

**Hon. Nickolas J. Dibiaso (Ret.)**

Arbitrator, Private Judge, Referee, Special Master, Mediator, Attorney, Retired Judge/Justice

**Current practice:**

Of Counsel, Dowling Aaron Incorporated (July 2006-present)  
8080 North Palm Avenue, Third Floor  
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Email: [ndibiaso@dowlingaaron.com](mailto:ndibiaso@dowlingaaron.com)  
Fellow, College of Commercial Arbitrators  
Member, California Academy of Appellate Lawyers  
Member, American Arbitration Association/ICDR Judges Panel, Large Complex Case panel,  
Commercial Case panel, Appellate panel, and Master Mediators' panel.  
Member, State Judges' Panel, Federal Arbitration, Inc. ("FedArb")  
"AV" Martindale rating  
Daily Journal 2013, 2014, 2015, 2016, 2017 Northern California ADR "SuperLawyer."

**Judicial career:**

Judge, Fresno County Superior Court (1985-1989)  
Various assignments, including civil trials, civil law and motion, Appellate  
Department (Presiding Judge, 1987-1989), and complex civil cases and coordinated  
civil actions; civil settlement conference judge (1985-1989)  
Justice, Court of Appeal, Fifth Appellate District (1989-2006)  
Participated in the appellate disposition of more than 6000 cases, including appeals  
and writ proceedings.  
Authored more than 1200 civil and criminal appellate opinions, including 80 published  
opinions (list of published civil opinions attached)  
Assistant Presiding Justice (2001-2006)  
Civil appeals settlement conference Justice (1989-2006)  
Justice pro-tem, California Supreme Court (January 1999)  
California Judicial Council Advisory Committee on Voir Dire (1985-1986)  
California Judicial Council Appellate Advisory Committee (1995-1996)  
Formal dispute resolution training: Straus Institute of Dispute Resolution  
(Pepperdine University (2005))

**Professional career:**

Partner, Thomas, Snell, Jamison, Russell, Williamson & Asperger (1970-1985)  
Specialized in business litigation, including antitrust, securities, agricultural, corporate,  
and construction industry matters. (Martindale-Hubbell "AV" rating)  
American Arbitration Association  
Construction Panel and Commercial Panel (1976-1985)  
Member, Advisory Council of the Los Angeles Region (1982-1983)  
Distinguished Service Award (1990)  
Captain, U. S. Army (active duty) (1968-1970)  
Deputy Staff Judge Advocate, Courts-Martial prosecutor and defense counsel,  
Fort Holabird, MD  
Supervisor, Tort Claims Office, US Army Intelligence Command, Fort  
Holabird, MD  
Awarded Army Commendation Medal (ARCOM)

## Experience

*As an Arbitrator, Private Judge, Referee, and Special Master:*

GENERAL: more than 300 proceedings as an arbitrator or court appointed officer. Acted as a Panel chair, or wing, or solo arbitrator in 250 AAA, ICDR, or ad hoc arbitrations involving issues arising under the laws of California and/or Delaware, Nevada, Texas, Illinois, New York, Nebraska, Utah, and the United States.

CONTRACTS/BREACH OF CONTRACT: arbitrability, specific performance, implied contracts, quasi-contracts, executive employments and compensation, non-competition and non-solicitation covenants, industrial developments, LLC operating agreements, partnership agreements, mining and subsurface rights, oil and gas leases, product sales, accounts, accountings, security interests, UCC-1s, UCC sales transactions, settlement agreements, agency, professional medical corporations/associations/groups, hospital/physician specialty coverage agreements, express and implied warranties, automobile sales and financing, federal and state consumer protection legislation, technology consulting/services, franchises/franchising, licensing agreements, manufacturing agreements, Medicaid reimbursement services, high frequency/computer stock trading, sales of water rights, attorney partnership and employment agreements/fee disputes, sales of partnership interests, stock sales, contracts to negotiate;

DISSOLUTIONS OF CORPORATIONS, LLCs, PARTNERSHIPS, LLPS, AND JOINT VENTURES: fair market/going concern/liquidation valuations, goodwill, breach of fiduciary duties, accountings, buy-out agreements, statutory buy-out provisions, appraiser appointment and review, appointment and supervision of liquidating trustee;

CORPORATIONS: governance issues, director liability, shareholder buyouts, derivative actions, business/stock valuations/appraisals, majority-minority shareholder claims, shareholder agreements, business judgment rule, attorney disqualifications, trademark infringement, general and limited partnership relationships and agreements;

CONSTRUCTION: contracts and subcontracts, breach, general and special conditions, extra work, delays, express and implied warranties, refinery, roadways, asphalt, buildings, concrete, electrical, workmanship, performance bonds, payment bonds, public/private works, loss of bonding capacity, *Eichleay* formula, "total cost"/other damage theories, mechanics' liens and bonds;

