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TO THE HIGH COST OF LITIGATION



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ADR Procedures

Selected International Arbitration Rules, 2011 Edition

BY STEVEN A. CERTILMAN

Below is a comparison of the latest international arbitration rules from five major providers, updated from 26 *Alternatives* 91 (May 2008).

When you are using the rules, check the latest versions, as they are amended periodically. The provider organizations update the rules at their websites, which also are in the table.

The author is a Stamford, Conn., commercial lawyer, litigator, arbitrator and mediator. He is a member of the College of Commercial Arbitrators; he also is a Fellow and Chartered Arbitrator of the London-based Chartered Institute of Arbitrators, and serves on its board. An adjunct professor at Fordham University School of Law in New York, he is a frequent speaker, trainer and author in the ADR field.

Just last month, the Paris-based International Chamber of Commerce released a new set of its rules, the product of long-running efforts targeting improved arbitration efficiency. The new ICC rules, which take effect as of Jan. 1, 2012, are analyzed in the comparison.

Practitioners also are advised to consider the consequences of selecting one set of rules over another as they relate to the facts and circumstances of the specific case. This advice applies as much to corporate counsel negotiating a contract in which an arbitration clause appears as it does to arbitration counsel engaged after a dispute has arisen.

Some commentary is provided on the rules

within the tables. But practitioners also should seek out sources for in-depth analysis of the rules and their application in practice. Many of the rules are summarized, rather than quoted.

The five sets of rules examined below do not, of course, represent the complete universe of international arbitration rules. There are many other important arbitral organizations that issue rules, especially regional providers.

[The CPR Institute, whose rules are examined in the first column below, publishes this newsletter.]

(For bulk reprints of this article, please call (201) 748-8789.)



TOPIC	CPR: International Institute for Conflict Prevention and Resolution	ICC: International Chamber of Commerce	ICDR/AAA: International Centre for Dispute Resolution/American Arbitration Association	LCIA: London Court of International Arbitration	UNCITRAL: United Nations Commission on International Trade Law
	http://www.cpradr.org/	www.iccwbo.org/ Direct link: http://www.iccwbo.org/ICCDRSRules/	www.adr.org/icdr/	www.lcia.org/ Direct link: www.lcia.org/Dispute_Resolution_Services/ARBPrintable_versions.aspx	www.uncitral.org/ Direct link: www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf
General (taken from materials produced by administrator)	Promulgated in 1992, revised in 2000, 2005, and 2007, rules provide for non-administered (ad hoc) arbitration of international disputes; provide procedures to facilitate the conduct of international arbitration fairly, expeditiously and economically and producing just and enforceable awards; designed to be easily understood. They are intended, in particular, for complex international cases. CPR's role as neutral organization is limited to instances when it is necessary to break an impasse in the proceedings. Separate Global Rules for Accelerated Commercial Arbitration have also been adopted.	In force starting Jan. 1, 2012, the ICC's International Court of Arbitration (the "ICC Court") ensures the application of the ICC Rules of Arbitration in cases the ICC administers. The ICC plays a key role in appointing and confirming of arbitrators, fixing arbitrators' fees, and scrutinizing awards. Its Secretariat is located in Paris. Tribunal chairman is referred to as president.	Current version of rules was effective June 1, 2009, superseding the 2003 rules. Rules provide for administered arbitration of international disputes. Rules for arbitrator appointment provide a flexible procedure encouraging the fullest measure of party autonomy in the appointment process, while assuring that the ICDR is available to act if the parties cannot agree. The rules are intended to provide effective and economical arbitration services to the global business community.	Current version of rules is from 1998.	Rules effective as of Aug. 15, 2010. Originally adopted in 1976 by the General Assembly of the United Nations and recommended for inclusion in international commercial contracts. Current May 2010 version was intended to address concerns regarding arbitration efficiency and to reflect and adapt to widely used practices. The rules are intended to provide a comprehensive, flexible and universal set of procedural rules which parties may select for the conduct of ad hoc arbitral proceedings arising out of their commercial relationship. Widely used and discussed in academic circles.
Application	Where the parties have agreed in writing to apply these rules, the rules are deemed a part of their arbitration agreement. Parties may agree to modify the rules in writing or on the record during the course of the arbitral proceeding. (R. 1.1.)	Where the parties have agreed to submit to arbitration under the ICC Rules. (Art. 6 (1).)	Where the parties have agreed in writing to apply these rules, or they have provided for arbitration by the ICDR or AAA without designating particular rules. (Art. 1.1.) Application of rules shall be subject to modification by agreement of the parties. (Art. 1.)	Where the parties have agreed in writing to apply these rules. (Preamble.)	Where the parties have agreed in writing to apply these rules, subject to modification by agreement of the parties. (Art. 1.)

