

STEVEN A. CERTILMAN

Asked and Answered

- What do you regard as the most important differences between arbitration and litigation in court?

The likelihood of more expeditious resolution and the ability to select your arbitrator(s).

- What are the most important qualities for a successful arbitrator to have?

One must have strong listening skills, proven experience in managing an efficient dispute resolution process and the will to make decisions which put that experience into practice.

- Do you prefer to be a sole arbitrator or a member of a three-arbitrator panel?

I enjoy the process of deliberating over a complex case. Accordingly, I prefer being part of a panel.

- Do you prefer to be a party appointed arbitrator or the chairman of a three-arbitrator panel?

I am very comfortable chairing a panel and, in particular, I enjoy having principal responsibility for shaping the process. My preference is to serve as chair.

- What are the best ways to achieve efficiency in arbitration consistent with fairness to all parties?

It is important to spend a bit of time during the preliminary conference understanding the key factual issues and the nature of the evidence which the parties must uncover through disclosure in order to prove their positions. Once this is understood, an appropriate balance can be achieved between necessary discovery and cost effectiveness.

- Do you believe that there is a role in arbitration for dispositive motions?

I do believe there is a place for dispositive motions, however it must be recognized as quite small. I fully support the pre-screening and approval procedure employed in Rule R-33 of the Commercial Arbitration Rules of the American Arbitration Association.

- What is the importance in arbitration of cross-examination?

One must consider the legal system composition of the parties. If there is a civil law system party involved, counsel may not be accustomed to cross-examination. Nevertheless, cross-examination has become commonplace in international arbitration and is generally permitted.

- When is it appropriate for direct testimony to be presented in written witness statements?

Use of written witness statements is appropriate any time the parties are willing to agree to it. It is appropriate for the arbitrators to inquire about it during the preliminary conference.

- What are the differences, from the point of view of the arbitrator, between commercial arbitration and investment arbitration?

Different governing norms, greater political impact, more participants, higher profile case.

- Do you believe that tribunal secretaries should be used by arbitrators? If so, what is their proper role?

I have not found it necessary to use a tribunal secretary but I do see how, in a case of extreme complexity, clerical and administrative assistance would be very helpful. Party consent is appropriate.

- How do you deal with requests for subpoenas of third-party witnesses and/or documents?

I require the requesting party to provide a memo demonstrating the arbitrator's power to issue the subpoena. I do not require a demonstration of enforceability as I believe that is an issue between the witness and the requesting party.

- Do you believe that Arbitrators have the right or an obligation to conduct their own legal research?

Arbitrators should generally not conduct their own research. In the unusual event that the arbitrators believe it is appropriate to do so, the issue and results of the research should be disclosed to the parties and they should be given the opportunity to respond to the results of the research.