AGRICULTURE: corporate/partnership dissolutions, agricultural packing/marketing contracts, retains, agricultural associations/cooperatives, conventional/organic products, marketing orders, grower agreements, custom farming contracts, federal crop insurance claims;

REAL PROPERTY: commercial, real estate sales and development, financing arrangements, shopping centers and leases, subdivisions, rents, estoppel certificates, undisclosed conditions, quiet title, warranty, partitions/partition referee appointment, options, lease/conditional sales, rights of first refusal, agents and brokers, valuations/appraisals, deed of trust/mortgage foreclosures and servicing entities, deeds in lieu, deficiency judgments, anti-deficiency legislation, guarantees/sham guarantees, *D'Oench, Duhme*, property management/sub-management agreements;

EMPLOYMENT: breach of contracts, wages and hours, discrimination, harassment, wrongful actual/constructive discharge, violations of public policy, failure to interact or accommodate, retaliation, hostile work environment, privacy, FEHA, Title VII, ADA;

INSURANCE: life insurance, comprehensive general liability, excess insurance, reinsurance and participation agreements, extended coverages, endorsements, uninsured and underinsured motorists, federal crop insurance programs; agency/broker agreements, professional liability insurance;

PROFESSIONAL NEGLIGENCE: legal, accounting, 10-Ks, 10-Qs, audits and auditor liability, GAAP, GAAS, FDIC;

PROBATE AND TRUST: accountings/objections to accountings, breach of fiduciary duties, trust creation and termination, creditor's claims;

PERSONAL INJURY: industrial accidents, automobiles, motorcycles, bicycles;

BREACH OF FIDUCIARY/ETHICAL DUTIES: partnerships, corporations and corporate officers/directors, law firms, executors, trustees;

HEALTH CARE AND HOSPITALS: medical provider insurance reimbursement claims/HMO and other group health care insurance plans, plan coverages, medical necessity, accountings;

DAMAGES: tort, contract, general, special, bodily injury, intentional and negligent infliction of emotional distress, reliance, mitigation, out of pocket rule, attorney fees and costs, punitive, front pay, back pay, alter ego liability, tort of another, prevailing party status, avoidable consequences, *Stearman*.

*As a Mediator:*

Dual and multi-party cases involving breach of contract claims, construction project disputes, real estate transactions, property ownership matters, insurance coverage issues, medical malpractice claims, legal malpractice claims, accounting malpractice claims, public retirement system controversies, condemnation valuation questions, wrongful death and personal injury claims, employment controversies, class actions, partnership and corporate governance and dissolution disputes, shareholder derivative claims, trade secret disputes, hospital governance matters, health care elder abuse, medical payor-payee disputes, public service districts, unfair competition claims, probate and trust controversies, and workers' compensation matters.

*As Of Counsel:*

Appeals (consultation, brief writing/editing, petitions for review, writ proceedings, "moot court" judge); Antitrust (counseling and compliance).

*As a Judge/Justice:*

Jury and non-jury trials in complex and/or coordinated civil actions, including breach of contract, fraud, unfair competition, insurance coverage, corporations, insurance subrogation, partnerships, joint ventures, real estate, libel and slander, inverse condemnation, negligence, personal injury, professional malpractice, product liability, emotional distress, government claims, crop damage, and agricultural associations and cooperatives.

Appellate review of multitudes of issues arising in civil cases, including breach of contract, fraud, breach of fiduciary duties, unfair competition, Cartwright Act, insurance and insurance coverage, real property transactions, premises liability, CEQA, attorney fees, mortgages, foreclosures, personal injury, wrongful death, professional malpractice, class actions, corporations and corporate governance, LLCs, partnerships, joint ventures, construction contracts and subcontracts, mechanics' liens, surety bonds, labor and employment, discrimination, wrongful termination, harassment, government tort claims, agency, sales transactions, condemnation, constitutional issues, workers' compensation, crop damage, riparian water rights, administrative law, and attorney disqualifications.

*As an Attorney:*

Litigation, trials, arbitrations and appeals in state and federal courts in commercial disputes, including antitrust, unfair competition, breach of contract, construction contracts and subcontracts (buildings, roads, wastewater treatment plants, underground construction and pipelines, grocery chain central processing facility, competitive bidding statutes, public and private works, mechanics liens, Miller Act), OSHA, commerce clause, insurance and insurance coverage, surety bonds, business torts, class actions, real property transactions, corporations and corporate governance, derivative actions, agricultural associations and cooperatives, tax fraud, EPA administrative audit proceedings, federal and state securities laws, DOJ antitrust investigation, FDIC bank insolvency proceeding, Federal Reserve Board Regulation U action, and public agencies and public service districts (water/irrigation/wastewater).

