

## Hon. Nickolas J. Dibiaso



Justice Dibiaso has broad experience as an attorney, trial court judge, appellate justice, and neutral in civil cases at all levels of dispute resolution -- alternate, administrative, trial and appellate -- in both state and federal jurisdictions.

As a practicing attorney with the firm of Thomas, Snell, Jamison, Russell, Williamson & Asperger (1970-1985), he specialized in business litigation, including antitrust, securities, agricultural, corporate and construction industry matters. He acted as counsel for the client in jury and non-jury trials in state and federal courts and in administrative hearings before state and federal commissions and boards, and in addition

represented clients in state and federal appellate courts. He was also involved in transactional and preventative construction industry and antitrust law, such as the preparation of construction contracts and subcontracts, the planning and review of construction job administration procedures, and giving antitrust compliance advice.

### Areas of Expertise:

- ACCOUNTING/FINANCE
- ANTITRUST
- APPELLATE
- ATTORNEY FEE/MALPRACTICE
- CONSTRUCTION
- CONTRACTS
- EMPLOYMENT/LABOR
- HEALTHCARE
- INSURANCE/REINSURANCE
- OIL, GAS, ENERGY & WATER
- PRODUCT LIABILITY
- REAL ESTATE
- SECURITIES/FINANCIAL SERVICES

### Justice Dibiaso's Federal Court experience as a lawyer included acting as:

- Counsel for the plaintiff in a Federal Court action in Hawaii involving the legality, under the Commerce Clause of the United States Constitution, of regulations issued by the State of Hawaii restricting the sale of sterilized milk in Hawaii,

- Counsel for the defendant, a national conglomerate, in a Federal Court action involving alleged Sherman Act and Robinson-Patman Act violations in connection with the wholesale distribution in California of an item of wearing apparel,
- Counsel for the defendant, a national manufacturer and distributor of engine components, in a Federal Court action involving alleged Sherman Act violations in connection with the distribution in Louisiana of fuel/water separators for diesel engines,
- Counsel for a California local public agency in administrative audit proceedings conducted by the Federal Environmental Protection Agency under Federal and State Clean Water Grant legislation,
- Co-counsel for the defendant in a Federal Court prosecution brought under the criminal provisions of the Internal Revenue Code,
- Counsel for the defendant, a publicly-held manufacturing company, in a Federal Court class action under the Civil Rights Act,
- Counsel for the plaintiff in a Federal Court lawsuit brought under the Federal and State securities laws involving the sale of cattle feeding contracts,
- Co-counsel for an integrated poultry producer in connection with its claim filed in a national class action pending in a Georgia Federal Court under the Rules for Complex and Multidistrict Litigation,
- Counsel for a farming corporation in connection with a Subpoena issued to it to produce documents and testimony before a grand jury, in an antitrust investigation of one segment of the food industry, pending in a Maryland Federal Court and conducted by the U.S. Attorney General's office,
- Counsel for the defendant, a diversified farming corporation, in a Federal Court action by the Federal Deposit Insurance Corporation in connection with insolvency proceedings for a defunct National Bank,
- Counsel for the defendant, a national conglomerate, in a Federal Court action involving an alleged violation of the Sherman Act in connection with the distribution of bottled wine, and
- Counsel for a National Bank, as the defendant, in a Federal Court action under Regulation U of the Federal Reserve Board.

**Justice Dibiaso's experience as a lawyer in construction cases included acting as:**

- Counsel for the plaintiff, a local public agency, in a State Court action brought under the California antitrust laws in connection with the design and construction of a sewage treatment plant,
- Counsel for the defendant, a major construction company, in a State Court action involving the bidding on a public works construction project,

- Counsel for the defendant, a statewide construction company, in a State Court action for damages for delays and undisclosed subsurface conditions in the construction of an underground sewage pipeline system for a southern California municipal services district,
- Counsel for the defendant, a statewide construction company, in a State Court action for damages for delays in the construction of a company brand central processing facility for a southern California grocery store chain,
- Counsel for the defendant, a local minority businessman, in a State Court action by a local public service district under the California public agency competitive bidding and conflict of interest statutes,
- Counsel for the defendant, a statewide construction company, in a State Court action involving alleged defects and delays in the construction of the engineering school building at a California State University, and
- Counsel for a national manufacturer and distributor of industrial equipment in a State Court action involving alleged defects in aerators supplied in the construction of a wastewater treatment plant for a northern California city.

Justice Dibiaso has also served as an arbitrator for the American Arbitration Association's Construction Panel and Commercial Panel (1976-1985).

