

MusickPeeler

Nathan D. O'Malley

PARTNER

Nathan O'Malley is a partner in the Los Angeles office of Musick Peeler where he leads the International Arbitration and Litigation Practice Group. As a recognized expert in the field of arbitration, Mr. O'Malley represents his clients at all stages of dispute resolution. He is also regularly appointed to serve as an arbitrator in high value disputes and he utilizes this experience, along with his years of work as an advocate, to provide his clients with targeted guidance and skillful representation.

Mr. O'Malley's practice is largely focused on disputes in the renewable and clean energy sector where he represents clients involved in the engineering, construction, operation and sale of various energy producing assets, such as solar thermal power facilities and natural gas-fired electricity plants. In recent years, he has developed a particular experience in the field of onshore and offshore wind farms, and has served as an arbitrator in disputes involving wind energy. Next to his work in the renewables sector, Mr. O'Malley has extensive experience with disputes involving infrastructure and industrial construction projects, as well as technology and general commercial matters. He has also represented clients involved in the payments industry, having acted for foreign acquiring banks and other financial institutions.

Over the course of his career, Mr. O'Malley has appeared on behalf of clients in international and domestic arbitrations seated in the US and in various foreign jurisdictions, including appearing before tribunals in Geneva, Zurich, Amsterdam, Brussels, The Hague, Frankfurt, Singapore and Abu Dhabi. He has handled cases brought under the auspices of the International Chamber of Commerce (ICC), UNCITRAL Rules, Stockholm Chamber of Commerce (SCC), Netherlands Arbitration Institute (NAI), Swiss Rules, ICDR/AAA, JAMS and World Intellectual Property Organization (WIPO). Mr. O'Malley also appears before state and federal courts, including the California Courts of Appeal and the Ninth Circuit Court of Appeals, often in cases pertaining to international arbitration. In 2017 he successfully argued the matter (for the amicus curiae) of *Portland General Electric v. Liberty Mutual Insurance Company et al.*, 862 F.3d 981 (9th Cir. 2017), which was the first opinion of the Ninth Circuit to consider whether courts must defer to arbitrators on issues of arbitrability when the ICC Rules of Arbitration are applicable. In its opinion, the Court largely adopted Mr. O'Malley's arguments as set forth in the submitted brief and at oral argument.

Mr. O'Malley is a lecturer in international arbitration law at the USC Gould School of Law and has authored a number of academic works on various ADR topics, including a leading text on international arbitration procedure which is now in its second edition, *The Rules of Evidence in International Arbitration: An Annotated Guide* (Routledge / Informa, London). Nathan also serves as the Co-Chair of the AAA-ICDR California Committee and leads the organizing committee of the USC International Arbitration Symposium.

Prior to joining Musick Peeler, Mr. O'Malley was based in the Netherlands for over ten years, where he worked for several non-US law firms as an associate and partner, and was registered with the Rotterdam Bar as a foreign lawyer. Mr. O'Malley reads and speaks Dutch.

Speaking Engagements

- Moderator, Institute for Corporate Counsel (2018), "Recent Changes to California's International Arbitration Law"

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Speaker, ABA International Section (2018), "Dealing with Privileges in International Arbitration"

- Speaker, Western Canada Commercial Arbitration Society, Mining and Resources Arbitration Conference (2018), "Appellate Arbitration"
- Speaker, AAA Construction Disputes Conference (2018), "Arbitrating Disputes Arising out of Renewable Energy Projects"
- Organizing Committee Member/Moderator, USC/JAMS International Arbitration Symposium (2015 - 2019)
- Speaker, ICC West Coast Conference (2016), "Evidence Taking in International Arbitration"
- Speaker, ICDR California International Arbitration Summit (2016), "Conflicts of Interest in International Arbitration and California Law"
- Moderator, ICC West Coast Conference (2015), "Arbitrating Disputes in China"
- Speaker, ICDR/LACBA Los Angeles International Arbitration Conference (2014), "Privilege and Confidentiality in International Arbitration"
- Speaker, ICDR/LACBA Arbitration in the Pacific Rim Conference (2013), "Emergency Arbitration under the ICDR Rules"
- Speaker, ICC Young Arbitrator's Forum – Paris (2013), "Witness Statements in International Arbitration"
- Speaker, Asser Institute (2012), "The Lance Armstrong Case: International Sports Arbitration and Due Process"
- Speaker, EXPORTA San Francisco International Trade Finance Conference (2012), "International Commercial Dispute Resolution Update"
- Instructor, Magna Charta Academie voor de Rechtspraak (2012), "International Contracting – Basic Principles"
- Speaker, ICC Young Arbitrator's Forum - The Hague (2012), "The Revised IBA Rules of Evidence"