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TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Which Version of Rules	Rules in effect at time of commencement. (R. 1.1.)	Rules in effect at time of commencement unless otherwise agreed by the parties. (Art. 6 (1).)	Rules in effect at time of commencement. (Art. 1 (1).)	Rules in effect at time of commencement. (Preamble.)	The UNCITRAL Arbitration Rules 2010 apply to arbitration agreements concluded after Aug. 15, 2010, unless otherwise specified, [and to other arbitrations if their governing agreements so provide (such as those which select the UNCITRAL Rules with language to the effect "as they may be amended from time to time." In other cases, the original UNCITRAL Arbitration Rules of 1976 apply.]
Jurisdiction					
Objections to Jurisdiction or Existence/ Validity of Arbitration Clause	Tribunal has power to hear and determine challenges to its jurisdiction, including objections with respect to existence, scope or validity of the arbitration agreement, (R. 8.1.)	Tribunal does not cease to have jurisdiction as long as the validity of the arbitration agreement is upheld by the tribunal. (Art. 6 (9).)	Tribunal has power to rule on its jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. (Art. 15 (1).)	Tribunal has power to rule on its jurisdiction, including any objection to the initial or continued existence, validity or effectiveness of the arbitration agreement. (Art. 23.1.)	Tribunal has power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement. (Art. 23 (1).)
Deadline for Jurisdictional Objection	Challenges must be made no later than the notice of defense or, if relating to a counterclaim, the reply to counterclaim. (R. 8.3.)	No clear express deadline, however, Articles 6(5) and 39 may apply. Lack of clarity as to whether arbitrability is determined by tribunal or ICC Court. (Art. 6.)	Objections must be filed no later than the filing of statement of defense to the claim or counterclaim that gives rise to the objection. (Art. 15 (3).)	Objections must be filed no later than the filing of Statement of Defense to the claim or counterclaim that gives rise to the objection. (Art. 23.2.)	Challenges must be raised no later than in the statement of defense or in the reply to counterclaim. (Art. 23 (2).)
Arbitration Clause Deemed a Separate Agreement	Yes. (R. 8.2.)	Yes, by implication. (Art. 6 (9).)	Yes. (Art. 15 (2).)	Yes. (Art. 23.1.)	Yes. (Art. 23 (1).)
Commencement					
Method	Commenced by notice of arbitration to respondent and deemed commenced on the date notice is received by the respondent. (R. 3.)	Commenced by request for arbitration filed with the ICC Secretariat. The date the request is received by the Secretariat is deemed the date of commencement. (Art. 4.)	Commenced on date written notice of arbitration is received by the administrator. (Art. 2 (2).)	Commenced by written request for arbitration to the Registrar of the LCIA with the necessary accompaniments. (Art. 1.1.)	Commenced by notice of arbitration to respondent and deemed commenced on the date notice is received by the respondent. (Art. 3 (1) and (2).) Electronic communication, including email and facsimile, now permitted, subject to certain rules. (Art. 2.)
Statement of Claim—Must It Be Attached to a Notice of Arbitration? *** Response to Notice of Arbitration	A statement of the general nature of the claim is required. (R. 3.3.)	A description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made is required, along with a statement of the relief sought. (Art. 4.) If the case is to have three arbitrators, Claimant shall nominate its arbitrator in its request for arbitration, failing which the appointment is to be made by the ICC Court. (Art. 12 (4).) Once the Terms of Reference are signed or approved by the ICC Court, no party may make new claims which fall outside the limits of the Terms of Reference unless authorized by the tribunal. (Art. 23 (4).)	Yes. (Art. 2 (3).)	A brief statement describing the nature and circumstances of the dispute is required. (Art. 1.) This is followed within 30 days by a written response to the request. Failure to submit a response is not a default but may result in preclusion from participating in the arbitrator appointment process. (Art. 2.) Within 30 days of Claimant's receipt of notice from the LCIA that a tribunal has been appointed, Claimant is required to submit a statement of case. (Art. 15.2) Statement of case generally accompanied by all essential documents. (Art. 15.6.)	No. If not submitted with notice of arbitration, tribunal determines timeframe for submission. (Art. 20.) A Statement of Claim is not required in all instances. (Art. 20 (1).) Respondent is required to submit a response to the notice of arbitration within 30 days of receipt of the notice. (Art. 4.)
Statement of Defense or Answer and Counterclaim	Notice of defense required within 30 days of respondent's receipt of notice of arbitration. (R. 3.4.)	Answer is required within 30 days of respondent's receipt of request for arbitration from Secretariat. (Art. 5.) Any counterclaims must be submitted with the answer and a reply to the counterclaim(s) is due within 30 days. Id. If the case is to have three arbitrators, the respondent shall nominate its arbitrator in its answer, and if respondent fails to nominate, the appointment is to be made by the ICC Court. (Art. 12 (4).) Once the Terms of Reference are signed or approved by the ICC Court, no party may make new claims which fall outside the limits of the Terms of Reference unless authorized by the tribunal. (Art. 23 (4).)	Must be filed with administrator and submitted to claimant. (Art. 3 (1).)	Statement of defense required within 30 days of respondent's receipt of statement of case. (Art. 15.3.) A statement of defense is generally accompanied by all reliance documents. (Art. 15.6.)	Tribunal sets time frame for submission. A statement of defense is not required in all instances. (Art. 21 (1).)

TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Default Mechanism	Yes, case may proceed. (R. 3.)	Yes, case may proceed (Art. 6 (8).) See also Art. 26 (2) for default to appear at the hearings.	Yes, case may proceed. (Art. 23.)	Yes, case may proceed. (Art. 15.8.)	Yes. Without sufficient cause, tribunal "shall" order termination of proceedings (if claimant's default) or proceedings to continue (if respondent's default). (Art. 30.)
Deposit for Costs Required on Commencement	Yes, generally requested by the tribunal. Additional deposits may be required. Case may be suspended or terminated in the event deposit of costs not made as required. (R. 17.)	Yes. Provisional advance until Terms of Reference drawn up may be requested by the Secretary General. Thereafter, the ICC Court fixes the amount of an advance estimated to cover arbitrator and ICC costs. (Art. 36 (2).) In the event the deposit of costs is not made as required, Secretary General may direct tribunal to suspend work and set a time limit for payment, after which the relevant claims shall be considered as withdrawn. (Art. 36 (6).)	Yes, generally requested by the administrator. Additional deposits may be required. Case may be suspended or terminated in the event deposit of costs not made as required. (Art. 33.)	Yes, generally requested by the administrator. Additional deposits may be required. Case may be suspended or terminated in the event deposit of costs not made as required. The tribunal is barred from proceeding in the absence of requisite funds. Case may be treated as withdrawn in the event deposit is not made as required. (Schedule of Fees and Costs Sec.5.)	Yes, generally requested by the tribunal. Additional deposits may be required. Case may be suspended or terminated in the event deposit of costs not made as required. (Art. 43.)
Arbitrators/Tribunal Matters					
Number of Arbitrators	Three arbitrators unless parties have agreed in writing to a single arbitrator. (R. 5.1.)	Absent agreement of the parties, a sole arbitrator is appointed unless it appears to the ICC Court that the dispute warrants the appointment of three arbitrators. (Art. 12 (2).) This is a flexible and efficient standard.	Absent the parties' agreement, one arbitrator unless administrator determines three to be appropriate because of the size, complexity or other circumstances of the case. (Art. 5.)	Sole arbitrator appointed unless parties have agreed otherwise, or LCIA determines that a three-member tribunal is appropriate "in view of all the circumstances of the case." (Art. 5.4.)	Three arbitrators unless parties agree to a single arbitrator no later than 30 days following commencement (Art. 7 (1).) Provision for single arbitrator if unopposed. (Art. 7 (2).)
Selection	Deference given to self selection. If single arbitrator or three neutral arbitrators, selection is by agreement of the parties or, if none, by the neutral organization. (R. 5.3, 6.1.) If there are to be two party-appointed arbitrators, the two party arbitrators appoint the third, who shall be the chair. The neutral organization may be CPR, but not necessarily. It resolves an impasse between the party arbitrators if necessary as in the case of a single arbitrator. (R. 5.2.) Except where a party fails to participate in the list procedure, or if a party did not appoint 'party-appointed' arbitrator, the neutral organization shall submit candidate list to the parties for ranking by the parties prior making the appointment. (R. 6.4, 6.5.) With more than one claimant or respondent (R. 5.4), CPR serves as neutral organization if parties have not agreed on one. (R. 6.1.)	ICC Court may appoint or confirm arbitrators. Process works through the ICC Secretariat and then the ICC Court. In sole arbitrator cases, if the parties cannot agree on the arbitrator, the ICC Court appoints the arbitrator. Subject to party agreement to another procedure, in three-arbitrator cases, each party submits a candidate for confirmation at the time of commencement or answer, as applicable. The president/chair is appointed by the ICC Court, unless the parties have agreed on another appointment procedure. The ICC Court also will appoint party arbitrators in the event a nomination is not timely made. Nationalities, residences and other relationships with the countries of which the parties or the other arbitrators are nationals are considered, as is the ability to conduct the arbitration in accordance with the rules. Sole arbitrators and the tribunal president must be of a nationality other than those of the parties except in "[s]uitable circumstances." (Art. 13 (5).) Party appointees must file a statement of independence. (Arts.12- 13.)	Agreement of the parties or, after 45 days, upon request of any party, all arbitrators or neutral presiding arbitrators shall be appointed by administrator. (Art. 6.)	Appointments are made by the LCIA. "Due regard" for the "particular method or criteria of selection agreed in writing by the parties" is given. (Art. 5.5.) The chair of three-member tribunals will be appointed by the LCIA. (Art. 5.6.) Sole arbitrator or chair shall not have the same nationality of a party unless the parties not of the same nationality agree otherwise in writing. (Art. 6.1.)	Deference given to self selection. If single arbitrator, selection is by agreement of the parties or, if none, by the appointing authority selected by the parties. (Art. 8.) If the parties have not designated or agreed to an appointing authority, the Secretary-General of the Permanent Court of Arbitration at The Hague may designate the appointing authority. (Art. 6.) Parties receive lists of proposed arbitrators and candidates may be objected to. (Art. 8.) If three arbitrators, each party appoints an arbitrator and the two party arbitrators select the third, who becomes the presiding arbitrator. The appointing authority resolves an impasse on selection of the presiding arbitrator as in the case of a single arbitrator. (Art. 9.)
Standard for Disclosure by Arbitrators	Any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality. (R. 7.3.)	Every arbitrator must be and remain independent of the parties. (Art. 11 (1).) Nominated arbitrators must "sign a statement of acceptance, availability, impartiality and independence," and disclose in writing "any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as "any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality." (Art. 11 (2).)	Any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. (Art. 7.)	All arbitrators shall be and remain at all times impartial and independent of the parties and shall not act as advocate for any party. (Art. 5.2.) Written statement required to affirm impartiality and independence. (Art. 5.3.)	"Any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence." Continuing duty to disclose. (Art. 11.)

