

## Daniel L. McClain

### Of Counsel

With 25 years of experience in business litigation, Dan McClain represents businesses and individuals, focusing on business, construction, lending, and real estate disputes and litigation. Dan's philosophy is based on treating client legal problems as if they were his own, providing objective and straightforward advice while serving as a powerful advocate on your behalf. Dan's concentrates on "business divorces" among partners; construction disputes; loan, mortgage and guaranty cases; and real estate disputes, including eminent domain (condemnation), commercial landlord-tenant and title issues. Recent clients include developers, contractors, commercial landlords and tenants, loan servicers, title agencies, borrowers, small businesses, and individual business owners and investors. Dan has first-chaired jury trials and commercial arbitrations. He also has substantial experience in class action and complex business litigation, including cases that were tried to a jury, the bench and arbitrators.

**Awards & Recognition** *Best Lawyers in America*, Commercial Litigation, 2015-present Missouri and Kansas *Super Lawyers*, Business Litigation, 2009-present Best Law Firms, U.S. News & World Report, 2018-present Martindale-Hubbell AV® Preeminent Rating Chair, Business Litigation Committee, Kansas City Metropolitan Bar Association, 2015-17 President-Elect and Director, Civil Litigation Section, Kansas City Metropolitan Bar Association, 2017-present

### Representative Cases: Business Litigation

- Lead counsel for engineering firm in federal lawsuit against former employee for breach of noncompete and related agreement. Obtained \$600,000 jury verdict in favor of client, including client's legal fees.
- Successfully defended Fortune 100 delivery company against claims by driver/independent contractor for alleged breach of contract, wrongful termination and discrimination. Obtained complete dismissal in favor of client.
- Lead counsel for financial services company. Filed suit to enforce non-compete agreement against former employee who resigned to work for direct competitor and began soliciting clients. Obtained temporary restraining order against former employee. Resolved via settlement.
- Lead counsel for national bank, defending claims for breach of contract arising from transfer of allegedly defective consumer loans. Resolved via settlement.

### Representative Cases: "Business Divorces"

- Lead counsel for 50% shareholder of closely held commercial contractor, suing former corporate officer and co-shareholder to recover embezzled funds and acquire defendant's stock. Defending counterclaims attempting to force dissolution of company.
- Lead counsel for 50% shareholder of manufacturer/distributor, defending claims of embezzlement and breach of fiduciary duty. Entered into cooperative agreement to allow neutral CPA to investigate alleged improprieties. Resolved via settlement.
- Successfully defended medical group LLC and individual members against claims by withdrawn member, suing to recover compensation allegedly owed upon withdrawal. Obtained summary judgment in favor of individual LLC members. Obtained appointment of special master to protect confidential LLC financial records from discovery by withdrawn member. Resolved at mediation.
- Lead counsel for development LLC members against adverse LLC members. When LLC defaulted on loans and lender filed suit, clients contributed funds to complete project and pay off company debts. Filed suit to recover adverse LLC members' respective shares of company debts/expenses. Defeated adverse LLC members' motions to dismiss. Forced discovery of adverse LLC members' income and assets. Developed damage models based on forensic accounting to quantify amounts owed to clients. Claims resolved at mediation.
- Lead counsel for 50% shareholder and member of affiliated real estate holding and management companies. Obtained temporary restraining order to permit client to continue managing company properties, avoiding lender foreclosure and allowing companies' survival. Forced discovery of company financial and operating records concealed by adverse shareholder. Claims resolved at mediation.

