

R. Carson Fisk

Shareholder

PRACTICE EMPHASIS:

Construction law; litigation; mediation and arbitration

EDUCATION:

J.D., The University of Texas School of Law, 2003

B.A., *cum laude in honors studies*, Texas Tech University, 2001

ADMITTED:

State Bar of Texas

State Bar of Oklahoma

COURT ADMISSIONS:

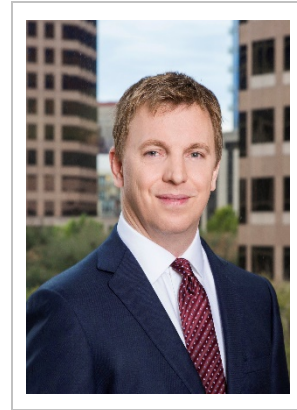
U.S. District Court, Northern, Southern, Eastern and
Western Districts of Texas

U.S. District Court, District of Colorado

U.S. Court of Appeals, Fifth Circuit

U.S. Court of Appeals, Tenth Circuit

U.S. Supreme Court



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Profile:

Board Certified in Construction Law by the Texas Board of Legal Specialization, Carson Fisk represents construction industry participants in both contentious and non-contentious matters, including complex construction litigation and claims, contract drafting and negotiation, and best practices and claims counseling matters. His practice focuses on the representation of general contractors, but he also actively represents developers/owners, subcontractors, suppliers, and sureties. He has experience with construction disputes involving construction and design defects, delay and acceleration claims, payment claims, mechanics liens and bond claims, termination claims, administrative actions, and surety claims, although he is adept in assisting parties in resolving their disputes prior to trial/final hearing. He has also drafted and negotiated a variety of construction contracts, including prime contracts, design contracts, EPC agreements, lender agreements, subcontracts, and purchase contracts, in both the private and public sectors. Additionally, he maintains an active alternative dispute resolution practice mediating and arbitrating construction disputes, and is a credentialed mediator with the Texas Mediator Credentialing Association, a member of the Panel of Mediators of the American Arbitration Association, a member of the National Panel of Construction Arbitrators of the American Arbitration Association, and a Fellow of the Chartered Institute of Arbitrators.

He is active in the community, serving as the current chair of the City of Austin Construction Advisory Committee, a committee on which he has served since 2012. He has also been involved in Preservation Austin, an architectural preservation organization that seeks to protect the architectural and cultural heritage of the greater Austin community.

Professional Recognition:

Construction Law, Texas Board of Legal Specialization
Fellow, Chartered Institute of Arbitrators
"Texas Super Lawyer," *Texas Monthly*, 2015-2017
The Best Lawyers in America (Construction Law), 2016-2017
"Texas Rising Star," *Texas Monthly*, 2007-2008, 2013-2015
AV® Preeminent™ Peer Review Rating, *Martindale-Hubbell*
Finalist, American Bar Association National Outstanding Young Lawyer Award, 2012
Fellow, Texas Bar Foundation, 2012-present
Tom Garner Award Recipient, Texas Board of Legal Specialization

Affiliations:

Austin Bar Association, Construction Law Section (Member, 2004-present; Council Member, 2012-2014)
Austin Bar Association, ADR Section (Member, 2011-present; Secretary, 2015-2016; Chair, 2016-2017)
Austin Bar Association, Oil, Gas & Mineral Law Section (Member, 2017-present)
State Bar of Texas Construction Law Section (Member, 2004-present)
State Bar of Texas ADR Section (Member, 2011-present)
Oklahoma Bar Association, ADR Section (Member, 2016-present)
American Bar Association, Forum on the Construction Industry (Member, 2004-present; Chair of the Construction Forum Young Lawyers Section, 2009-2012; Division 8 Steering Committee, 2013-2016)
Texas Bar College (Member, 2006-present)
American Arbitration Association Roster of Neutrals (2014-present)
Texas Mediator Credentialing Association (Credentialed Mediator, 2014-present)
Dispute Resolution Board Foundation (Member, 2016-present)
Chartered Institute of Arbitrators (Fellow, 2017-present)
The Associated General Contractors of America, Austin Chapter
Associated Builders and Contractors, Central Texas Chapter

Representative Experience:

