



Scott D. McElhern Partner

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Practice Areas

Construction Litigation | Eminent Domain & Inverse Condemnation |
Energy | Energy Project Development | Infrastructure | Real Property &
Land Use Litigation | Regulatory Law & Business Permitting

Clients turn to Scott McElhern to provide his legal insight to map out a strategy for success. He focuses his practice on litigation matters involving construction, eminent domain, real estate and commercial disputes.

Scott adeptly guides public and private owners, general contractors, and subcontractors through all phases of **litigation** and arbitration, including matters involving claims for delay, disruption, differing site conditions, and extra work. Scott also negotiates and drafts construction contracts on behalf of public and private owners, contractors, and design professionals, as well as represents public owners and contractors on bid disputes. A sampling of projects that Scott has worked on include commercial and industrial buildings, subdivision site improvements, hotels, apartment complexes, military visitor quarters, prisons, single-family residences, educational facilities, solar energy installations, agricultural pumping plants, fish screens, levees, wastewater treatment facilities, communication towers, and biogas and electrical generation facilities.

Scott also represents public agencies and property owners in **eminent domain** matters in both state and federal courts. Public agencies have retained Scott to acquire agricultural, open space, mining, commercial, industrial, and residential property for flood control projects, transmission lines, natural gas pipelines, wastewater treatment facilities, and transportation projects. When property owners are confronted with eminent domain, they seek Scott's guidance to ensure that just compensation is awarded. He has represented property owners in matters involving highways, bridges, schools, telecommunication sites, water delivery systems, and an entertainment and sports center.

In addition to his construction and eminent domain practice, Scott also represents businesses and individuals in real estate and commercial disputes. He has successfully tried cases to verdict on behalf of his clients, as well as represented his clients on appeal.

Experience

Construction

- Represented a general contractor in a bid dispute on a \$113 million wastewater treatment project in Sacramento County. Successfully defended the contract awarded to the general contractor against two writs of mandate filed in superior court.
- Represented site improvement contractor in several lawsuits arising from failed subdivision projects. Recovered multi-millions of dollars through mechanic's liens and payment bond remedies.
- Represented a large infrastructure general contractor alleging differing site conditions on a \$44 million joint intake and fish screen project. Resolved favorably after mediation.
- Represented a site improvement contractor in a JAMS arbitration proceeding arising from the construction of a large apartment complex in Santa Clara County. The matter settled favorably after arbitration award.
- Represented the County of Tulare on various construction claims relating to alleged delays and liquidated damages on its \$52 million South County Detention Facility Project. Resolved favorably in mediation.
- Represented the Zone 7 Water Agency on various construction claims related to alleged changed conditions and extra work on its \$34 million water treatment project. Resolved favorably after mediation.
- Represented a pipeline contractor in the PG&E bankruptcy case. We investigated and recorded over 50 mechanics liens throughout Northern California, and then perfected the liens through the bankruptcy procedures. This resulted in the full payment of the claims of over \$15 million and prejudgment interest of over \$1.7 million.
- Represented the Three Rivers Levee Improvement Authority on a levee project consisting of construction claims alleging delay damages and extra work.
- Represented financial institution in a dispute arising from a failed roofing system at its headquarters building. Successfully recovered the cost of a new roofing system.
- Successfully defended general contractor in extra work claims arising out of a construction project at CSU Chico.
- Obtained favorable arbitration award on behalf of general contractor in AAA arbitration arising out of the owner's improper termination of the construction contract.
- Prosecuted a construction defect action on behalf of a public agency arising from a defectively designed and constructed HVAC system. Recovered the repair cost after several mediation sessions.
- Extensive experience with construction payment remedies, including mechanic's liens, stop notices, payment and performance bonds and subdivision bonds.
- Advised public agencies on preparation of bid specifications and represent public agencies in bid disputes.
- Provided advice and counsel to private contractors regarding the drafting of contracts.

Eminent Domain

- Represent the Sutter Butte Flood Control Agency in the acquisition of over 200 parcels of property for a 44 mile levee improvement project along the west bank of the Feather River.
- Represent the Three Rivers Levee Improvement Authority in over 60 property acquisitions in Yuba County for several multimillion dollar levee improvement projects, including the construction of the largest set back

levee in the western United States.

- Co-chaired jury trial in the case of *Three Rivers Levee Improvement Authority v. Danna Investment Company* resulting in a verdict that was substantially lower than the pre-litigation offer and deposit of probable compensation. This resulted in a judgment requiring the landowner to return some of the deposit to the public agency.
- Represented the Modesto Irrigation District in 18 separate eminent domain actions involving the acquisition of property for a 230 kV transmission line.
- Represented CalPERS in the condemnation of its property by the City of Sacramento for the new Sacramento Kings Arena.
- Represented a Fortune 100 telecommunication company in the condemnation of its cell site by Caltrans.
- Represent landowners in pre-condemnation activities associated with the Department of Water Resources Bay Delta Conservation Plan and the potential tunnel project through the Delta.
- Represented several landowners in eminent domain actions brought by the City of Elk Grove arising out of the Highway 99 and Grantline Road interchange project.

Real Estate and Commercial Litigation

- Obtained verdict in favor of homeowners after a two week jury trial. The homeowners were able to rescind their home purchase agreement based on fraud and also recover attorneys' fees and prejudgment interest. In total, the homeowners' recovery was in excess of \$1,000,000.
- Obtained a judgment in favor of a real estate company after a two week court trial relating to the interpretation of express easements and whether prescriptive easements existed. The real estate company also recovered its attorneys' fees. Successfully represented the real estate company on appeal.
- Represented a probate estate in a two week jury trial arising from contractual claims brought by an acquaintance of the decedent.
- Defended a private corporation in a multimillion dollar case based on alleged non-compliance with state cogeneration law.

Professional & Community Service

- Associated General Contractors of California, Legal Advisory Committee
- Yolo Basin Foundation, Former Board Member, 2000-2021
- Sacramento County Bar Association, Civil Litigation Law Section
- California Lawyers Association, Business Law Section
- National Institute for Trial Advocacy's National Session, Graduate
- Leadership Sacramento, Sacramento Metro Chamber Foundation, Class of 2007
- Milton L. Schwartz Inn of Court, Former Member

Education

- J.D., Santa Clara University School of Law, 1994
- B.A., University of California at Davis, 1991

Honors & Rankings

- Best Lawyers in America[®], Construction Law, Litigation – Construction, 2023-2024
- *Super Lawyers*, Northern California Super Lawyer, Construction Litigation, 2018-2023
- *Sacramento Magazine*, Top Lawyer, Construction, Eminent Domain, Government Contracts, Construction Litigation, Land Use/Zoning, 2015-2023
- *Sacramento Business Journal*, Best of the Bar, 2016-2018
- Externship, Magistrate Judge Edward A. Infante, United States District Court, Northern District of California, San Jose, CA, 1993

Speaking Engagements / Events

- *2018 ACWA Legal Briefing & CLE Workshop Presented by Downey Brand LLP*, ACWA 2018 Fall Conference & Exhibition, November 27, 2018

Legal Alerts

- *Court of Appeal Clarifies Limits on Pre-Condemnation Activities Without Condemnation Action*, March 18, 2014