



Eugene R. Commander
Gene Commander, Inc.

Current Employer-Title	Gene Commander Inc., President
Mediation Profession	Mediator, Consultant
Work History	Gene Commander, Inc. 2015-present; Polsinelli PC, 2013-2015; Polsinelli Shugart PC, 2009-2013; Shughart Thomson & Kilroy PC, 2000-2009; Hall & Evans, LLC, 1981-2000; Smith, Petersen, Beckman & Willson, 1977-1981.
Experience	<p>CONSTRUCTION</p> <p>Provides proactive, customized dispute resolution services to business and construction professionals. Prior law practice focused on the representation of general contractors, design-builders and construction managers with clients listed in Engineering News-Record's "Top 400 Contractors."</p> <p>Litigated matters involving virtually every sector of the construction industry before state and federal courts, arbitration panels, government agencies and a variety of alternative dispute resolution forums.</p> <p>Experience includes a variety of project types:</p> <ul style="list-style-type: none">• Commercial: office buildings, retail malls, mixed use developments, resorts, casinos, hotels and convention centers• Public: public/private rapid transit mixed use developments, criminal detention facilities, schools, recreation and community centers, churches, museum and zoo• Residential: high-rise condominiums, townhomes, apartments and custom single-family residences• Industrial: solar and petroleum fueled power generation, wind energy research and development, high-grade gold milling, concrete block manufacturing, plastic injection mold manufacturing, computer chip manufacturing, data centers and warehouses• Infrastructure: highways, bridges, runways, transit and pedestrian mall, earthen dam, reservoir, parking garages and horizontal directional drilling <p>COMPLEX LITIGATION AND ARBITRATION</p> <p>Experience includes international construction projects, commercial transactions and related United States litigation and arbitration involving:</p> <ul style="list-style-type: none">• Breach of horizontal drilling contract for installation of sanitary sewer beneath Pacific Ocean at U.S. military facility in the Republic of Marshall Islands• Breach of development agreement to design, build and operate petroleum fueled power generation facility in Honduras• Breach of surety reinsurance agreement by European reinsurer of performance and payment bonds issued for construction of a Canadian manufacturing facility

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E-DISCOVERY

Experience includes the successful recovery, preservation, production, review and maintenance of voluminous electronically stored information (ESI), including:

- Resolution of proportionality and cost shifting discovery disputes
- Negotiation and enforcement of technology assisted review (TAR) agreements and other e-discovery agreements to protect the confidential, proprietary and privileged content of the ESI.

INSURANCE

Experience includes insurance claims under complex commercial liability, product liability, excess liability, reinsurance, property, builder's risk and professional liability policies involving advice to London-based and domestic insurers and insureds regarding claim management practices, duty to defend and insurance coverage.

Experience includes first and third party insurance claims arising from complex construction and commercial property damage, business interruption and economic loss caused by defective design and construction, product failure, structural collapse, landslide, earth movement, expansive and collapsible soil, flood, hail, ice and snow, fire and alleged arson.

REAL ESTATE

Experience includes commercial real estate transactions and disputes involving project finance, development agreements, purchase and sale agreements, promissory notes, deeds of trust, assignments of rent, secured collateral and personal guarantees.

Experience includes disputes arising from the sale of market rate, low income and senior multi-family housing involving jointly-owned property separation agreements, management agreements, HUD audits, appraisals, irrevocable family trusts, breach of fiduciary duty and conversion claims.

Experience as a Mediator

Experience includes service as the mediator in traditional and customized alternative dispute resolution proceedings, including a med-arb proceeding involving a variety of construction, real estate and commercial disputes.

Representative Issues Handled as a Mediator

Experience with a variety of claims:

- Bid mistakes, cost overruns, differing site conditions, delays, acceleration, lost productivity and contract termination
- Design and construction defects, and mold abatement
- Prompt payment, trust fund violation, mechanic's lien foreclosure and bankruptcy proceedings, and sales and use tax
- Fraud and misrepresentation

Years of Practice as a Mediator

15

Total Number of Cases Mediated

85

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Mediation Experience as an Advocate or Party Over thirty years' experience representing clients in AAA, private and judicial mediations, and other customized dispute resolution proceedings, including a med-arb proceeding, involving claims in one instance totaling up to \$30 million.

Mediation Philosophy The settlement of complex construction and commercial disputes requires a thoughtful and proactive approach, which should be customized case by case to meet the unique needs and requirements of the parties. The mediator should be engaged early in the dispute resolution process to (1) become familiar with counsel, the parties, and the key factual and legal issues surrounding the parties' dispute; and (2) identify the availability of insurance coverage, surety bonds, and any other potential sources of recovery. The prompt, good faith pre-mediation exchange of critical evidence (e.g., project and accounting records) followed by open lines of communication between the mediator, counsel, parties, experts, and insurers will help narrow the issues for the decision makers and contribute to a highly productive and cost-effective formal mediation conference. The mediator should be prepared to participate in an evaluative manner, set reasonable expectations and encourage a practical evaluation of the parties' claims, defenses, damages and cost-effective chances of recovery. The mediator must be a good listener with the patience and flexibility to allow the dispute resolution process to evolve through the combined efforts of all participants, and the mediator must possess the instincts and judgment to envision a path to settlement; even if that requires the development of a new strategy during the formal mediation conference to keep the negotiations working towards a successful conclusion.