### Representative Cases: Construction Disputes

- In five separate cases, lead counsel for developers of condominiums, defending claims by homeowners' associations and individual unit owners for alleged construction/design defects and related fraud and tort claims. Obtained dismissal of tort and equitable claims. Other claims arising under Uniform Condominium Act and sales contracts or leases resolved at mediations. In three cases, the developer-client paid nothing.
- Successfully defended contractor against claims by subcontractors for breach of contract, non-payment and to enforce mechanic's liens arising from renovation project at historic property. Resolved at mediation.
- Successfully defended EPC contractor in three-week arbitration arising from construction of biodiesel facility under cost-plus contract. Owner sought \$19.4 million in damages for alleged design defects, financial irregularities and project mismanagement. Client admitted partial liability. Arbitrators awarded owner less than one percent of amount claimed.
- Successfully defended EPC contractor in two-week arbitration arising from design/construction of refinery. Mechanical subcontractor sought \$12 million for alleged delays, disruption and productivity losses. Client admitted partial liability. Arbitrators awarded claimant \$3.6 million, within predicted range of exposure and less than client's final settlement offer.

### Representative Cases: Loan Issues

- Lead counsel for Fortune 100 national bank subsidiary and other financial services companies, defending consumer class actions arising from residential second mortgage loans. In two cases, obtained summary judgment in favor of clients, affirmed on appeal. In two cases, class certification defeated. Other claims resolved by settlements.
- Successfully defended owner/officer of management company in lender's suit to enforce personal guaranties of company loans. Lender claimed over \$750,000 in damages arising from alleged "waste" of properties securing loans. Developed defense that any devaluation of properties was caused by lender or economic conditions not covered by guaranties. Case resolved via settlement.
- In three-day arbitration, lead counsel for national loan settlement/closing company against RESPA and tort claims asserted by borrowers arising from allegedly illegal residential loan. Award rendered 100% in favor of client.
- In two separate cases, lead counsel for two title agencies and their principals against \$50 million in claims arising from alleged mortgage fraud schemes involving hundreds of properties. Resolved via settlements.
- Lead counsel for corporate officers/owners of multi-state hotel venture, defending claims by hotel franchisors on clients' guaranty of corporate obligations. Developed defenses based on franchisors' failure to provide services promised in franchise agreements. Resolved via settlements.

### Representative Cases: Real Estate Disputes

- Lead counsel for utility in eminent domain proceedings to obtain power line easements in Missouri and Kansas. Missouri case resolved by settlement the day before trial. Kansas case tried to jury, verdict was over \$1 million less than landowner sought.
- Lead counsel for commercial landlord in dispute over \$1 million in furniture, fixtures and equipment provided under "turnkey" lease. Obtained temporary restraining order preventing tenant from removing disputed FFE. After bench trial, verdict rendered in favor of client.
- Lead counsel for commercial tenant. Landlord terminated lease and sought damages for unpaid rent after landlord was unable to find replacement tenant. Obtained summary judgment in favor of tenant on ground that landlord wrongfully terminated lease.

**Law School:** University of Iowa Law School, J.D., with high distinction, 1992

**College:** University of Iowa, B.A., with highest distinction, 1988 (Phi Beta Kappa) **Judicial Clerkship**

- Law Clerk to Hon. Joseph E. Stevens, Jr., Chief Judge of the U.S. District Court for the Western District of Missouri (1992-94)

### Professional Affiliations

- Missouri Bar Association
- Lawyers Association of Kansas City, Board of Directors, 2010-18
- Kansas City Metropolitan Bar Association
- Earl E. Connor, American Inns of Court

### Published Works & Presentations

- Author/Speaker, "Lost Profit Damages in Business Tort Actions," Business Litigation Handbook of Annual Seminar, (KCMA, 2017)
- Author/Speaker, "Covenants Not to Compete and Trade Secrets in Missouri and Kansas," (Lawyers Association of Kansas City, April 2015)
- Author/Speaker, National Business Institute, "Evidence and Expert Testimony Best Practices: Supporting Your Case," (National Business Institute, April 2007, January 2008, April 2008)



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### Admissions

Missouri  
 Kansas  
 U.S. Court of Appeals for the Eighth Circuit  
 U.S. Court of Appeals for the Tenth Circuit  
 U.S. District Court for the Western District of Missouri  
 U.S. District Court for the District of Kansas  
 U.S. District Court for Colorado

### Services

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