

# CALVERT ❖ MENICUCCI

A Professional Corporation



8900 Washington St., N.E., Suite A  
Albuquerque, NM 87113

ccalvert@hardhatlaw.net

Phone: 505-247-9100  
Fax 505-247-9761

## Resume Carl A. Calvert

### Education:

1977 J.D. University of New Mexico Law School (summa cum laude & 1st in class)  
1973 Ph.D. University of Washington  
1968 M.A. University of Washington  
1965 B.A. University of New Mexico  
Educational Awards include Phi Kappa Phi and Order of the Coif  
Editor, New Mexico Law Review 1976-1977; Member Moot Court Team

### Legal Practice: (AV rating by Martindale-Hubbell Law Directory)

3/1998 to present Calvert Menicucci, P. C.  
8900 Washington, N.E., Suite A  
Albuquerque, NM 87113  
Shareholder and Director

Current practice is 90-95% construction related, including arbitration and litigation; 5-10% other commercial and business matters.

1981-2/1998 Crider, Calvert & Bingham, P.C.  
3908 Carlisle, NE, Albuquerque, NM 87107  
Shareholder and Director

1977-1981 Poole, Tinnin & Martin, P.A.  
P.O. Box 1769, Albuquerque, NM 87103  
Associate

[Prior to law school, I was an Instructor or Assistant Professor teaching Philosophy and Humanities at the college level, including Illinois State University, Illinois Wesleyan University, Central Washington State University and Park College.]

### Bar Membership:

1977 New Mexico State Bar  
1977 United States District Court District of New Mexico  
1977 United States Court of Appeals Tenth Circuit  
1979 United States Court of Appeals Ninth Circuit  
1991 United States Court of Appeals for the Federal Circuit

### Fellow, American College of Construction Lawyers, February, 1999

American Bar Association

Forum Committee on the Construction Industry - Chairman, Division 9 (1999-2001); Co-chair 2002 Annual Program; and member

Public Contracts Section - New Mexico Chairman (1990s) and Member  
Litigation Section - Member

**Association Memberships:**

American Arbitration Association; (Arbitration Training Faculty; NM Advisory Board (Chairman 2002-2003); Complex Disputes Panel, **Construction Arbitration Master Panel**)  
Associated General Contractors, Building Branch  
Member, Board of Directors, 1986 & 1987  
Chairman, Associate/Affiliate Division, 1987  
Vice-Chairman, Associate/Affiliate Division, 1986  
American Subcontractors Association  
Chairman, National Attorneys' Council, 1998  
Board of Directors ASA NM for 1986-1989  
Chapter Attorney, ASA NM 1989-1998

**Arbitration and Mediation Training:**

2006 American Arbitration Association – Conduct as Chairman Training  
2002 American Arbitration Association – Arbitrator II Training  
1998 American Arbitration Association - Neutrals Retreat - Complex Case Track  
1996-98 American Arbitration Association Faculty, conducting AAA Construction Arbitrator Training in Albuquerque, NM; Phoenix, AZ; Fresno, CA; Sacramento, CA; Baton Rouge, LA; Breckenridge, CO; Los Angeles, CA.  
1996 American Arbitration Association Faculty Training Program  
1992 American Arbitration Association Mediation Training  
1991 American Arbitration Association Advanced Arbitration Training  
1987 American Arbitration Association Arbitration Training

I have served as the arbitrator in forty or more arbitrations. The largest involved a dispute of 200 million. The longest hearing was thirty eight days, with many more than one week. I have chaired arbitrations with two to thirteen parties. The disputes have involved large manufacturing facilities, water treatment plants, highway and utility projects, highrise buildings, commercial and residential construction.

**Legal Experience in Construction:**

Since 1977 I have represented many construction industry firms (both national and local), including general contractors (building and heavy/highway), subcontractors, suppliers, design professionals and owners.

A. With respect to construction disputes and claims in litigation or arbitration, the following are representative of the type of work and issues:

1. Represented the owner of a 12 million dollar regional hospital against the design builder on multiple changes and defects.
2. Represented a general contractor in a seventeen day arbitration concerning all aspects of construction of a motor hotel.
3. Represented mechanical and electrical subcontractors on productivity impact claims on a highrise and on a university student union.
4. Represented a drywall subcontractor in a five day arbitration with a prime contractor on construction of a motor hotel on liquidated damages and supplementation of forces.
5. Represented a highway contractor in a disruption and interference claim against the State Highway Department.
6. Represented a utility contractor in arbitration against public agency with claims involving adjustments to unit prices, delays & extras.