- Defended a Texas-based general contractor against a defective/deficient work claim concerning the construction of a competition pool, with the claim favorably settling following a multi-party mediation.
- Defended a Texas-based general contractor against a delay and defective/deficient work claim concerning the construction of a mixed use property and prosecuted the contractor's claim for unpaid work, interest, attorneys' fees and cost, with the claim favorably settling following a multi-party mediation.
- Defended an Austin-based general contractor against a delay claim concerning the construction of a restaurant and prevailed on the contractor's claim for unpaid work, interest, attorneys' fees and costs.
- Defended an out-of-state contractor in a lawsuit filed in Texas seeking a declaration of contract rights stemming from the construction of a chemical processing plant and prosecuted a claim for significant delay damages, with the claim favorably settling following negotiations.
- Defended an out-of-state contractor in a lawsuit concerning the alleged failure to complete a project and prosecuted a claim for wrongful termination, with the claim favorably settling at mediation.
- Defended a developer in a multi-party lawsuit concerning allegations of construction defects and misrepresentations, including the prosecution of third-party claims against various parties, with the claim favorably settling in various phases through negotiations.
- Defended a Texas-based structural steel subcontractor in an arbitration in which the contractor sought in excess of \$1,000,000 for alleged delay damages, with the claim favorably settling in mediation.
- Assisted civil contractor in resolving suspension, delay, and deficient work claim with improvement district following removal of project engineer.
- Assisted contractor in securing the effective removal of numerous defamatory statements posted online and resolving the underlying dispute.
- Drafted design-build contract documents for Texas-based university for the construction of a new residence hall.
- Drafted design and construction contract package for a developer concerning the development of a hotel in Hawaii.
- Drafted geotechnical, architectural, and construction contract package for a public entity concerning the design and construction of a new headquarters facility.

Representative Experience (Cont'd)

- Reviewed, revised, and negotiated numerous prime contracts and subcontracts for Texas-based athletic surfaces contractor.
- Through the TxDOT administrative process, assisted a contractor in securing the removal of indirect suspension and debarment sanctions issued by the Texas Department of Transportation.
- Successfully mediated numerous construction related disputes, including residential and non-residential matters addressing issues such as construction defects, payment disputes, termination claims, and lien issues.
- Has provided general counsel advice and guidance to numerous construction companies.
- Has served as mediator and arbitrator in numerous construction disputes.

Publications:

Making the Most of Early Mediation, *Construction News*, April 2017
Expedited Permitting Arrives in Austin, *AM Monthly Law Alert*, March 2017
Expedited Permitting in Austin, *AM Monthly Law Alert*, September 2016
Understanding the TxDOT Sanction Process, *AM Monthly Law Alert*, June 2016
Tricks & Traps to Avoid with Factoring Companies, *Modern Contractor Solutions Magazine*, 2014
How to Save Money in a Construction Lawsuit, *Modern Contractor Solutions Magazine* (Co-Author), 2014
How to Avoid a Construction Lawsuit - Practical Tips for General Contractors, Co-Author, *Modern Contractor Solutions Magazine* (Co-Author), 2013
Increased Use of Bifurcation in Construction Cases Involving Derivative Claims, *The Construction Lawyer: Journal of the American Bar Association Forum on the Construction Industry*, Vol. 33, No. 4, 2013
Be Informed and Active on Local Issues, *Construction News*, 2013
Enforceability of Forum Selection and Choice of Law Clauses in Litigation and Arbitration, *Construction News*, 2013
Requesting Information from Upstream Parties related to Lien and Bond Claims, *Construction News*, 2013
The Demise of the Civil Claim for Misapplication of Trust Funds, *The Construction Law Journal*, Vol. 10, No. 1, 2012
Mediation as a Tool for Successful Dispute Resolution, *Construction News*, 2011
Choosing a Forum for Dispute Resolution, *Construction News*, 2011
Time to Update Your Contracts, *Construction News*, 2011
Protecting Public Project Bid Documents from Disclosure, *Texas Construction*, 2010
Carefully Consider a Surety's Indemnity Agreement, *Texas Construction*, 2010
Recordkeeping Procedures Can Help Protect Privileged Documents, *Texas Construction*, 2010
Defending Against a Misapplication of Trust Funds Claim, *Texas Construction*, 2009
Options Limited for Bid Protests on State Building and Facility Projects, *Texas Construction*, 2009
Asserting Claims Against Design Professionals on Behalf of the Contractor, *The Construction Law Journal*, Vol. 7, No. 1, 2009
Implied Obligations In Construction Contracts, *Texas Construction*, 2008
Constitutional Concerns with the TxDOT Sanctioning Process, *Texas Tech Administrative Law Journal*, 2008
Attorneys Can Add Value to a Construction Project, *Texas Construction*, 2008
Asserting a Contract Claim Against TxDOT, *Texas Construction*, 2008
Understanding the TxDOT Sanction Process, *Texas Construction*, 2008
Construction Checklists: A Guide to Frequently Encountered Construction Issues (Checklist No. 60 – Common Issues in Drafting International Dispute Resolution Clauses), American Bar Association, 2008