Recent Arbitrator Appointments

- Appointed by the Permanent Court of Arbitration as the sole arbitrator in an UNCITRAL Rules arbitration seated in The Hague arising out of a World Bank financed infrastructure project in an African nation.
- Appointed by the ICC International Court of Arbitration as the sole arbitrator in an ICC arbitration seated in The Hague arising out of a cross-border sale of goods contract.
- A party-appointed arbitrator in a Dubai International Arbitration Centre arbitration seated in Dubai arising out of a dispute between two shareholders in a joint venture company.
- Appointed by the Permanent Court of Arbitration as the sole arbitrator in an UNCITRAL Rules arbitration seated in The Hague between a general contractor and a sub-contractor on an infrastructure project in an African nation.
- Appointed by the ICC International Court of Arbitration as the sole arbitrator in an UNCITRAL Rules arbitration seated in Amsterdam arising out of an international professional services partnership.
- Appointed by the ICC International Court of Arbitration in an ICC arbitration seated in Vienna arising out of a joint venture agreement.

Recent Cases

Lead counsel for the EPC contractor and developer in four ICC arbitrations arising out of the Mojave Solar Project, a 250 mw solar electric generating facility located in the Mojave Desert. The arbitrations ranged in subject matter from claims by subcontractors and suppliers, to disputes over certain tax liabilities and incentives connected to the project.

Lead counsel for the EPC contractor in an approx. 300 million US Dollar ICC arbitration arising out of the construction of a natural gas-fired facility built in the Northwest of the United States. The claims and counterclaims arose out of the termination of the contractor prior to project completion.

Arbitrator in an ICC arbitration arising out of a dispute between partners to a joint venture seeking to develop a waste-to-energy facility based in Croatia.

Arbitrator in a AAA Commercial Rules dispute between the purchaser and seller of a solar energy facility.

Lead counsel for a marine & dredging contractor engaged in the expansion of Port Taichung in an ICC arbitration arising out of work performed on the project. The arbitration was seated in Zurich, Switzerland.

Lead counsel on behalf of a supplier of pipe materials to the US Federally Funded, Navajo-Gallup Water Supply Project, in a dispute with a construction and engineering firm owned by the Navajo Nation.

Arbitrator in a dispute arising out of a World Bank financed municipal waste infrastructure project in Sierra Leone, in an UNCITRAL Rules arbitration seated in The Hague, the Netherlands.

Representing a European distributor in an ICC arbitration in Singapore arising out of a dispute over defective products sold in the EU.

- Representing a Cypriot construction company in an ICC arbitration seated in Abu Dhabi arising out of a sub-contract for the construction of a port facility in the Persian Gulf.
- Representing a European licensor in a Netherlands Arbitration Institute arbitration in Brussels arising out of the termination of a license agreement.
- Representing a European owner of a vessel in an ICC arbitration seated in Zurich arising out of a charter-party agreement.
- Representing a Cypriot specialty sub-contractor in an ICC arbitration in Geneva arising out of a port project in Qatar.
- Representing a European specialty sub-contractor in an ICC arbitration in Geneva arising out of a power plant project in North America.
- Representing a European software designer in a World Intellectual Property Organization (WIPO) arbitration seated in Geneva arising out of a joint venture agreement and related technology license.
- Representing a North American distributor and shareholder of a joint venture in a multi-party dispute with a European manufacturer in a Netherlands Arbitration Institute arbitration seated in Rotterdam.

Admissions & Associations

State Bar of California

United States District Court, Central and Eastern Districts of California

California Bar Association

International Bar Association

Former Co-Chair of the Benelux Subcommittee of the USCIB/ICC Arbitration Committee

Former Chairman of Netherlands Chapter and Associate Member

Chartered Institute of Arbitrators

ICSID Review - Foreign Investment Law Journal, Peer Reviewer, June 2014 to present

International Centre for Dispute Resolution, Member of the Panel of Arbitrators, Starting November 2015

Korean Commercial Arbitration Board, Member of the Panel of International Arbitrators, Effective until May 31, 2020

USC Institute for Corporate Counsel, Member of the Advisory Board, Effective until 2019

California International Arbitration Council (CIAC) Board of Directors, Executive Committee Member