7. Represented a utility contractor in two claims against a municipality and engineering firm for delay and interference.
8. Represented a paving contractor against municipality on claim for change in price due to changed conditions.
9. Represented contractor on a claim for equitable adjustment on concrete channel project performed for municipality. The claim involved extensive cost analysis of loss resulting from storm damage to channel, allegations of insufficient protective work, excessive directed removal of concrete, and survey changes. Presentation of claim involved working with damage, structural, hydrology and meteorology experts.
10. Represented traffic control subcontractor against multi-state highway contractor on a claim for reformation of contract and damages.
11. Represented general contractor and developer against large claim by paving subcontractor. Issues involved disputed quality and quantity of asphalt paving, base course and subgrade preparation.
12. Represented subcontractor in arbitration against general contractor of high-rise downtown office building. Issues involved impact of scheduling changes, increased costs of change to tooled joints from construction joints, and increased costs resulting from failure of coordination and interference by general.
13. Represented general contractor on city park in arbitration against municipality for completion dispute.
14. Represented general contractor in claim against federal government (IBCA) for quantity overruns and extras.
15. Represented general contractors in disputes with suppliers and subcontractors on numerous matters including defective work, completion delays, terminations, etc.
16. Multitudinous Miller Act, State Public Works Act, Materialmen's Lien and other construction claims generally involving only one or two issues and amounts in controversy from \$500 to \$500,000.
17. Multitudinous disputes representing homeowners or builders on small to luxury homes.
18. Numerous New Mexico construction licensing disputes.
19. Numerous bid and proposal protests.
20. Several challenges to or defenses of New Mexico's resident contractor preferences.

B. Representative consultation and negotiation of claims which have been resolved without litigation, such as:

1. Consultation and drafting on hundreds of construction contracts and subcontracts, including contract documents for public owners, private owners, architects, design/build, prime contractors, subcontractors and suppliers.
2. Consultation and negotiation for highway contractor on constructive termination.
3. Represented a public owner in negotiations with design professions for contracts on the design of a prison.
4. Analysis and negotiation for paving subcontractor of quality dispute on paving of subdivision.
5. Consultation on termination claim of general contractor of two large California hotels.
6. Consultation for sub-subcontractor on termination, delay and MBE issues arising on State Highway Department project.
7. Consultation with private owner on the contracts with Construction Manager and bid documents for large private high school.
8. Contract analysis for highway contractor on State Highway Department project concerning claim for decrease in price due to use of non-designated materials pit.
9. Frequent consultation on business form, licensing, preferences, bidding.

C. Miscellaneous representative legal experience concerning construction:

1. Represented a highway and paving contractor in a million dollar lender liability claim. Issues involved extensive analysis of financial status of contractor, equipment liquidation and business losses.
2. I was the principal attorney involved on behalf of one of the nation's largest construction firms in the acquisition of a highway contractor. This involved extensive analysis of financial and performance records on a highway contractor.
3. I have been the principal attorney (with tax and accounting advisors) on several sales or purchases of construction companies.
4. I served as mediator in a couple of dozen mediations principally when the parties desired an evaluative approach. These have included multi-day mediations as well as a mini-trial of a multi-party dispute involving homeowners, developers and builders with respect to an expansive soils claim.

#### **Publications:**

- Calvert, Contributing Author, "Chapter 33, New Mexico", *State-By-State Guide to Construction Contracts and Claims*, Construction Law Library, Aspen Publishers, 2006.
- Calvert and Ingwolson, *Pass Through Claims and Liquidation Agreements*, The Construction Lawyer (ABA, 10/98)
- Calvert, *Construction on Tribal Lands: Practical Applications to Construction Contracting in Indian Country*, Construction from the Owner's Perspective, (ABA Forum on the Construction Industry 4/2005).
- Calvert, Craig and Hamilton, *Performance Specifications*, Construction Round-Up (ABA Forum on the Construction Industry 5/1996)
- Calvert and Calvert, *News from the Regions*, The Procurement Lawyer (Fall, 2001)
- Calvert, *News from the Regions - Region VI, New Mexico*, 1997 The Procurement Lawyer, ABA Public Contract Newsletter, Vol. 33, No. 1.
- Calvert, *News from the Regions - Region VI, New Mexico*, 1996 The Procurement Lawyer, ABA Public Contract Newsletter, Vol. 31, No. 2.
- Calvert, *Recent Developments in State and Local Public Contract Law: New Mexico*, Summer 1993 Public Contract Newsletter, Vol. 28, No. 4.
- Calvert, "The Uniform Owner-Resident Relations Act," 6 New Mexico Law Review 293 (1976).

