



MICHAEL P. CARBONE, ESQ.



Mediator/Arbitrator/Referee

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EDUCATION

B.S., J.D., University of San Francisco; Member, Law Review and McAuliffe Honor Society.

LEGAL BACKGROUND

Clerk for Honorable Preston Devine, California District Court of Appeal, 1966-67. Admitted to practice before state and federal courts in California and the Supreme Court of the United States.

Private practice of law, 1967-2004. Partner in the law firms of Jordan, Lawrence, Dawson & Carbone, Zankel & Carbone, Zankel & McGrane, and Wendel, Rosen, Black & Dean, LLP. "AV" rating from Martindale Hubbell. Practiced in most fields of civil law, primarily real estate, business, construction, corporate, partnership, securities, employment, and trust and estate.

Litigation Practice

Handled trials and appeals in most of the fields identified above. Significant cases included:

- Briefed and argued the appeal in *Transamerica Title Insurance Company, Inc. v. Green*, (1970) 11 Cal.App.3d 693, 89 Cal. Rptr. 915, 44 ALR3d 543, which established for the first time in California that the failure of a notary public to obtain identification from the signatory to a document was *negligence per se*.
- Represented The Gypsum Association in the Gypsum Wallboard Antitrust cases, which resulted in the largest civil settlement at that time in a price fixing case, obtaining a dismissal of the client on summary judgment.
- Successfully defended an architect against a claim for malpractice in the preparation of an estimate for major renovation of a downtown office building in San Francisco.
- In *Consumers Distributing Company Limited v. E.T. Hermann et al.* (1991) 107 Nev. 387, 812 P.2d 1274, 13 ALR5th 951, successfully appealed a high six figure judgment against the tenant in a commercial lease case.
- Represented the property owner in *Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 97 Cal.Rptr. 840, which held that in the absence of an emergency a city may not physically abate an alleged public nuisance without first affording the owner minimum administrative due process.
- Represented a private university in the case of *Paulsen v. Golden Gate University* (1979) 25 Cal.3d 803, 159 Cal.Rptr. 858, which was a breach of contract case brought by a student

who failed to earn a law degree. Following adverse decisions in the Superior Court and the District Court of Appeal, successfully appealed to the California Supreme Court.

- Represented the same client in a wrongful termination lawsuit brought by a faculty member who failed to achieve tenure, resulting in a mediated settlement at a time when mediation was first being used to settle lawsuits.
- Successfully defended a major retail chain in a consumer fraud action brought by the purchaser of a diamond ring.
- Defended a real estate syndicator in an action for violation of federal securities laws.

Commercial Real Estate and Construction Law

Represented owners and developers of commercial real estate in complex purchase, sale, financing and other transactions. Noted for expertise in commercial leasing, represented both landlords and tenants in the negotiation of thousands of commercial leases over a period of more than thirty years, primarily involving complex shopping center and other retail leases, as well as ground leases.

Represented owners, contractors, subcontractors and design professionals in the negotiation of design and construction contracts and in the litigation and resolution of various kinds of construction disputes, including claims for breach of contract, construction defects, and enforcement of mechanics' liens and stop notices.

DISPUTE RESOLUTION EXPERIENCE

25 years experience as a neutral, including full-time practice since 2004. Has served as arbitrator, mediator or referee in most of the fields in which he practiced law and has handled more than 400 cases, including many large and complex matters.

Independent arbitrator, panel member with the American Arbitration Association, and securities arbitrator with the NASD and FINRA from 1985 through 2006; currently an arbitrator with ADR Services, Inc. and with the American Arbitration Association, including the Commercial, Real Estate and Construction Panels. Has acted as either the chair or sole arbitrator in virtually all cases.

Independent mediator from 1994 through 2006 and with ADR Services, Inc. since 2007.

The following cases are representative:

- Chaired AAA panel arbitrating a high six figure wrongful termination claim brought by an executive of a mortgage loan brokerage company.

- Served as the neutral arbitrator on a panel hearing a dispute between a national bank and its landlord concerning interpretation of the lease and determination of rent.
- Chaired an NASD arbitration of claims by a customer against a national brokerage firm for fraud and mismanagement of the customer's account.
- As court-appointed referee in two complex partition cases involving the same owners, heard and decided issues arising from contested accounting of income and expenses and breaches of fiduciary duty; determined values of two parcels of real estate (including a San Francisco apartment house and a residence and vineyard in Sonoma County), enabling the owners to buy each other's interests in the respective properties and thereby conclude partition by appraisal of both properties, collectively worth several million dollars.
- As court appointed referee in another complex partition case involving three parcels of investment real estate worth several million dollars, heard and settled accounting of income and expenses, oversaw a partition in kind of a condominium building and sold the other two parcels.
- Settled a lawsuit for breach of a multi-million contract to purchase an office building in downtown San Francisco by facilitating a negotiated modification of the contract and the closing of the sale.
- Arbitrated and mediated dozens of residential and commercial real estate cases, including actions for misrepresentation or nondisclosure of material information in sale of real estate, breach of contract of purchase and sale, breach of commercial lease, land use issues, foreclosures, eminent domain, inverse condemnation, easements, condominium issues, and tenancies in common.
- Mediated and settled dozens of cases involving construction defects and breach of contract claims in connection with the construction or remodeling of condominium buildings, luxury homes, and commercial and industrial properties, including complex multi-party litigation.
- Mediated the settlement of a claim by an investor against a mortgage broker for the loss of hundreds of thousands of dollars invested in deeds of trust.
- Facilitated a high six figure settlement of a claim by a group of physicians against their billing service for failure to bill and/or collect for services, including resolution of insurance coverage issues.
- Settled claims involving breach of warranty and misrepresentation in the sale of a radio station.
- Arbitrated and mediated partnership disputes, including accountings and dissolutions.
- Mediated six figure settlement of a lawsuit by a domestic employee against a decedent's sole heir for breach of a contract to make a will.
- Arbitrated and mediated many other estate and trust disputes, including trust accounting and administration matters.

