details of the case in a manner that promotes results and ensures neutrality.

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I have been a full-time neutral since 1986. My practice includes labor arbitration, mediation, and fact-finding; employment mediation; special master; and related dispute resolution services. I am the former Chair of the Labor and Employment Law Sections of both the State Bar of California and the Bar Association of San Francisco; I am also former Chair of the Pacific Northwest Region of the National Academy of Arbitrators and the Labor and Employment Law Section of the Oregon State Bar. I am a Fellow in the College of Labor and Employment Lawyers; other professional memberships include: inter alia, the National Academy of Arbitrators, the Association for Conflict Resolution, and the Professional Organization of Women in Employment Relations.



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PMA is not a typical dispute resolution firm with a large panel of neutrals, as is evident by the select number of neutrals on board—all of whom have very high skill sets and expertise in various practice areas.

OUR PANEL OF NEUTRALS

Nicholas DeWitt, Esq., Katherine J. Edwards, Esq., Howard C. Hay, Esq., Louise A. LaMothe, Esq., Scott S. Markus, Esq., Christine Masters, Esq., John "Jay" McCauley, Esq., Eugene C. Moscovitch, Esq., Hon. Michael B. Orfield, and Deborah Rothman, Esq.

The PMA Business, Real Estate and Insurance Practices are comprised of the most distinguished neutrals, all of whom have relevant dispute resolution experience in specific areas of practice. Our neutrals have earned a reputation as trusted leaders in resolution, and clients value them not only for their expertise, but for their ability to navigate conflicts and lead parties to successful resolutions.

Neutrals Specializing in Business, Real Estate and/or Insurance Practices

Nicholas DeWitt, Esq. Partnership Disputes, Breach of Contract, Unfair Competition, Trade Secrets, Real Estate, Commercial Leases, Franchise Disputes, and Business Fraud

Scott Markus, Esq. Breach of Contract, Franchise Disputes, Business Dissolution, Unfair Competition, Insurance Coverage, Bad Faith, Subrogation Issues, Residential Non-disclosure Cases, Boundries and Easements and CC&Rs

John "Jay" McCauley, Esq. Purchase & Sale Agreements, Restrictive Covenants, Easement, Adverse Possession, Entitlement, Development Agreements, Foreclosure and Financing

Eugene C. Moscovitch, Esq. Commercial Litigation, Products Liability, Trademark Law, Intellectual Property, Franchise, Entertainment

Deborah Rothman, Esq. Antitrust, Franchise, Commercial Real Estate Litigation, Entertainment, E-Discovery, Securities, Unfair Competition, Unfair Business Practices, Business Torts, Partnership Dissolutions and Product Liability

To learn more, visit www.pma-adr.com.

PMA operates out of eight locations: Century City, Inland Empire, Irvine, Los Angeles, Sacramento, San Diego and San Francisco, California and Las Vegas, Nevada.

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Mediation is far less expensive than litigation through trial. While parties can control the outcome of their lawsuit by settlement, they cannot control the decision of a judge or jury. There are no winners or losers after a mutually agreed upon settlement.

RMKB attorneys/mediators offer the experience of civil trial lawyers coupled with the training and experience of mediators. Providing a fair, objective and optimistic mediation process, RMKB attorneys/mediators encourage communication and exchange of information. The process is tailored to the participants and most often results in a reasoned and satisfactory settlement of all issues in dispute.

About the Firm:

For more than 60 years RMKB has been committed to delivering the best litigation and transactional services in a cost-effective manner. Our nationwide and recognized international presence as a premier litigation firm has evolved into a broad spectrum of business-oriented services. We solve problems, structure deals, and deliver results without unnecessary layers of staff and attorneys. Together we maximize results by providing direct access to our most skilled and experienced lawyers in the field, while using state-of-the-art information technology.

Our lawyers have extensive experience in the areas of business litigation and appellate law; class actions; construction defect litigation; corporate law; directors and officers liability; employment counseling and litigation; entertainment law; environmental, Prop 65 and toxic tort liability; estate planning and wealth management; fidelity and surety bonds; insurance coverage, bad faith, ERISA, fraud, regulation and reinsurance; intellectual property; litigation management, cost control and fee disputes; mergers and acquisitions; personal and catastrophic injury litigation; product and premises liability; professional negligence; real estate; startup and emerging-growth company formation and representation; and taxation.

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Unresolved insurance coverage issues are often an impediment to dispute resolution. Willoughby, Stuart & Bening not only helps resolve matters quickly and efficiently, but understands how to get there by overcoming difficult coverage issues. Having represented both insureds and insurers in diverse matters for decades, the firm's attorneys are frequently selected as mediators in matters involving coverage disputes, or cases where coverage for one or more defendants is at issue—often times in matters more significant than the dispute actually in litigation.



Brad Bening leads the firm's Mediation and Arbitration team and has successfully mediated more than 500 cases in his career. Mr. Bening has been appointed Special Master and Referee in more than 50 cases in Superior Court throughout the Bay Area, and in federal court. As a Special Master, Mr. Bening has helped parties manage and resolve numerous complex construction, real estate, business and insurance matters, and utilizes his skills as a mediator to achieve consensus among the parties. Mr. Bening brings a highly evaluative approach to settlement and strives to fully understand the position of each party. His extensive trial experience allows him to appreciate the risk and benefit for all parties involved.



Randy Willoughby has an active private mediation and arbitration practice serving as a mediator and early neutral evaluator for the US District Court for the Northern District of California, and as a mediator and arbitrator by appointment for the Santa Clara County Superior Court. With more than 40 years' experience in litigation, Mr. Willoughby handles matters involving business, insurance, real estate, construction, agra-business, and professional liability disputes. He has appeared in both state and federal courts throughout the state of California.



Ronald Cook, a seasoned attorney and ADR professional, specializes in insurance coverage and all forms of litigation that are often the subject of insurance claims. He relates to all parties involved in mediation because he has seen both sides, representing many plaintiffs and defendants as a litigator. Mr. Cook serves as a court-appointed arbitrator, settlement judge pro tem, and private binding arbitrator and mediator. In addition to insurance, his practice includes commercial litigation, construction, real estate, personal liability and landlord-tenant law.

Messrs. Bening, Willoughby and Cook have been selected by their peers to be included in The Best Lawyers in America and as Northern California Super Lawyers.

Willoughby, Stuart & Bening has an enviable record of accomplishment in mediation and arbitration—approaching a success rate of 100 percent. The firm is diligent in tracking matters and following up to continue to work towards a resolution. Because of the firm's experience with business, insurance, real estate and construction, and intellectual property litigation, clients can be assured that their mediation is being handled by an attorney who understands their business and their personal concerns.