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TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Challenge of Appointment	Standard is "circumstances exist or arise that give rise to justifiable doubt regarding the arbitrator's independence or impartiality." Different standard to challenge a party's own appointed arbitrator. (R. 7.5.)	Any challenge to an arbitral appointment must be filed with the ICC Secretariat within 30 days of receipt of notice of appointment or confirmation, or within 30 days of receipt of information which forms the basis for the challenge. The ICC Court rules on the challenge (Art. 14 (2)), and its decision is final. (Art. 11 (4).)	Standard is "circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence." (Art. 8.) The ICDR makes the decision in its sole discretion. (Art. 9.)	Standard is "circumstances exist that give rise to justifiable doubts as to [the arbitrator's] impartiality or independence." (Art. 10.3.) Challenge must be made within 15 days of the formation of the tribunal or after becoming aware of the circumstances forming the basis of the challenge. (Art. 10.4.)	Standard for challenge is existence of circumstances that "give rise to justifiable doubts as to the arbitrator's impartiality or independence." (Art. 12.) Notice of challenge must be sent within 15 days after notification of appointment of the challenged arbitrator or within 15 days after circumstances giving rise to the challenge become known to the challenging party. (Art. 13 (1).) Appointing authority decides challenge if parties do not agree and subject arbitrator does not resign. (Art. 13 (4).)
Removal for Cause	Adopts UNCITRAL standard for removal. (R. 7.10.)	General standard for removal is if prevented de jure or de facto from fulfilling the arbitrator functions, or not fulfilling those functions in accordance with the rules or within prescribed time limits. (Art. 15 (2).) Not a clear standard. The ICC Court rules on the challenge (Art. 15 (3).) and its decision is final. (Art. 11 (4).)	Withdrawal mandatory if parties agree on the challenge. (Art. 8.) Administrator decides a contested challenge. (Art. 9.)	Arbitrator acts in deliberate violation of arbitration agreement, fails to act fairly and impartially, or fails to exercise reasonable diligence. (Art. 10.2.)	Only stated standard for removal is failure to act, or de jure or de facto impossibility of performing the arbitrator functions. (Art. 12(3).) Not a clear or thorough standard.
Replacement Arbitrators	Express provisions. Rehearing is in the tribunal's discretion except where sole or presiding arbitrator is replaced, in which case the successor decides whether to conduct rehearings. (R. 7.11.)	The ICC Court has discretion to determine whether to follow the original nominating process. Rehearing is in the discretion of the tribunal. (Art. 15 (4).)	Where an arbitrator withdraws not due to a challenge, rules permit continuation of proceedings with two arbitrators at the discretion of the tribunal. (Art. 11.) Substitute arbitrators appointed pursuant to Art. 6. (Art. 10.)	Express provisions. (Art. 11.) Under certain circumstances, rules permit continuation of proceedings with two arbitrators at the discretion of the tribunal. (Art. 12.)	If arbitrator resigns, new one must be appointed. No provision for completion of hearings with two arbitrators. (Art. 14.) Can be used to delay if party arbitrators serially resign.
Seat of the Arbitration—The Procedural Law	Determined by tribunal if parties have not agreed. The award is deemed made at such place. (R. 9.5.)	Referred to in these rules as the place of the arbitration. Fixed by the Court unless agreed by the parties. (Art. 18 (1).)	Parties may agree; if not, administrator makes initial determination but final decision is with tribunal within 60 days of its constitution. (Art. 13 (1).)	Parties may agree; if not, the seat is London unless the LCIA determines another location is more appropriate after soliciting comment of the parties. (Art. 16.)	If not designated by the parties, it is determined by the tribunal with regard to the circumstances of the case. (Art. 18 (1).)
Substantive Law	Determined by tribunal if not designated by the parties. (R. 10.1.)	Determined by tribunal if not designated by the parties. (Art. 21 (1).)	Determined by tribunal if not designated by the parties. (Art. 23 (1).)	As designated by the parties or, if the tribunal determines that the parties have made no agreement, the tribunal shall apply the law(s) or rules of law which it considers appropriate. (Art. 22.3.)	As designated by the parties or, if no agreement, the law which the tribunal determines to be appropriate. (Art. 35 (1).)
Language	Generally the language of the document containing the arbitration agreement, subject to tribunal to determine otherwise. Tribunal may also order translation of submitted documents. (R. 9.6.)	Absent parties' agreement, tribunal determines language(s) having due regard for all relevant circumstances, including the language of the contract. (Art. 20.)	If the parties have not agreed, the language of the document containing the arbitration agreement shall be used subject to tribunal power to determine otherwise. Tribunal may also order translation of submitted documents. (Art. 14.)	Initially it is the language of the arbitration agreement. If the arbitration agreement is in more than one language, the LCIA makes the preliminary determination. After the tribunal is appointed, the tribunal makes the final determination. (Art. 17.)	Agreement of the parties or, if none, one or more languages at the arbitrators' discretion. (Art. 19.)
Interim Measures of Protection					
Type	Tribunal permitted to take such measures as deemed necessary at a party's request. Tribunal may condition interim measures on giving of security. (R. 13.1.)	Unless the parties have agreed otherwise, at the request of a party, the tribunal may order "any interim or conservatory measure it deems appropriate." Relief may be conditioned on giving of "appropriate security" and may take the form of an order or award. (Art. 28 (1).)	Tribunal permitted to take such measures as deemed necessary, including injunctive relief and measures for the protection and conservation of property. Interim measures may take the form of an interim award; the tribunal may require security for the costs of such measures. (Arts. 21 and 31.)	The tribunal may order security for all or part of the amount in dispute; preservation, storage, sale or other disposal of any property or thing under the control of any party and relating to the subject matter of the arbitration; and on a provisional basis, subject to final determination in an award, any relief which the tribunal would have the power to grant in an award. Relief may be conditioned on giving of security and may take the form of an order or award. Parties may agree to limit interim measures. (Art. 25.)	Tribunal granted expansive authority to order such measures as are deemed necessary in respect of the subject matter of the dispute, including measures to maintain the status quo, to preserve evidence, to preserve assets out of which a subsequent award may be satisfied and "take action that would prevent, or refrain from taking actions that is likely to cause," current or imminent harm, or prejudice to the arbitral process. Such interim measures may be established in the form of an interim award and the tribunal may require security for the costs of such measures. (Art. 26.) This is a more restrictive authority than, e.g., under the ICC Rules.

TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Express Recognition of Court Proceedings as Alternative Route to Interim Measures of Protection	Yes. (R. 13.2.)	Yes, but may be limited once the file is transmitted to the tribunal. (Art. 28 (2).)	Yes. (Art. 21 (3).)	Yes, but may be limited after the formation of the tribunal. (Art. 25 (3).) Right to apply to a state court or judicial authority is limited with respect to the relief available from the tribunal under Article 25.1.	Yes. (Art. 26 (9).)
Emergency Measures of Protection					
Available Procedure	Interim measures via application to a special, pre-tribunal arbitrator. (R. 14.3.)	ICC now has Emergency Arbitrator Rules (known as Appendix V) which permit a party seeking urgent interim or conservatory measures that cannot await constitution of the tribunal to make application for appointment of an emergency arbitrator. (Art. 29.)	Procedure available for emergency measures of any interim award deemed necessary, including injunctive relief, measures for conservation, protection of property, etc. (Art. 37.)	Expedited formation rule (Art. 9), and Interim and Conservatory Measures rule (Art. 25), but no specific Emergency Measures rules.	None.
Terms of Reference					
Required?	None.	Required. Due to be received by the Secretariat within two months of transmittal of the file to the tribunal. Extendable at the request of the tribunal or by the Secretariat sua sponte. Must be signed by the tribunal and all parties. (Art. 23.) This process can often delay the case by many months as the arbitrators and the parties negotiate the terms. Under French law, if not others, once the terms of reference are signed, the parties are bound by them.	None.	None.	None.
Provisional or Procedural Timetable					
Required?	None.	"Procedural timetable" required. To be established by tribunal after consulting with the parties at or following a "case management conference," which occurs while drawing up the Terms of Reference or as soon thereafter as possible. Filed with ICC Court. (Art. 24 (1) and (2).)	None.	None.	Required, as soon as practicable after constitution of the tribunal and after inviting the parties to express their views. (Art. 17 (2).)
Pre-Hearing Conference					
Requirement and Timing	Required, generally to be held promptly after the constitution of the tribunal. (R. 9.3.)	See Provisional Timetable.	Optional at the discretion of the tribunal. (Art. 16 (2).)	No specific provision.	No specific provision. Not covered by Art. 17 (3).
Disclosure					
General Standard for Production of Documents	Tribunal may order "(s)uch disclosure as is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making disclosure expeditious and cost effective." (R. 11.)	Silent. Generally quite limited.	The tribunal may order parties to deliver a summary of reliance documents (Art. 19 (2)), but also may order parties to produce "other documents, exhibits or other evidence it deems necessary or appropriate." (Art. 19 (3).)	Tribunal has the power to order any party to produce to it and the other parties for inspection, and to supply copies of, any documents or classes of documents in their possession which the tribunal determines to be relevant. (Art. 22.1 (e).)	The tribunal may require parties to produce documents, exhibits or other evidence (Art. 27 (3)).
Orders of Protection or Confidentiality	Tribunal authorized to issue orders of protection for proprietary, trade secrets, or other sensitive information. (R. 11.)	"Upon request of any party, the arbitration tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information." (Art. 22 (3).)	No specific provision.	General requirement of confidentiality with respect to "all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain." (Art. 30.1.)	No specific provision.
Witness Disclosure	No specific provision.	No specific provision.	No less than 15 days before hearings. (Art. 20 (2).)	May be required. (Art. 20.1.)	No less than 45 days before hearings. (Art. 25.)
Remedies for Non-Compliance with Rules or Order of Tribunal	If deemed material by tribunal, after passage of reasonable period for compliance, a just remedy may be imposed, including an award on default. Hearing must be held before issuance of award to establish prima facie case. (R. 16.)	Silent. Commentators suggest that adverse inference may be drawn.	Case may proceed on the evidence before the tribunal. (Art. 23 (3).) Note: Lacks teeth; not favorable to non-defaulting party. However, under Art. 28 (5), the tribunal may award costs to a party to compensate for dilatory or bad-faith conduct in the arbitration.	Silent.	Case may proceed on the evidence before the tribunal. (Art. 30 (3).) Note: Lacks teeth, not favorable to non-defaulting party. Commentators suggest that adverse inference may be drawn.

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TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Conduct of Hearings					
General Discretion and Obligation in Conducting the Proceedings	"Subject to these International Rules, the tribunal may conduct the arbitration in such manner as it shall deem appropriate." (R. 9.1.) The tribunal is obligated to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible. (R. 9.2.) The tribunal shall determine the manner in which the parties present their cases. (R. 12.1.)	The tribunal and the parties "shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute." (Art. 22 (1).) The tribunal, "after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties." (Art. 22 (2).) In all cases, the tribunal "shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case." (Art. 22 (4).) The tribunal shall be in "full charge" of the hearings. (Art. 26 (3).) If the Rules are silent, the parties may agree upon rules or, failing that, the tribunal may establish such rules. (Art. 19.) The tribunal may adopt procedural measures or modify the procedural timetable "to ensure effective case management." (Art. 24 (3).) Tribunal to proceed "within as short a time as possible to establish the facts of the case by all appropriate means." (Art. 25 (1).) "In all matters not expressly provided for in these Rules, the Court and the Arbitral Tribunal shall act in the spirit of these Rules . . ." (Art. 41.)	"Subject to these Rules, the tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case." (Art. 16 (1).) The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. (Art. 16 (2).)	Tribunal required to "act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent," and avoid "unnecessary delay or expense, so as to provide a fair and efficient means for the final resolution of the parties' dispute." (Art. 14.1.) Unless agreed otherwise by the parties, the tribunal shall have the widest discretion to discharge its duties allowed under such law(s) or rules of law as the tribunal may determine to be applicable. (Art. 14.2.) The tribunal shall have the "fullest authority to establish time limits for meetings and hearings. (Art. 19.5.)	"Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case." The arbitral tribunal shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute. (Art. 17 (1).)
Pre-Hearing Memoranda	Yes, unless the parties agree or the tribunal determines otherwise. (R. 12.1.)	No express provision but see Art. 25 (2) regarding parties' written statements. Not typically employed.	No specific provision.	No specific provision.	No specific provision. Left to the discretion of the tribunal. (Art. 24.)
Hearings in Person	If either party requests, otherwise discretion of tribunal. (R. 12.2.)	Once the tribunal has studied the written submissions and documentary evidence, either party may request a hearing in person or the tribunal may of its own motion decide to hold a hearing. (Art. 25 (2).)	Impliedly required (Art. 20 (1)), but under tribunal's general power to conduct the arbitration in whatever manner it considers appropriate (Art. 16 (1)), oral hearings may not be required.	If either party requests it. (Art. 19.1.) No express provision for the tribunal to require hearings.	If either party requests it, otherwise discretion of tribunal. (Art. 17 (3).)
Location of Hearings	Meetings and hearings may be held anywhere tribunal deems appropriate. (R. 9.5.)	Tribunal may conduct hearings and meetings at any location it considers appropriate subject to the parties' agreement. (Art. 18 (2); see also Art. 26 (1).)	The tribunal may hold conferences or hear witnesses at any place it deems appropriate. (Art. 13 (2).)	The place and time of meetings and hearings is fixed by the tribunal. (Art. 19.2.)	Location of hearings is within the tribunal's discretion. Unless otherwise agreed by the parties, the tribunal may also meet at any location it considers appropriate for any other purpose, including hearings. (Art. 18 (2).)
Formal Judicial Rules of Evidence	Not required to be applied. (R. 12.2.)	Excluded by implication and interpretation. (Art. 25.)	Excluded by implication and interpretation. (Arts. 16, 19.)	Excluded by implication and interpretation. May be applied by order of the tribunal. (Art. 22.1 (f).)	Excluded by implication and interpretation. (Art. 27 (4).)
Tribunal Requests for Evidence	Permitted. (R. 12.3.)	The tribunal may decide to hear witnesses, experts and any other person and may summon any party to provide additional evidence. (Art. 25.)	Permitted. (Art. 19 (3).)	Apparently permitted under Art. 22.1.	Permitted. (Art. 27 (3).)
Tribunal Appointment of Neutral Experts	Permitted. (R. 12.3.)	Permitted. (Art. 25 (4).)	Permitted. (Art. 22.)	Permitted. (Art. 21.)	Permitted. (Art. 29 (1).)
Specific Procedures for Tribunal Experts	No.	No.	Yes. (Art. 22.)	Yes. (Art. 21.1.)	Yes. (Art. 29.)
Tribunal Inspection of Goods or Property	No express provision.	No express provision but Art. 19 suggests permissibility.	The tribunal may inspect property at any place it deems appropriate. (Art. 13 (2).)	Yes. (Art. 22.1.)	Permitted at any location unless otherwise agreed by the parties. (Art. 18 (2).)
Written Statements of Witnesses	Discretion of the tribunal. (R. 12.2.)	Silent; parties' written submissions mentioned in Art. 25 (2).	Permitted. (Art. 20 (5).)	Permitted. (Art. 20.3.)	Permitted. (Art. 27 (2).)
Telecommunication / Videoconferencing	R. 9 may permit use.	Discussed approvingly in Art. 24(4), Arbitral Proceedings; App. IV, Case Management Techniques; and App. V, Art. 4(2) on emergency arbitrator procedures.	Not addressed.	Not addressed.	Permitted of all witnesses at the discretion of the tribunal. (Art. 28 (4).)
Respect of Legal Privilege	Tribunal determines the applicability of any privilege or immunity (R. 12.2.)	Silent.	To be taken into account by the tribunal. (Art. 20 (6).)	Silent.	Silent.

TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Usages of Trade Considered	Usages of trade applicable to the subject contract shall be considered by the tribunal. (R. 10.2.)	Tribunal required to take account of the provisions of the contract and relevant trade usages. (Art. 17 (2).)	Usages of trade applicable to the subject contract shall be considered by the tribunal. (Art. 28 (2).)	Silent.	Yes. (Art. 35 (3).)
Translations	Need and arrangements determined by tribunal. (R. 12.4.)	By implication and interpretation, determined by tribunal.	By agreement of the parties or at the request of the tribunal, the administrator makes arrangements. (Art. 20 (3).)	The language agreed by the parties. If no agreement, the language will initially be the language of the arbitration agreement. After the tribunal is appointed, it decides the language. Document translations may be ordered. (Art. 17.)	Tribunal may order translation into language agreed by parties or language determined by tribunal (19.2).
Are Hearings Open or Closed?	Tribunal may exclude witnesses during testimony of other witnesses. (R. 12.4.)	Closed except with consent of the tribunal and the parties. (Art. 26 (3).)	Hearings are private unless agreed otherwise by parties, or law requires otherwise. Tribunal may exclude witnesses during testimony of other witnesses. (Art. 20 (4).)	Closed unless otherwise agreed by the parties or directed by the tribunal. (Art.19.4.)	Closed unless agreed by the parties. (Art. 28 (3).)
Closure of Hearings	Silent.	Hearings shall declare the proceedings closed as soon as possible after the last hearing or the filing of the last authorized submission. Further submissions, arguments or offers of evidence may then be made only upon request of, or with permission of, the tribunal. (Art. 27.)	Hearings may be declared closed if the parties have indicated no further testimony or evidence is required, or the tribunal is satisfied that the record is complete. (Art. 24(1).) The tribunal may, upon application of a party or on its own motion, reopen the hearings at any time before the award is made. (Art. 24 (2).)	Full authority to establish time limits for meeting and hearings or any part thereof. (Art. 19.5.)	Hearings may be declared closed if the parties have indicated no further proofs to offer, witnesses to be heard or submissions to be made. (Art. 31 (1).) The tribunal may, upon application of a party or on its own motion, reopen the hearings at any time before the award is made if it considers it to be necessary owing to exceptional circumstances. (Art. 31(2).)
Award					
Types of Award	Final, interim, interlocutory and partial. To facilitate enforcement of non-final awards, tribunal may state that it views the award as final for purposes of any related judicial proceedings. (R. 15.1.)	Interim, partial and final awards are specified (Art. 2 (v)), as is award by consent (Art. 32). Other possibilities are envisioned (See "inter alia" in Art. 2(v).)	Final, interim, interlocutory and partial. (Art. 27 (7).) In the case of a settlement during the pendency of the proceedings, at the request of the parties, an award on agreed terms may also be made. (Art. 29 (1).)	By express provisions, final and consent awards. (Art. 26.) Interim awards may be issued under Art. 26.7.	Separate awards on different issues authorized (Art. 34 (1).) Implies authority to issue final, interim, interlocutory and partial awards. In the case of a settlement during the pendency of the proceedings, at the request of the parties, an award on agreed terms may also be made. (Art. 36 (1).)
Form of Award	Reasoned unless the parties agree otherwise. (R. 15.2.)	Reasoned. No exception. (Art. 31 (2).)	Reasoned unless the parties agree otherwise (Art. 27 (2)), or for award issued upon parties' settlement (Art. 29 (1).)	Reasoned unless the parties agree otherwise. (Art. 26.1.)	Reasoned unless the parties agree otherwise (Art. 34 (3)), or for award issued upon parties' settlement. (Art. 36 (1).)
Award Required to be Made at the Place of Arbitration	Award deemed made at the seat. (R. 15.2.)	Award deemed to be made at the place of the arbitration. (Art. 31 (3).)	Yes. (Art. 27 (3).)	Silent.	Award deemed to have been made at place of arbitration. (Art. 18 (1).)
Time Limit for Issuance	Silent	Generally, a final award is due six months from the last signature of a party or arbitrator on the Terms of Reference. Subject to extension by the ICC Court. (Art. 30)	"Promptly" in Art. 27 (1).	Silent.	Silent.
Formalities	Award must be dated and signed by the sole arbitrator, or if a tribunal, a majority of the arbitrators. If a tribunal member does not sign, the award must be accompanied by a statement of whether the third arbitrator was given the opportunity to sign. (R. 15.2.) Tribunal required to comply with filing or other requirements under the governing procedural law. (R. 15.4.)	Decision is by the majority and if a majority cannot be reached, the award is made by the chairman alone. (Art. 31 (1).) A unique characteristic is the ICC Court's mandatory scrutiny of draft awards before signature by the tribunal. The ICC Court may require modifications as to form without affecting the tribunal's liberty of decision, although the ICC Court "may also draw [the tribunal's] attention to points of substance." (Art. 33.) The ICC Court may consider the requirements of mandatory law at the place of arbitration. (Art. 6, Internal Rules of the ICC Court ("Appendix II").)	Award must state the date and place where the award was made. (Art. 27.) Award must be signed by the arbitrator(s), and if a tribunal member does not sign, the award, it must state the reason for the absence of a signature. (Art. 26(1).)	Award must state the date on which the award was made and the seat of the arbitration. It must be signed by the tribunal or those members assenting to it. The reason for an omitted signature must be given. (Art. 26.)	Award must be signed by the arbitrator(s), and if there is a tribunal and a tribunal member does not sign, the award must state the reason for the absence of a signature. (Art. 34 (4).)

