

Brian Esenwein

Curriculum Vitae

420 Throckmorton Street, Suite 500, Fort Worth TX 76102
(817) 338-4500 - besenwein@cottenschmidt.com
(as of July 2009)

EDUCATION AND PROFESSIONAL LICENSES:

Baylor University School of Law - Waco, Texas
Juris Doctor - November 1982 - Top 15% of Graduating Class
Associate Editor of Baylor Law Review, 1982

Texas Tech University, B.B.A., Accounting 1977 - with Honors
Omicron Delta Kappa
Beta Gamma Sigma

Licensed as Attorney and Counselor at Law by the Supreme Court of Texas and
Member of the State Bar of Texas, 1983 to present.

Licensed as a Certified Public Accountant by the Texas State Board of Public Accountancy
from July 1979 to present.

Martindale-Hubbell Rating: AV

WORK EXPERIENCE:

Private practice of law in Fort Worth, Tarrant County, Texas during the past 25 years.

December 1992 - Present

Partner
Cotten Schmidt, L.L.P.
Fort Worth, Texas 76102

March 1983 - December 1985

Associate
Harris, Finley, Creel and Bogle, P.C.
Fort Worth, Texas 76102

December 1985 - December 1992

Partner (as of 1988)
Brown, Herman, Scott, Dean & Miles, L.L.P.
Fort Worth, Texas 76102

June 1977 - June 1980

Certified Public Accountant
Audit Senior with Arthur Young & Company
Dallas, Texas

PROFESSIONAL MEMBERSHIPS/CERTIFICATIONS:

State Bar of Texas
Fellow, Texas Bar Foundation
Tarrant County Bar Association
American Health Lawyers Association
National Arbitration Forum

Texas Society of Certified Public Accountants
Fort Worth Chapter of TSCPA
Fort Worth Business and Estate Planning Council
American Arbitration Association

ADR PANEL MEMBERSHIPS:

- American Arbitration Association - Panel of Mediators (North Texas, Arkansas and Oklahoma)
- American Arbitration Association - Commercial Panel of Arbitrators
- American Arbitration Association - Special Medicare Roster of Arbitrators
- American Health Lawyers Association - Roster of Neutral Mediators, Arbitrators and Hearing Officers
- Financial Industry Regulatory Authority (formerly National Association of Securities Dealers) - Arbitration Panel
- National Arbitration Forum-Panel of Neutral Mediators and Arbitrators

ADR TRAINING AND SELECTED EXPERIENCE:

Training: (Instructors listed on Page 7)

American Arbitration Association:

- Chairing an Arbitration Panel - Managing Procedures, Process and Dynamics
- Dealing with Delay Tactics in Arbitration
- Safeguarding, Deciding and Writing Arbitration Awards
- *Pro Se*: Managing Cases Involving Self-Represented Parties
- Arbitrator Workshop
- Mediation Workshop (five day)

American Health Lawyers Association:

- Arbitration Workshop, Chicago (2002)
- Advanced Dispute Resolution Training, Scottsdale (2002)
- Healthcare Mediator Training Workshop, San Antonio (1999)

Financial Industry Regulatory Authority:

- Chairperson Training
- Basic Arbitrator Training
- Various Telephone Conference Calls – Rule Updates

Other:

- Arbitration Roundtable - Best Practices
- Appointed Arbitrator in Dozens of Disputes
- Panel Member Workshops

Selected Experience: (References listed on Pages 5 and 6)

- Served as an Arbitrator in Commercial Disputes, Employment, Franchise, Insurance, Buy/Sell Agreements, Partnership Dissolution, Physician Recruitment and Physician Medical Staff/Clinical Privileges in New Mexico, Oklahoma, and Texas (1999-Present).
- Served as Chairman of Arbitration Panel - Three-day hearing involving multi-million dollar claims.
- Court-appointed Mediator – Complex Real Estate and Oil and Gas Dispute – (Settlement reached).
- Party-appointed Mediator – Real Estate Disputes, Commercial Lease Issues, Oil and Gas Disputes, Insurance Claims, Hospital and Physician Relocation Contract
- Represented an Investor in four-day National Association of Securities Dealers - 2005 - Arbitration, Dallas. (Award over \$250,000.00 issued in favor of Investor.)

- Involved in litigation, arbitration, and mediation as advocate in numerous matters involving contract construction and interpretation.
- Served as Hearing Officer in Physician peer review matters.
- Extensive experience as an attorney in negotiating settlements in a variety of disputed matters for individuals and organizations, and in representing parties in litigation, mediations and arbitrations.

(See also Primary Areas of Legal Representation.)