Mediation References Jonathan Pray, (303) 223-1100, jpray@bhfs.com ; Al Cohen, (303) 290-6600, acohen@bbhlegal.com; additional references are available upon request.

Alternative Dispute Resolution Training AAA Red Flags & Risk Areas: Challenges to Arbitrator Authority (ACE014), 2017; AAA Consolidation and Joinder Issues in Construction Arbitration, 2017; ACESIN Arbitrating in a Digital World: Fair and Expedient Management of Electronic Discovery, 2016; AAA Dealing with Difficult Attorneys in Arbitration (ACE013), 2016; AAA ADR and Emerging Technologies: The Future Has Arrived, 2016; AAA Construction Conference – Keeping Arbitration Lean, 2015; AAA, Conducting Research & Investigations: The Arbitrator's Authority, 2014; AAA Webinar, Interim Awards, Partial Final Awards and Functus Officio Doctrine: Tailoring Flexible Accessories to Suit a Strict Doctrine, 2014; AAA Webinar, Developments in Arbitration Law: Disclosure, Vacatur, Sanctions, and Arbitrator Authority, 2013; AAA Webinar, Recovery of Legal Fees and Costs in Arbitration: The What, When, Where, Why and How, 2011; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; AAA Spring Construction Conference, Mediation: It's Not New, So What's Next?, 2011; AAA/CDOT/DRBF Dispute Resolution Boards: Early-Stage Dispute Resolution for Construction Projects, 2010; CBA Alternative Dispute Resolution Section, Intro to Mediation, 2007; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2006; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2005; AAA Arbitrator Ethics & Disclosure (ACE003), 2004; AAA Arbitrator Update, 2002; AAA Construction Arbitrator II Training, 2002; AAA Commercial Arbitrator Training,

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1999; AAA Construction Industry Arbitrator Training, 1997.

Professional Licenses Admitted to the Bar: Colorado, 1981; Iowa, 1977; U.S. District Court, District of Colorado, 1981; U.S. Court of Appeals, Tenth Circuit, 1981.

Professional Associations Associated General Contractors of Colorado; American Bar Association (Forum on Construction Industry and Section of Dispute Resolution); Colorado Bar Association (ADR and Construction Sections).

Also has a long and distinguished resume of community engagement and achievement, including a 2016 mayoral appointment to the Denver Urban Renewal Authority board of commissioners, and his prior role as chairman of Downtown Denver Partnership and Denver Civic Ventures, executive committee member of Metro Denver Economic Development Corporation, and board member of Associated General Contractors of Colorado.

Education Iowa State University (BA, Architecture-1975); University of Iowa (JD, with distinction-1977).

Awards and Honors Named a Fellow in the American College of E-Neutrals, 2017; Named Best Lawyers' 2016 Construction Law "Lawyer of the Year" in Denver. Recipient of Engineering News-Record's 2015 Colorado Legacy Award. Recipient of Downtown Denver Partnership's 2014 Honorary Partner Award. Selected for inclusion in Chambers USA: America's Leading Lawyers for Business, Real Estate, 2014-2015; Selected for inclusion in The Best Lawyers in America for construction law and litigation, 2005-2016; Selected for inclusion in Colorado Super Lawyers published by 5280 magazine, 2006-2015; Recognized as one of ten "Power Book" finalists for legal profession by Denver Business Journal, 2008 and 2011. Selected as member of the Transportation Committee for the Hickenlooper-Garcia gubernatorial transition team, 2010 and 2014.

Publications and Speaking Engagements Has written articles for construction industry publications over the years, including Engineering News-Record, Colorado Construction, Colorado Real Estate Journal, and On-Site, a publication of the Associated General Contractors of Colorado; and Law Week Colorado.

Has spoken at industry conferences, including Executive Leadership Academy presented by Associated General Contractors of Colorado, and at the Sturm College of Law and the Franklin L. Burns School of Real Estate and Construction Management in the Daniels College of Business at the University of Denver.

Citizenship United States of America

Languages English

Locale Aurora, Colorado, United States of America

Compensation

Hearing: \$395.00/Hr
Study: \$395.00/Hr
Cancellation Period: 0 Days

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Comment:

Includes all mediation-related communications, activities, study time, conferences, site visits and follow-up, including all communications with AAA. Charges actual out-of-pocket travel expenses with no mark up (e.g., mileage, airfare, taxi, rental car, meals and lodging) only when outside Denver metro area. No charges for travel time and no cancellation fee.

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