#### **Presentations and Lectures:**

- "A Perspective on Construction Damages" First Annual Meeting of the Montana State Bar Construction Section, August 2005 (with written materials).
- "Construction Contracting with Indian Tribes" 2005 Annual Meeting Forum on the Construction Industry, New Orleans, LA (with written materials).
- "Project Management" Montana Subcontractors Association, Bozeman and Missoula MT Spring 2005.
- "Bonding and Bid Depositories", International Association of Bid Depositories, October, 2004.
- "Changes and Change Orders", Lorman Education Services, Albuquerque, NM, April, 2004. (Seminar with written materials)
- "Project Administration", presented to local chapter of American Subcontractors Association, Albuquerque, NM, March, 2004 (Seminar with written materials)
- "Innovative Contracting" Moderator for 39<sup>th</sup> Paving and Transportation Conference, University of New Mexico, January, 2002.
- "Negotiating Subcontracts" presented to local chapter of American Subcontractors Association, Helena & Billings, Montana, August, 2001 (Seminar with written materials)
- "Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, May, 2001 (Seminar with written materials).

"Recent Trends in Project Delivery -- Development Manager Contracting", Construction Industry Superconference, San Francisco, California, December, 2000.

"Lien and Bond Claims In New Mexico", presented to annual meeting of Northern New Mexico Independent Electrical Contractors, December, 2000. (Seminar with written materials).

"Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, May, 2000 (Seminar with written materials).

"Montrose Chemical and the New CGL Endorsement", Society of Chartered Property Casualty Underwriters,, September, 1999.

"Subcontract Review", presented to local chapter of American Subcontractors Association, Helena, Montana, June 1999 and Billings, Montana August 1999 (Seminar with written materials)

Calvert, Flowers & Othmer, "Construction Payment Remedies in New Mexico" (NBI June, 1999)(Seminar and written materials).

"Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, May, 1999 (Seminar with written materials).

Calvert, Gregory & Hendrick, "Would the Person Who Thinks the AGC Contracts are Fair, Please Stand Up?", Annual Meeting of the American Subcontractors Association, Miami, Florida, 3-99.

"Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, June, 1998 (Seminar with written materials).

Calvert and Ingwalson, "Pass Through Claims and Liquidation Agreements" Annual Meeting of the ABA Forum on Construction Industry, Orlando, FL. 4-98. (Materials published in ABA Manual Lawyering in the 21st Century)

"Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, June, 1997 (Seminar with written materials).

Construction Arbitrator Training: Fresno, CA, 11-96; Phoenix, AZ, 2-97; Baton Rouge, LA, 5-97; Albuquerque, NM; Sacramento, CA; Breckenridge, CO, 10-97; Los Angeles, CA.

"Motions, Discovery and the Conduct of the Hearing", Second Judicial District Court Arbitrator Training, May 8, 1997.

"How to Effectively Represent your Client in Mediation", Continuing Education of the State Bar of New Mexico, May 8, 1997.

"Reviewing Subcontracts", American Subcontractors Association, Feb. 12, 1997 (three-hour presentation with written materials).

Calvert & Othmer, "Construction Contract Survival In New Mexico" 10th Annual Construction Law Conference, Austin, TX, February 1997.

Calvert, Othmer & Sheehan, "New Mexico Construction Law - What To Do When" (NBI 1996)(Seminar and written materials).

Calvert, Craig and Hamilton, "Performance Specifications: The Issues, the Problems and Some Solutions", presented to ABA Forum on the Construction Industry Twentieth Anniversary, Dallas, Texas, May, 1996.

Calvert, Craig and Hamilton, "Performance Specifications: Can You Dance Without Music?" presented to ASA Forum on the Construction Industry Annual Meeting, Orlando, Florida, May, 1996.

"Lien and Bond Claims In New Mexico", presented to New Mexico Chapter, American Subcontractors Association, February, 1996 (Seminar with written materials).

Calvert, Othmer & Sheehan, "New Mexico Construction Law - What To Do When" (NBI 1995)(Seminar and written materials).