- Arbitrated and mediated legal malpractice cases.
- Arbitrated and mediated numerous personal injury, employment, elder abuse, health care, and other civil cases.

DISPUTE RESOLUTION TRAINING

Arbitration

American Arbitration Association:

- Basic Arbitrator Training, 1993, 6.5 hours (graded first in class)
- Construction ADR Conference, November 2009, 7 hours

National Association of Securities Dealers, 1996-Basic and Chair training in Securities Arbitration, 16 hours.

Mediation

The Mediation Center, 1995 - Civil and Commercial Mediation, 45 hours

The American Academy of Attorney-Mediators, Inc., 1996 - Basic Mediation Training, 15 hours

First District Court of Appeal, 2001- Appellate Mediation, 15 hours

Bar Association of San Francisco, 2002- Advanced Mediation Training, 8 hours

Bar Association of San Francisco, 2003- Diversity in Mediation, 6 hours

Pepperdine University, Strauss Institute of Dispute Resolution, 2003 - Mediating Complex Construction Defect Cases, 18 hours.

PROFESSIONAL AND OTHER ASSOCIATIONS

State Bar of California

- Co-Chair of the ADR Committee of the Business Law Section, 2006-2008
- Member of the Standing Committee on ADR, 2005-2008
- Member of the Litigation Section (including ADR Committee) and Real Property Law Section (Executive Committee, 1989-92)

American Bar Association (Member, Dispute Resolution Section, Co-Chair Mediation Committee, 2008)

Academy of Court Appointed Masters

Association of Business Trial Lawyers

California Academy of Distinguished Neutrals

California Dispute Resolution Council (Member, Board of Directors 2002-2005)

The Mediation Society (President 2000-2001)

Northern California International Arbitration Club

St. Thomas More Society

The Olympic Club

PUBLICATIONS

- “Customizing the Mediation Process,” *The Recorder Arbitration and Mediation Supplement*,
Spring 2009
- "Settlement Cracks? New Ruling Puts an End to Court Ordered Mediation," *The Recorder Arbitration and Mediation Supplement*, *March 2007*
- “Judicial Reference: A Better ADR Alternative?” *ABTL Report*, *Vol. 15. No. 2, Spring 2006*
- "Getting Down to Business," *The Recorder*, *March 7, 2005*
- "Mediating a Complex Construction Defect Case," *California Real Property Journal*, *Vol. 22, No.3, Summer, 2004.*
- “Mediation Process Can Settle Even Hopeless Cases,” *San Francisco Daily Journal*, *March 6, 200.*
- "Current Trends in the Arbitration and Mediation of Real Estate Disputes," *California Real Property Journal*, *Vol. 16, No.3, Summer, 1998.*
- “Convincing the Client to Mediate,” *The Recorder*, *September, 1994*
- "Glossary of Casualty and Liability Insurance Terms," *California Real Property Journal*, *Vol. 6, No. 1, Winter, 1988*

LECTURES AND PANELS

- “The Four Essentials to a High Quality Mediation,” Alameda County Bar ADR Section, July 30, 2009
- “The Impact of Jeld-Wen, Inc. v. Superior Court on Construction Defect Mediation,” West Coast Casualty Construction Defect Seminar, May 8, 2008
- "Overcoming Obstacles to Settling Real Estate Disputes," The Real Property Section of the Bar Association of San Francisco, November 15, 2006
- "Effective Advocacy in Mediation or How to Let the Other Side Have Your Way," State Bar of California Annual Meeting, September 10, 2005
- "Mediation Strategies: A Business Lawyer's Guide to Successful Negotiation," State Bar Section Education Institute, January 29, 2005
- "ADR Strategies and Tactics for Complex Litigation," State Bar of California Business Law Section Spring Meeting, May 13, 2004
- “Mediation Confidentiality- Current Status and Policy Choices,” 10th Annual ADR Policy Conference sponsored by the California Dispute Resolution Council (November, 2003)
- “A Dialogue on *Rojas v. Superior Court*,” The Mediation Society (September, 2003)
- “The Evolution of a Mediator,” Bar Association of San Francisco Mediation Committee (November, 2002).