**Educational Service:**

San Joaquin College of Law

Assistant Adjunct Professor of Law (1979-1983) (taught "Antitrust and Trade Regulation Law")

Participated as an instructor or panel member for a multitude of civil litigation, discovery, arbitration, trial and appellate practice and substantive law (including construction, antitrust, and arbitration) educational programs, involving both federal and state law topics and sponsored by a variety of organizations, including the California Judicial College, the Center for Judicial Education and Research (CJER), the California Bar Association, the California Continuing Education of the Bar (CEB), the San Joaquin College of Law, the Court of Appeal for the Fifth Appellate District, the American Arbitration Association, the Rutter Group, the Construction Specifications Institute, the Associated General Contractors of California, and many bar associations.

**Public Service:**

Board of Directors and Treasurer, Fresno County Bar Association (1976-1977)  
Board of Trustees, Fresno County Law Library (1986-1989)  
    President of the Board (1988-1989)  
Board of Directors, Fresno Philharmonic Association (1976-1983)  
    President of the Board (1979-1982)  
Board of Directors, Fresno County Chapter of the American Red Cross (1983-1985)  
Board of Directors, Downtown Club (1975-1978)

**Education:**

University of Santa Clara, B. A. History (Magna Cum Laude) (1965)  
Boalt Hall School of Law, University of California, Berkeley, Juris Doctor (1968)

**ADR Fee schedule:**

Mediations - \$400 per hour; with minimums and cancellation charges;  
Arbitrations, Special Master, Referee, etc. - \$500 setup fee; \$400 - \$500 per hour;  
Cancellation policy: If the Hearing in an Arbitration or the trial in a reference or other court appointed position/proceeding is set for two or fewer days, a cancellation fee of four (4) hours per scheduled day will be charged if the Hearing or trial is cancelled within 14 calendar days of the scheduled commencement date. If the Hearing or trial or proceeding is set for three or more days, a cancellation fee of four (4) hours per scheduled day will be charged if the Hearing or trial is cancelled within 30 calendar days of the scheduled commencement date. In all instances, an appropriate adjustment will be made if the Hearing, trial, or proceeding is re-set for a later date or if some or all of the cancelled dates are filled with other assignments.

Travel time and costs not charged.

**Locale:** Nationwide

**Comments (As Judge/Justice)**

It is "virtually impossible to find a lawyer who has a bad word to say about [him]" "He's had more experience [in complex civil cases] than most of the lawyers who come before him." (Daily Journal, April 26, 1988)

He "is revered in Central Valley legal circles, praised for his intelligence, savvy and objectivity." "His experience in handling complex business cases, both as a lawyer and a trial court judge, gives him an unusual command over such cases." "He's a deep thinker who has also experienced life in the trenches." (Daily Journal, September 23, 2002)

Published Civil Case Opinions authored by Justice Nickolas J. Dibiase  
 Court of Appeal of California, Fifth Appellate District  
 1989-2006