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TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Currency of Award	Silent.	Silent.	Currency of the contract subject to tribunal discretion. (Art. 28 4.)	The award may be "expressed in any currency." (Art. 26.6.)	Silent.
Pre-Award and Post-Award Interest	Silent.	Silent.	May be awarded as considered appropriate by the tribunal. (Art. 28 (4).)	May be awarded at a rate determined by the tribunal, regardless of the rate imposed under state law. Interest award may be simple or compound and cover any period up to the date on which the award is complied with. (Art. 26.6.)	Silent.
Types of Remedies Expressly Permitted	Any remedy or relief, including specific performance, within the scope of the parties' agreement and permissible under the applicable substantive law. (R. 10.4.)	Silent.	Silent.	Silent.	Silent.
Limitations on Relief	Punitive, exemplary or similar damages are excluded unless required by substantive law or allowed by agreement of the parties. (R. 10.5.)	Silent.	Parties waive punitive, exemplary or similar damages unless required by substantive law or agreement of the parties. This provision shall not apply to any award of arbitration costs to a party to compensate for dilatory or bad faith conduct in the arbitration. (Art. 28 (5).)	Silent.	Silent.
Post-Award Requests	Within 20 days of receipt of award, a party may request clarification, correction, or award as to claims not determined. (R. 15.5.)	Within 30 days of receipt of award, a party may request interpretation or correction of the award. (Art. 35.) No provision for an award as to claims not determined.	Within 30 days of receipt of award, a party may request interpretation or correction of the award, or an award as to claims not determined. (Art. 30 (1).)	Within 30 days of receipt of award, a party may request correction of the award, or an award as to claims not determined. (Art. 27.)	Within 30 days of receipt of award, a party may request correction of award or the tribunal may make such correction of its own initiative. (Art. 38.) Within 30 days of receipt of award, a party may request additional award from claims presented but omitted from the award. (Art. 39(1).) Within 30 days of receipt of award, a party may request interpretation of award. (Art. 37.)
Costs	Fixed by tribunal at time of award. (R. 17.2.) Allocation by tribunal subject to party agreement. (R. 17.3.)	Costs allocated by tribunal at time of award. (Art. 37 (4).) ICC Court sets or approves the fees of the arbitrators. At any time during the arbitral proceedings, interim award of costs and order for payment may be made by tribunal (Art. 37 (3).) Express authorization to consider the degree to which a party has conducted the arbitration in an expeditious and cost-effective manner. (Art. 37 (5).)	Fixed by tribunal. Tribunal may make a reasonable apportionment in the award, taking into account the circumstances of the case. (Art. 31.)	Arbitration costs (other than legal costs) are determined by the LCIA and allocated by the tribunal. All costs should be allocated on the general principle that costs should reflect the parties' relative success or failure in the award or arbitration. The reasons for the costs award must be stated. (Art. 28.)	Fixed by the tribunal. (Art. 40.) Generally, costs shall "in principle" be borne by the unsuccessful party, subject to the tribunal's discretion. (Art. 42 (1).)
Items Included in Costs	Tribunal fees; expenses; costs of tribunal and party experts; legal and other costs incurred by parties, and costs the tribunal deems appropriate, administrative costs of neutral organization. (R. 17.2.)	Arbitrators' fees and expenses; administrative expenses of ICC fixed by the ICC Court; fees and expenses of tribunal experts, and reasonable legal and other costs incurred by the parties. (Art. 37 (1).)	Tribunal fees and expenses, costs of tribunal experts, administrator fees. (Art. 31.) Non-exclusive list. Emergency relief pursuant to Art. 21.	The "Schedule of Arbitration Fees and Costs" discusses administrative charges in part one, and the tribunal's fees and expenses under part four.	Tribunal fees and expenses; costs of tribunal experts; travel and other expenses of tribunal and witnesses in discretion of tribunal; reasonable legal fees and expenses of the parties; Appointing authority fees. (Art. 40.)
Award of Attorney's Fees	At the tribunal's discretion, they may be included in costs. (R. 17)	Shall be included in costs awarded. (Art. 37 (1).)	At the tribunal's discretion, reasonable costs for legal representation by the successful party may be included in costs. (Art. 31(d).)	The award may order all or part of the legal or other costs incurred by a party to be paid by another party unless the parties have agreed otherwise. The tribunal determines the amount of such costs. (Art. 28.3)	The tribunal may award reasonable costs for legal representation and assistance. (Art. 40(e), 42 (2).)
Confidentiality of Award	Yes, except in connection with judicial proceedings ancillary to the arbitration. (R. 18.)	Silent.	Yes, except by parties' agreement or required by law. (Art. 34.) Nevertheless, unless the parties agree otherwise, the administrator reserves the right to publish awards, rulings and decisions redacted to conceal the names of the parties and other identifying details or that have been made publicly available in the course of enforcement or otherwise. (Art. 27 (8).)	Not published without parties' prior consent. (Art. 30.3.) General rule of confidentiality. (Art. 30.1.)	Confidential except that award may be made public with consent of parties or where and to extent disclosure required by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority. (Art. 34 (5).)

