

# Meet ABA Forum on Construction Law ADR Neutral Leslie King O'Neal



By Marissa L. Downs

**Q: Describe the path you took to becoming an ADR neutral.**

A: Florida was one of the first states to allow judges to send civil cases to mediation. When I was an advocate, nearly all my cases went to mediation at least once-sometimes more than once! I became a firm believer in the value of mediation and

other ADR methods. I became a Florida certified circuit court mediator in 2021 and I joined JAMS in 2022, after retiring as in-house counsel with Brasfield & Gorrie, a large commercial general contractor. I am also an adjunct professor at Pepperdine Law School, teaching arbitration theory and practice in its master of dispute resolution and master of laws programs.

**Q: What adversities did you have to overcome to succeed in your practice and get where you are today?**

A: When I started practicing law, there were very few women doing litigation and even fewer doing construction litigation, so I experienced some gender bias. However, I found that construction clients accepted me once they realized I knew what I was doing.

**Q: What sets you apart from other ADR professionals?**

A: The depth and breadth of my experience with all types of construction, insurance, and surety claims. When I was an advocate and when I was in house, I was involved in dozens of mediations of all types: insurance coverage claims, personal

injury claims, various types of construction disputes and surety bond claims. I have mediated similar types of claims with JAMS, particularly insurance claims and subcontractor disputes. Likewise, I have been involved in numerous construction arbitrations as an advocate, as in house counsel, and as an arbitrator. Specifically, I have arbitrated construction defect cases, subcontractor/general contractor/surety delay and default claims and contract disputes.

**Q: Mediators are oftentimes described as “facilitative,” “evaluative,” or “transformative.” Do you have a style?**

A: I think mediators must adapt their style to the particular case and the parties. I look at the parties' interests, relationships, and goals in working toward resolution.

**Q: Do you have any practices that you find make you particularly effective as a mediator?**

A: In construction cases, pre-mediation conferences with the parties improve the chances for success in mediation. The parties need to have sufficient information to make informed decisions. I always try to have at least one conference with each party (including insurers or sureties) before mediation to ensure this.

**Q: What techniques and strategies do you use to help parties overcome impasse?**

A: There are books about this topic because there are many different techniques. I have found using role reversal, using trial balloons and bracketing can be effective.

**Q: What can attorneys do to best position their clients for a successful mediation outcome?**

A: Attorneys need to work with their clients to prepare for mediation. Even sophisticated clients may have little knowledge

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or understanding of the mediation process. Advance preparation for mediation through information exchange with other parties is important. Attorneys and clients should discuss their expectations for mediation and their negotiation strategy-but they must understand the need to be flexible.

**Q: When do you recommend parties in a dispute attempt mediation?**

A: This varies, but in my experience, there should be sufficient information exchange (not full-blown discovery) for the parties (and their insurers) to make informed settlement decisions. The earlier this can occur, the better.

**Q: What should attorneys and their clients take into consideration when selecting an arbitrator?**

A: The arbitrator's background and experience are important but I think case management skills are equally important and often overlooked.

**Q: What measures do you take as an arbitrator to ensure arbitration is less costly and more efficient to litigation?**

A: Developing a detailed, realistic case management plan at the preliminary hearing is essential. I encourage parties to limit depositions and to do phased and targeted document discovery, particularly in e-discovery. To reduce hearing time, I suggest using witness statements for direct testimony, using summaries of voluminous documents, using witness panels, using joint expert testimony, and using a chess clock to divide time.

**Q: In what way do you use technology in the arbitration process?**

A: Zoom and similar platforms have made virtual arbitrations or hybrid arbitrations the norm. Real time transcripts are valuable in hearings. I am investigating the use of AI tools to summarize long documents.

**Q: What do you think the future of arbitration will look like?**

A: I think use of online arbitration platforms will become more common. I also think that use of AI in the arbitration context will expand; that said, I don't think AI will replace arbitrators or lawyers anytime soon.



**Q: If you were going to draft your own dispute resolution clause in a construction law contract, what points would you include (or exclude)?**

A: I would suggest a stepped negotiation process with mediation as an option; if this fails, the dispute goes to arbitration. Key points for the arbitration clause: (1) make it definite (I don't like "optional" arbitration clauses); (2) define the scope; I prefer broad arbitration clauses; (3) specify the arbitration provider and applicable rules (ad hoc arbitrations can be tricky); and (4) provide for finality (the arbitration award should be final and binding and subject to confirmation as a final judgment).

**Q: What are some of your interests or hobbies?**

A: I love to travel. I also enjoy cooking and reading, particularly biographies.

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*This article was originally published in The Dispute Resolver by the ABA Forum on Construction Law and is reprinted with their permission.*

JAMS neutral Leslie King O'Neal has 40+ years of experience handling construction, complex commercial litigation, governmental, surety and insurance matters in private practice, as in-house counsel for an ENR top-25 commercial general contractor and as an ADR professional. Learn more at [jamsadr.com/oneal](https://jamsadr.com/oneal).

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