CIVIC: Former Director of Cancer Care Services, Fort Worth, Texas
Former Chairman – Tarrant County Bar Association – Finance Committee

PERSONAL: Married to Caressa S. Esenwein (27 years); two children, Rachael, 20; and Madison, 12

PRIMARY AREAS OF LEGAL REPRESENTATION:

During the past 25 years in private legal practice, I have served as counsel in the following representative matters:

- Litigation:
 1. Commercial dispute regarding product design.
 2. Breach of fiduciary duty allegations against personal representatives and trustees.
 3. Breach of warranty and deceptive trade practice claims.
 4. Defense of Medicare cost reimbursement claims.
 5. Defamation claims brought in the representation of a physician against a television station and television reporter.
 6. TRO/Temporary Injunction – operation of oil and gas company
- Arbitration:
 1. Breach of contract claims involving sale of managed care organization.
 2. Business partnership disputes.
 3. Investor claims against a broker and brokerage firm.
 4. Breach of employment contract claims
- Mediation:
 1. Multi-specialty physician group in disputes regarding physician practice management agreement.
 2. Disputes arising under joint venture agreement between hospital and publicly-traded corporation.
 3. Claims of hospital-based physician group arising under provider/coverage agreement with tax-exempt hospital.
 4. Will contest involving substantial private business interests.

- Professional Review Actions:

1. Represented a physician in a four-day fair hearing regarding summary suspension of hospital privileges.
2. Represented a physician in a three-day hearing regarding terms and conditions of probation of hospital privileges.
3. Represented a physician as co-counsel in a seven-day state administrative hearing.
4. Represented an Ambulatory Surgery Center in the summary suspension of a physician's surgical privileges.

- Hospital and Health Care Law Transactions:

1. Represented physicians, health care executives, physician practice management companies, multi-specialty and single specialty physician groups, tax-exempt health care entities and various for-profit health care providers.
2. Represented physicians, hospitals and other healthcare facilities in professional review actions.
3. Served as general legal counsel for various health care entities and individual health care providers, involving a wide range of issues including mergers and acquisitions, restructuring, reorganization, valuations, restrictive covenants, managed health care matters, mediation and arbitration, formation and operation of certified nonprofit corporations, negotiation and documentation of hospital revenue bond financing, formation and dissolution of joint ventures, and contractual affiliations and investments.
4. Drafted and negotiated contractual arrangements including shareholder agreements, employment agreements, recruiting agreements, joint venture arrangements, and management service contracts.
5. Worked on valuation cases and business liquidations regarding fair value determinations.

- Business Organizations / Real Estate / Oil and Gas Transactions:

1. Formed, reorganized, bought, sold and dissolved numerous businesses in various industries.
2. Drafted and negotiated employment agreements, shareholder agreements, management agreements, and business governing documents.
3. Served as legal counsel to a wide variety of both tax-exempt and taxable business organizations.
4. Represented businesses in administrative hearings relating to Texas sales, franchise, and ad valorem tax matters.
5. Represented both buyers and sellers of commercial, residential, and undeveloped real estate.
6. Drafted and negotiated commercial and residential leases on behalf of both lessors and lessees.
7. Drafted and negotiated AIA contract documents involving the improvement of both undeveloped and developed properties.
8. Negotiated oil and gas agreements (Surface Use / Pipeline Easements / Leases).

• Estate Planning and Administration:

1. Worked extensively in planning individual estates of various sizes and complexity and in the administration of estates of decedents.
2. Drafted and negotiated numerous family settlement agreements relating to the overall resolution of estate and trust-related disputes.
3. Drafted and negotiated premarital and marital agreements.
4. Represented trustees, personal representatives and beneficiaries in disputes arising under trust agreements, and in connection with estate administration.
5. Negotiated settlements of estate and gift tax examinations with the Internal Revenue Service.

Qualification to Serve as a Neutral Dispute Resolver:

My involvement on both sides of the docket in various civil trials, arbitrations, mediations and administrative hearings has given me essential insight into the challenges faced by counsel and parties in complex and highly-contested matters. I have served as advocate, mediator, arbitrator, and hearing officer in numerous alternative dispute resolution settings. My accounting and business background and transactional experiences are useful in document-intensive disputes and those involving financial and accounting issues. My varied experiences as an arbitrator, mediator, and in presiding over due process hearings have provided me the necessary training and experience to act as a neutral to help parties resolve their disputes. More than 25 years in private legal practice and nine years serving as a neutral have convinced me that an authoritative, properly-trained, and experienced neutral is essential to each side's having the best opportunity to present its claims and defenses in an arbitration or fair hearing setting to achieve a proper result in a timely fashion. My formal training through the American Arbitration Association, American Health Lawyers Association, and Financial Industry Regulatory Authority enables me to use varied skills and techniques to assist the parties in resolving disputes through arbitration or in a facilitative or evaluative manner, depending on the underlying circumstances and the parties' intentions regarding the mediation of disputes.