"Lien and Bond Claims In New Mexico", presented to local chapter of National Association of Credit Managers, June, 1995 (Seminar with written materials).

"Avoiding Potential Problems in Subcontractor to Supplier Contracts", American Subcontractors Assn. National Convention, March, 1995.

"Construction Contracting", Lorman Education Services, June, 1994 (Seminar with written materials).

"Avoiding Potential Problems in Subcontractor to Supplier Contracts", American Subcontractors Assn. National Convention, March, 1995.

"Tips on Protecting Your Payment Rights Against Third Parties", American Subcontractors Assn. National Convention, March, 1994.

"Avoidance of Bidding Problems for Both Prime Contractor and Subcontractor", Associated General Contractors, November, 1993.

Calvert, Othmer & Sheehan, "New Mexico Construction Law - What To Do When" (NBI 1993)(Seminar and written materials).

"New Mexico's Lien Law & Stop Notice Act" presented to local chapter of National Association of Credit Managers, 1993 (Seminar with written materials).

"Mechanic's Liens and Materialmen's Liens under New Mexico Law", Cambridge Institute, May, 1993 (Seminar with written materials).

"Public Works Mediation Act" presented to New Mexico Sheet Metal Contractors Association (4-92) and Associated General Contractors (7-92).

"Mechanic's Liens and Materialmen's Liens under New Mexico Law", Cambridge Institute, April, 1992 (Seminar with written materials).

"Recent Developments in Public Contract Procurement", co-sponsored by American Bar Association, Section of Public Contract Law and New Mexico Bar Association, May, 1992 (Seminar with written materials).

Calvert, Othmer & Sheehan, "New Mexico Construction Law - What To Do When" (NBI 1992)(Seminar and written materials).

"Mechanics' and Materialmen's Liens" presented to New Mexico State Bar 1991 Real Property Institute, Mortgage Loan Defaults and Foreclosures in New Mexico, November 1, 1991 (Seminar with written materials).

Calvert, Othmer & Sheehan, "New Mexico Construction Law - What To Do When" (NBI 1991)(seminar and written materials).

"New Mexico's Lien Law & Stop Notice Act" presented to local chapters of American Subcontractors Association & National Association of Credit Managers, 1990 (Seminar with written materials).

"Payment", Public Contracts in New Mexico: 1990 Update, sponsored by New Mexico State Bar and ABA Section on Public Contracts, Sept. 1990 (Lecture with written materials).

"Materialmen's Liens and Stop Notice Act", Associated Builders & Contractors; American Subcontractors Association; Dahl's Active Supply, Inc.; National Association of Credit Managers, New Mexico Branch; April 18, May 2, 16 & 24, 1990 (with written materials).

"Reviewing Subcontracts", American Subcontractors Association, Feb. 22, 1989 (two hour presentation with written materials).

"Bidding for and Reviewing Subcontracts", Painting and Decorating Contractors of America, July 22, 1988 (two-hour presentation and written materials).

"Arbitration and Construction Industry Liaison Council", American Society of Professional Estimators (Roadrunner Chapter), January 6, 1988.

"Changes in the A401", Regional Conference, American Subcontractors Association, August 14, 1987 (two-hour presentation).

"Personal Sureties on Government Contracts", Testimony before the Senate Subcommittee on Federal Spending, Budget and Accounting, August 11, 1987.

"Remarks on Construction Industry", Rio Grande Utility Contractors Association, June 25, 1987.

"A101 & A201 (1987)", Annual Convention, American Society of Professional Estimators (two-hour presentation and written materials), June 15, 1987.

"Construction Contracts...A Detailed Analysis of Architects' and Engineers' Forms", Continuing Education Services, Denver, Colo. (one of three speakers; with written materials), November 21, 1986.

"Trouble Shooting Your Construction Contract", NM State Bar Seminar (one of five speakers; with written materials), June 21-22, 1986.

"Liens", Associate/Affiliate Division, AGC.

"Liens and Claims", Association/Affiliate Division, AGC.

"Exculpatory Contract Provisions", Associate/Affiliate Division, AGC.

"Remarks on Retainage", Associate/Affiliate Division, AGC.

"AGC Form 600 Subcontract", Associate/Affiliate Division, AGC.

"Arbitration", UNM Engineering Class.

Panelist, Surety Company Analysis of the Construction Industry, New Mexico Insurance Industry Convention.

Panelist, Financial Statement Analysis of the Construction Industry, New Mexico Bank Loan Officers Association.