TOPIC	CPR	ICC	ICDR/AAA	LCIA	UNCITRAL
Miscellaneous					
Confidentiality of Proceedings	Yes, except in connection with judicial proceedings ancillary to the arbitration. (R. 18.)	Silent.	Yes. (Art. 34.)	General requirement of confidentiality with respect to "all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain[.]" (Art. 30.1.)	Hearings are held in camera unless the parties agree otherwise. (Art. 28 (3).)
Mediation amidst Arbitration	Rules are supportive. Tribunal members barred from mediating and "will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless both parties consent." (R. 19.)	Silent.	Silent but covered by AAA Rules of Ethics.	Silent.	Silent.
Limit of Arbitrator Liability	Yes, except for conscious and deliberate wrongdoing. (R. 20.)	General exclusion of liability for tribunal and others. (Art. 40.)	Yes, except for conscious and deliberate wrongdoing. (Art. 35.)	Yes, except for conscious and deliberate wrongdoing. (Art. 31.1.)	Yes, parties waive claims to the fullest extent allowed by law except in case of intentional wrongdoing. (Art. 16.)
Waiver of Compliance with Rule	Yes, if a party knows of the failure and fails to promptly object. (R. 21.)	Yes. Wording may be argued to apply to jurisdictional challenges as well. (Art. 39)	Yes, if a party knows of the failure but proceeds with the arbitration and fails to promptly object. (Art. 25.)	Yes, if a party knows of the failure but proceeds with the arbitration and fails to promptly object. (Art. 32.1.)	Yes, if a party knows of the failure but proceeds with the arbitration and fails to promptly object, unless it can show that failure to object was justified. (Art. 32.)
Arbitrator Compensation	Arbitrators compensated "on a reasonable basis determined at the time of appointment[.]" The compensation of each arbitrator shall be fully disclosed to all tribunal members and parties. (R. 17.)	Determined by the ICC Court, not the arbitrators. The ICC Court uses a published scale (Appendix III (B)) but it may deviate from it in exceptional circumstances. (Art. 37 (2).)	Arbitrators compensated based upon their amount of service, taking into account their stated compensation rate and the case's size and complexity. Rate is set by negotiation through the ICDR "as soon as practicable after the commencement of the arbitration" or, if no agreement is reached, it is set by the ICDR. (Art. 32.)	Rates agreed prior to appointment, referred to a schedule of guidelines.	Arbitrators' compensation fixed by tribunal and shall be "reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case." (Art. 41.) A mechanism is provided for the parties to dispute the fees determined by the tribunal.
Arbitral Institution as Appointing Authority	N/A	Available in ad hoc proceedings.	N/A	N/A	N/A

ADR Skills

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numerous claims and counterclaims, and complex technical issues. Without continuing cooperation, it is easy for everyone to get caught up in an escalating conflict that gets resolved only after lengthy, bitter, and expensive litigation.

In PEN processes, lawyers can maintain or increase their revenue by offering creative compensation arrangements that satisfy both clients' and lawyers' interests. They can design fee arrangements that provide bonuses for achieving clients' goals and resolving matters relatively quickly. Sharp lawyers can generate efficiencies, share the savings with clients, and thus increase their effective hourly rates. See, e.g., Mark D. Wolf, "Update: How Value Billing Helps Both the Client and the Law Firm," 28 *Alternatives* 1 (2010).

PEN is not appropriate in every case but when it is, it is a useful tool for lawyers to satis-

fy many clients and make money by using their time more efficiently. Lawyers should routinely do an "early case assessment" to analyze what procedures would be most appropriate in each case. The CPR Institute's Early Assessment Toolkit provides an especially good protocol. (See www.cpradr.org/Resources/ADRTools/EarlyCaseAssessmentGuidelines.aspx; CPR publishes this newsletter.)

This article highlights key points from my book, "Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money" (ABA 2011), which describes how lawyers take the initiative to manage cases efficiently from the outset and plan a reasonable negotiation process when appropriate. The book includes advice from interviews of outstanding lawyers who handle all kinds of cases.

LAYING THE FOUNDATION

How can lawyers build an escape hatch from their prison of fear? One option is to work with

their counterpart lawyers to jointly plan and manage the dispute resolution process and can keep it on track.

Building confidence in the process can be especially helpful at the outset, when the parties may be especially afraid and distrustful.

Effective lawyers begin by developing good working relationships with their counterparts. Arranging a face-to-face meeting at the outset, perhaps over a meal, can help lawyers get to know each other as individuals, not merely as "opposing counsel."

At these initial meetings, they may spend much of their time getting to know each other, not just discussing the details of the case. When lawyers have such personal connections, they are more likely to resolve problems in a case than if they merely maintain a professional arms-length relationship.

Lawyers can reassure their clients that they have little to lose by exploring negotiation as they can stop the process at any time. If they

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