

# Mediation Attractive Alternative For Engineering Disagreements

It certainly lacks the mystique, intrigue, uncertainty, anticipation and occasional excitement of a courtroom trial. But more and more Minnesota lawyers handling legal disputes involving engineers are pointing their clients to mediation as the most economical and efficient way to solve disagreements.

One of the strongest proponents of that approach is Elizabeth Poeschl, a lawyer focusing her practice in construction law with the Minneapolis law firm of Meagher & Geer. Poeschl notes that Minnesota judges requires those in a legal dispute to try and resolve differences through some form of alternative dispute resolution, including mediation. If that fails, the parties can still seek a court trial. However, Poeschl notes that , in her experience mediating construction-related cases, mediation is successful about 75 percent of the time.

“The state of Minnesota has been a leader in promoting mediation as a way to solve legal disagreements,” Poeschl said. “That promotion is appealing because it saves parties significant time and costs. Sometimes court cases related to construction can involve considerable expense as a result of the discovery process, depositions and the number of people involved.” Poeschl points out typical participants in construction-related court cases include the building owner, general contractor, architect and engineer plus perhaps as many as 20 subcontractors and material suppliers . “It can be very unwieldy trying to bring everyone together,” she points out.

The mediation process places conflicting parties in separate rooms and involves the mediator moving between them in an attempt to find points of agreement. “In Minnesota, we have a number of mediators who have become very good at what they do,” Poeschl said. “In most cases, parties are motivated to find items on which they can agree because the cost of a court trial can be prohibitive. In mediation, generally, everyone comes out hurting a little bit. But the positive aspect is the participants feel they have control over the result. In a court trial, they don’t.”

**Elizabeth Poeschl**



Poeschl has been an attorney eight years. Following graduation from the William Mitchell College of Law, she joined the Minneapolis law firm of Maslon & Edelmann. Initially, her legal work involved a variety of specialties ranging from family law and estate planning to contract and corporate law.

Her legal exposure also included construction law, which she saw as a good fit. “I found I enjoyed the detail work involved in the practice of construction law,” she explained. Poeschl also noted she liked the people she met in construction-related work including engineers. “Engineers are very smart and ‘down-to-earth’ people,” she said. “It was a very refreshing experience in that I learned they really believe in what they are doing. They are also very good at explaining what they do,” Poeschl continued. “The technical aspect of what engineers do is immense. I am impressed by the cutting edge things they are doing in such areas as green technology and green buildings. It is always interesting to find out what engineers are up to. And,” she concluded, “I found the more I learned about engineering the easier my job as a lawyer became.”



HELLMUTH & JOHNSON PLLC

ATTORNEYS AT LAW

**YOU DESIGN  
ENGINEERING SOLUTIONS.  
WE DESIGN  
LEGAL SOLUTIONS.**

The attorneys at Hellmuth & Johnson, PLLC are experienced in assisting engineering, design and construction firms through all phases of their business. We understand the construction industry, its language and procedures. Let us help you design a legal strategy for your business.

#### Construction – Real Estate – Business

- Documentation system analysis
- Design defects
- Errors and omissions
- Mechanic's liens
- Performance and payment bonds
- Contract drafting and negotiation
- Mediation, arbitration and litigation
- Real estate and development
- Business formation
- General business matters

Call John T. Trout at 952-746-2127

Hellmuth & Johnson, PLLC

10400 Viking Drive, Suite 500, Eden Prairie, MN 55344  
P 952-941-4005 • TF 800-947-2176 • [www.hjlawfirm.com](http://www.hjlawfirm.com)

---

# ENGINEERS AND THE LAW

---

The destination of construction law attorney was not the trip Poeschl had in mind when entering law school. Initially, Poeschl thought she would specialize in criminal law. Her undergraduate majors at the University of St. Thomas in St. Paul were sociology and criminal justice. While in law school, Poeschl had the opportunity to work in the office of the Ramsey County Public Defender and was also able to participate in legal proceedings from the perspective of a prosecuting attorney by working for the Hennepin County Attorney.

“I enjoyed both experiences and they were a great learning opportunity for me,” Poeschl recalls. Her work also provided the chance to appear before judges by presenting cases while under the supervision of a licensed attorney. One of the most important things Poeschl learned, however, was that she did not want to practice as a criminal attorney for the rest of her career. “It was difficult to see all of the repeat offenders,” she explained. “I didn’t think I could be that helpful to people.”

Poeschl notes she is very happy with her eventual decision to pursue construction law. “I really enjoy the work I do,” she said. “The greatest enjoyment comes in the realization that every case I have will be different. Each one has a different set of facts to deal with. Sometimes the problem involved in the lawsuit may relate to concrete, sometimes there is a question about the soils or perhaps there is a difficulty with the windows. The result is I am constantly meeting new experts and learning new things. That makes my work challenging but very interesting. And when you have those two things going for you, you are going to have a very good job.”

## ENGINEERING LITIGATION DOWN DESPITE ECONOMY

Conventional wisdom dictates that with the economy in the doldrums, the number of lawsuits filed involving engineers should be on the increase. Surprisingly, that is not the case. Clients are not challenging engineers over disagreements as one might anticipate as dollars become harder to come by. That is the situation in Minnesota as well as the rest of the world.

Bloomington attorney Jeff Coleman, P. E, a partner in the Coleman, Hull & van Vliet law firm, spoke recently of a conversation he had with a longtime underwriter for a London company providing insurance coverage for many major architecture and engineering firms throughout the world.

The man told Coleman the rate of claims against such firms is the lowest it has been in 25 years. “Normally,” Coleman said, “when the economy turns down the amount of litigation picks up.” Coleman said litigation involving engineers has dropped in Minnesota as well. “Maybe local engineers are paying attention when we put on those seminars about how to avoid legal problems,” he cracked.

Coleman, a one-time structural engineer who also served on the State Board of Registration for Architecture, Engineering, Land Surveying, Landscape Architecture Geoscience and Interior Designers, believes the low rate of legal action is reflective of the “integrity and high level of expertise in this part of the country. The quality of engineering in Minnesota has always been very good,” he said. A prime benefit of the decrease in legal action is that insurance premiums for local firms are staying low.

## Unique Background Helped Place Attorney Dawn Gagne In Courtroom

As a business major at the College of St. Catherine in St. Paul during the 1970s, Dawn Gagne was not certain as to what her eventual employment would involve. A good bet for her at the time, however, is that future career endeavors would not include defending the work of engineers. But life has strange twists.

Fast-forward 25 years and that is how Gagne spends much of her time these days. As an attorney focusing her practice in the defense of claims against design professionals for the St. Louis Park-based Cousineau McGuire Chartered law firm, Gagne acknowledges many fellow students from her college days would likely be surprised by the work she does today.

Her college major required a class in business law. Gagne found the study interesting and soon realized she might have an affinity for the legal profession. “As a lark,” she took the Law School

Admission Test and did well enough to be accepted at William Mitchell College of Law. The end result is Gagne soon found herself pursuing a law degree there, becoming an attorney in 1984.

Gagne spent a few years working for two Twin Cities law firms before becoming the in-house counsel for Carl Bolander & Sons Co., a long-time St. Paul construction company. “I have always felt very comfortable in a construction environment,” Gagne said during a conversation in her St. Louis Park office. She adds that comfort level extends to problem solving as well as fixing things. “My father was very mechanically inclined,” she explained. “He knew how things worked. It is a talent he passed on to me. I am very good at solving problems around the house.”

Gagne believes that skill, as well as the 11 years she spent with the Bolander companies, and her seven years at Cousineau McGuire