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...
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 Al 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 Al in the arbitration context will expand; that said, I don’t think Al 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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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.