References Regarding Alternative Dispute Resolution Services and Attorney Services:

ADR Services - Mediation:

David D. Disiere Martin, Disiere, Jefferson & Wisdom. L.L.P. 808 Travis Street, Suite 1800, Houston, Texas 77002-5706	(Counsel to Party in 2008 Mediation)	713.632.1700
Doug Hudman Holland, Johns, Swartz & Penny 306 W. 7th Street, Suite 500, Fort Worth, TX 76102	(Counsel to Party in 2008 and 2009 Mediations)	817.335.1050
John Lively, Esquire Burnett Plaza, Suite 2075 801 Cherry Street, Fort Worth, Texas	(Counsel to Party in 2008 Mediation)	817.338.1026
James P. McGowen, Esquire McGowen & Shaw, P.L.L.C. 2602 McKinney Ave., Suite 305, Dallas, Texas	(Counsel to Party in 2007 Mediation)	214.265.1335

Troy D. Okruhlik (Counsel to Party in 2009 Mediation) 817.870.8700
Harris Finley & Bogle, P.C.
777 Main Street, Suite 3600, Fort Worth, Texas 76102

John Price (Counsel to Party in 2008 Mediation) 936.598.2981
Fairchild, Price, Thomas & Haley, LLP
413 Shelbyville Street, Center, Texas 75935

ADR Services - Arbitration:

John Allen Chalk, Sr., Esquire (Co-Arbitrator) 817.878.0575
Whitaker Chalk Swindle & Sawyer, l.l.p.
301 Commerce Street, Suite 3500, Fort Worth, Texas 76102

Leonard Court, Esquire (Counsel to Party in Arbitration) 405.235.7706
Crowe & Dunlevy
20 North Broadway, Suite 1800, Oklahoma City, Oklahoma

Scott Fraley, Esquire (Co-Arbitrator) 214.761.6460
Fraley & Fraley, L.L.P.
901 Main Street, Suite 6300, Dallas, Texas 75202

Donald W. Gould, II, Esquire (Counsel to Party in Arbitration) 713.652.2525
Johnson DeLuca Kennedy & Kurisky, P.C
1221 Lamar Street, Suite 1000, Houston, Texas 77010

Earl F. Hale, Jr., Esquire (Co-Arbitrator) 214.515.0199
4144 North Central Expressway, Suite 225, Dallas, Texas

William Hartsfield, Esquire (Co-Arbitrator) 972.991.7211
Hamilton & Hartsfield PC
14651 Dallas Parkway, Suite 102, Dallas, Texas

David J. Hyman, Esquire (Co-Arbitrator) 918.587.0000
Boone Smith Davis Hurst & Dickman
500 ONEOK Plaza, Tulsa, Oklahoma

Michael C. Kelsheimer, Esquire (Counsel to Party in Arbitration) 214.954.4135
Looper, Reed & McGraw, P.C.
1601 Elm Street, Suite 4100, Dallas, Texas

Ronald N. Ricketts, Esquire (Co-Arbitrator) 918.595.4800
Gable & Gotwals
1100 ONEOK Plaza, Tulsa, Oklahoma

Professional Services – Attorney:

Fred Bockstahler, Esquire, Vice President 361.694.5000
Driscoll Children’s Hospital
P. O. Box 6530, Corpus Christi, Texas

Brooks Harrington, Esquire 817.339.5073
Methodist Justice Ministry
800 West Fifth Street, Fort Worth, Texas 76102

Steve Hayes, Esquire (former law partner) 817.886.2355
Law Office of Steven K. Hayes
201 Main Street, Suite 600, Fort Worth, Texas 76102

Marc McDonald, Esquire 817.877.1088
Bourland, Wall & Wenzel, P.C.
301 Commerce Street, Suite 1500, Fort Worth, Texas 76102

Charles B. Milliken, Esquire 817.336.2400
Decker, Jones, McMackin, McClane, Hall & Bates
801 Cherry Street, Fort Worth, Texas

Keith A. Ward, Esquire 918.764.9011
Keith A. Ward & Associates
1874 S. Boulder, Tulsa, Oklahoma 74119

Instructors:

Harold Coleman, Jr., Esquire (AAA Mediation Workshop Instructor) 619.749.6001
Harold Coleman Jr., Limited Conflict Management Services
San Diego, California

Jerry P. Roscoe, Esquire (AHLA Arbitration and Mediation) 202.533.2059
JAMS
1666 Connecticut Avenue NW - Suite 500, Washington DC 20009

Stuart M. Widman, Esquire (AAA Arbitration Workshop Instructor) 312.263.3700
Miller, Shakman & Beem, LLP
180 North LaSalle Street, Suite 3600, Chicago, Illinois 60601