Case	Citation
Protect Our Water v. County of Merced	130 Cal. App. 4 <sup>th</sup> 488 (CEQA attorney fees)
Farris v. Fireman's Fund Ins. Co.	119 Cal. App. 4 <sup>th</sup> 671 (attorney disqualification)
Jessen v. Hartford Casualty Ins. Co.	111 Cal. App. 4 <sup>th</sup> 698 (attorney disqualification)
Jefferson v. County of Kern	98 Cal. App. 4 <sup>th</sup> 606 (limitations/Tort Claims Act)
Lauren H. v. Kannappan	96 Cal. App. 4 <sup>th</sup> 834 (compromise verdict)
Souvannarath v. Hadden	95 Cal. App. 4 <sup>th</sup> 1115 (public health)
Lewis C. Nelson & Sons v. Clovis Unified School Dist.	90 Cal. App. 4 <sup>th</sup> 64 (prejudgment interest/construction)
Fresno Unified School Dist. v. Workers' Comp. Appeals Board	84 Cal. App. 4 <sup>th</sup> 1295 (workers' compensation)
Sonora Diamond Corp. v. Superior Court	83 Cal. App. 4 <sup>th</sup> 523 (jurisdiction/corporations/alter ego)
Maranian v. Workers' Comp. Appeals Board	81 Cal. App. 4 <sup>th</sup> 1068 (workers' compensation)
In re Anthony B.	72 Cal. App. 4 <sup>th</sup> 1017 (dependency)
N.T. Hill v. City of Fresno	72 Cal. App. 4 <sup>th</sup> 977 (subdivision map/fees)
Jauregi v. Superior Court	72 Cal. App. 4 <sup>th</sup> 931 (civil forfeiture)
In re Cathina W.	68 Cal. App. 4 <sup>th</sup> 716 (dependency)
In re Charmice G.	66 Cal. App. 4 <sup>th</sup> 659 (dependency)
Hill v. City of Clovis	63 Cal. App. 4 <sup>th</sup> 434 (appellate jurisdiction)
In re Meranda P.	56 Cal. App. 4 <sup>th</sup> 1143 (dependency)
In re Marriage of Mallory	55 Cal. App. 4 <sup>th</sup> 1165 (domestic relations)
In re Lorenzo C.	54 Cal. App. 4 <sup>th</sup> 1330 (dependency)
Spitze v. Zolin	48 Cal. App. 4 <sup>th</sup> 1920 (driving privileges)
Voss v. Superior Court	46 Cal. App. 4 <sup>th</sup> 900 (ag marketing act/APA)
Wurts v. County of Fresno	44 Cal. App. 4 <sup>th</sup> 380 (tort claim/medical malpractice)
Brantley v. Pisaro	42 Cal. App. 4 <sup>th</sup> 1591 (summary judgment)
In re Edward H.	43 Cal. App. 4 <sup>th</sup> 584 (dependency)
Fantazia v. County of Stanislaus	41 Cal. App. 4 <sup>th</sup> 1444 (tort claim/legal malpractice)
In re Rottanak K.	37 Cal. App. 4 <sup>th</sup> 260 (dependency)
Miranda v. National Emergency Services, Inc.	35 Cal. App. 4 <sup>th</sup> 894 (medical malpractice)
Karl S. v. Superior Court	34 Cal. App. 4 <sup>th</sup> 1397 (dependency)
Los Angeles County Court Reporters Assn. v. Superior Court	31 Cal. App. 4 <sup>th</sup> 403 (court reporters)
Cutler-Orosi Unified School Dist. v. Tulare County School etc. Authority	31 Cal. App. 4 <sup>th</sup> 617 (insurer duty to defend)
In re Marriage of Andresen	28 Cal. App. 4 <sup>th</sup> 873 (dependency)
In re Rebekah R.	27 Cal. App. 4 <sup>th</sup> 1638 (dependency)
Rocky D. Ritchie v. Workers' Comp. Appeals Board	24 Cal. App. 4 <sup>th</sup> 1174 (workers' compensation)
S.C. Anderson, Inc. v. Bank of America	24 Cal. App. 4 <sup>th</sup> 529 (construction damages/lost profits/bonding capacity)
Estate of Woodworth	18 Cal. App. 4 <sup>th</sup> 936 (wills and probate)

Curties v. Hill Top Developers, Inc.	14 Cal. App. 4 <sup>th</sup> 1651 (comparative negligence/assumption of risk)
In re Joshua H.	13 Cal. App. 4 <sup>th</sup> 1718 (dependency)
In re Cassandra V.	15 Cal. App. 4 <sup>th</sup> 1377 (dependency)
In re Jesse B.	8 Cal. App. 4 <sup>th</sup> 845 (dependency)
Azadigian v. Workers' Comp. Appeals Board	7 Cal. App. 4 <sup>th</sup> 372 (workers' compensation)
Parsons Brinckerhoff Quade & Douglas, Inc. v. Kern County Employees Retirement Assn.	5 Cal. App. 4 <sup>th</sup> 1264 (mechanic's lien foreclosure)
Miranda v. Shell Oil Co.	17 Cal. App. 4 <sup>th</sup> 1651 (toxic tort damages)
Chevron U.S.A., Inc. v. Superior Court	4 Cal. App. 4 <sup>th</sup> 544 (summary judgment)
Hartwig v. Zacky Farms	2 Cal. App. 4 <sup>th</sup> 1550 (attorney fee apportionment)
County of Madera v. Ranger Ins. Co.	230 Cal. App. 3 <sup>rd</sup> 271 (bail bond surety)
In re Marriage of Carlson	229 Cal. App. 3 <sup>rd</sup> 1330 (domestic relations)
In re Rebecca H.	227 Cal. App. 3 <sup>rd</sup> 825 (dependency)
Jackson v. Pierce	224 Cal. App. 3 <sup>rd</sup> 964 (driver's license)
Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.	223 Cal. App. 3 <sup>rd</sup> 924 (prevailing party fees and costs)
Shannon v. Superior Court	217 Cal. App. 3 <sup>rd</sup> 986 (attorney/client privilege)
Twain Harte Associates, Ltd. v. County of Tuolumne	217 Cal. App. 3 <sup>rd</sup> 71 (inverse condemnation)
In re John B.	215 Cal. App. 3 <sup>rd</sup> 477 (dependency)
St. Paul Ins. Co. v. Industrial Underwriters Ins. Co.	214 Cal. App. 3 <sup>rd</sup> 117 (insurance coverage)