Justice Dibiaso was appointed as Judge of the Fresno County California Superior Court in 1985. He was primarily assigned to hear civil cases and conduct the civil law and motion calendar. He was regularly assigned to preside "for all purposes" in complex civil cases and coordinated civil actions.

Justice Dibiaso was appointed as a Justice of the Court of Appeal of California, Fifth District, in 1989. In that capacity, he participated in the appellate disposition of more than 4000 cases, including appeals and writ proceedings. He authored more than 1200 civil and criminal appellate opinions, including 80 published opinions. He served as the Assistant Presiding Justice of the Court (2001-2006) and sat as a Justice pro-tem on the California Supreme Court (January 1999). He retired from the Court in 2006.

Justice Dibiaso is currently Of Counsel to the Fresno law firm of Dowling Aaron Incorporated, and serves as an independent arbitrator, mediator, special master, and referee and as a consultant for Appeals and Writs. He is a Fellow of the College of Commercial Arbitrators, a Member of the California Academy of Appellate Lawyers, and a Member of the American Arbitration Association's Judges Panel, Large Complex Case panel, Commercial Case panel, and Appellate panel. He has an "AV" Martindale-Hubbell rating and is a Daily Journal Northern California "SuperLawyer."

**Since 2006, Justice Dibiaso has served as an Arbitrator in a multitude of cases, including:**

- The dissolution of a 4 million dollar agricultural limited liability corporation,
- The dissolution of two 350 million dollar partnerships,

- A 2 million dollar breach of contract action against a contractor and its surety in connection with alleged defects in an asphalt overlay installed on a roadway in the Sierra Nevada Mountains,
- A breach of contract dispute between two Midwestern credit unions in connection with the sale and repurchase of a 5 million dollar sub-prime mobile home loan pool,
- A 12 million dollar commercial dispute centered in Utah,
- A 2 million dollar legal malpractice action centered in Nevada,
- An action between a partnership and its former partners over withdrawal payouts and non-competition provisions in the partnership agreement,
- A complex multi-million dollar breach of contract action involving claims arising out of concurrent surface use and subsurface mining rights in real property,
- Consolidated probate and trust actions involving cross-claims of heirs to a 60 million dollar real estate development business,
- A 250 million dollar accounting claim brought by a federal governmental agency against an international business firm,
- A 40 million dollar breach of contract claim arising out of a multi-year contract to manufacture and supply a well-known household product,
- A 150 million dollar breach of contract claim arising out of a contract to construct a refinery for a petroleum product,
- A dispute among the members of an LLC about the management of a 20 million dollar agricultural facility, and
- The alleged infringement of the trademark of a 300 million dollar agricultural corporation.

**Since 2006, Justice Dibiaso has served as a Court Appointed officer in a variety of cases, including as:**

- Plenary referee in an action for the judicial foreclosure of deeds of trust and for deficiency judgments against debtors and guarantors arising out of loans exceeding 8 million dollars extended to finance the acquisition and construction of a residential subdivision project,
- Plenary referee in a dispute involving the dissolution of a 60 million dollar real estate development partnership,
- Discovery referee in a breach of contract and breach of warranty case involving the sale of an automated dairy milking system, in which a 20 million dollar damage claim was made against numerous defendants (including United Kingdom and Netherlands corporations),
- Discovery referee in various commercial disputes, including several raising E-Discovery issues,
- Special master in a state-wide wage and hour class action, and
- Temporary judge in a dispute among the alleged beneficiaries of a multi-million dollar life insurance policy.



Justice Dibiaso has particular knowledge and experience in matters involving corporate and partnership disputes and dissolutions, valuations of real and personal property and business entities, and complex accounting and/or damage calculation issues with respect to public and private business entities.

Justice Dibiaso served on active duty with the U. S. Army from 1968 to 1970. His duties included acting as a Courts-Martial prosecutor and defense counsel for the US Army Intelligence Command, as the Supervisor of the US Tort Claims Office of the US Army Intelligence Command, and as the Deputy Staff Judge Advocate of the US Army Intelligence Command. He was awarded the Army Commendation Medal (ARCOM).

Justice Dibiaso was an Assistant Adjunct Professor of Law at the San Joaquin College of Law, where he taught a course entitled "Antitrust and Trade Regulation Law." He has also 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, and the Associated General Contractors of California.

### **Education:**

He holds a B. A. (Magna Cum Laude) in History from the University of Santa Clara (1965) and a J.D. from the Boalt Hall School of Law, University of California, Berkeley (1968).