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Publications (Cont'd)

Revisiting Restrictions on Contingent Payment Clauses, *Texas Construction*, 2007
The Fair Housing Act, *Austin Business District Magazine*, 2006
Procurement Procedures for Higher Education, *Texas Construction*, 2006
Adoption of the Implied Warranty of Good and Workmanlike Performance in Commercial Construction, *The Construction Law Journal*, Vol. 4, No. 2, 2006
Comparative Contract Fault: Using the AIA Documents to Apportion Contract Damages, *The Construction Lawyer: Journal of the American Bar Association Forum on the Construction Industry*, Vol. 26, No. 2, 2006

Presentations/Seminars:

2017 Legislative Update, Associated General Contractors of America (Austin Chapter), 2017
Dispute Resolution Process and Issues (CE 395-Project Controls), The University of Texas at Austin, 2017
Proactive and Reactive Approaches to Minimize the Cost of Defaults, Surety Association of South Texas, 2017
How to Save Money in a Construction Lawsuit, Associated Builders and Contractors (Mid-Coast Chapter), 2017
Limitations of Liability: Enforcement and Practical Tips, The Construction Law Foundation of Texas, 2017
Texas Lien and Bond Claims, Associated General Contractors (Austin Chapter), 2017
How to Save Money in a Construction Lawsuit, Construction Financial Management Association (Heart of Texas), 2017
2016 Case Law Update, Dallas Bar Association Construction Law Section, 2016
How to Save Money in a Construction Lawsuit, Greater Austin Contractors and Engineers Association, 2016
How to Save Money in a Construction Lawsuit, Construction Financial Management Association (Central Texas), 2016
The Basic Course in Texas Construction Law: Contract Termination, The Construction Law Foundation of Texas, 2015
Construction Law Legal Specialization, San Antonio Bar Association Construction Law Section, 2015
Navigating the Pitfalls in a Texas Defamation Case, Austin Bar Association Construction Law Section, 2015
Factoring, Contract Scope, and Cyber Liability Issues, Private Client Event, 2014
Risk Management & Factoring Seminar, Private Client Event, 2014
Texas Lien Law, Construction Financial Management Association, Central Texas Chapter, 2014
Securing Removal of a Lien Claim, Lorman Education, 2014
Hiring and Employment Practices, Associated Builders and Contractors, Central Texas Chapter, 2014
Mud-Wrestling the Chapter 162.001 Issue, The Construction Law Foundation of Texas, 2014
Ahead of Its Time: Technology Tool Box at a Construction Site, ABA Forum on the Construction Industry, 2014
How to Avoid a Construction Lawsuit and the Use of Exculpatory Clauses, 2013
Construction Lien Law in Texas, Lorman Education, 2013
The Demise of the Civil Claim for Misapplication of Trust Funds, Austin Bar Association Construction Law Section, 2012
How to Avoid a Construction Lawsuit, Greater Austin Contractors and Engineers Association, 2012
How to Avoid a Construction Lawsuit, Construction Financial Management Association, Central Texas Chapter, 2012
Mitigating Losses during (and after) a Project, Construction Financial Management Association, Central Texas Chapter, 2011
The Fundamentals of Construction Contracts: Understanding the Issues in Texas, Lorman Education, 2008
Managing Construction Projects in Texas, Lorman Education, 2008
Tricks, Traps and Ploys Used in Construction Scheduling in Texas, Lorman Education, 2006
Recent Supreme Court Jurisprudence and Hot Issues Affecting Construction Contracts, Lorman Education, 2005