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Asked and Answered

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

  The ability to select your arbitrator(s) and the likelihood of more expeditious resolution. I would like to add that the arbitration process is more cost effective than litigation however this is highly dependent on the pre-hearing expectations (dispositive motions, discovery) of counsel.

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

  Strong listening skills, proven experience in managing a fair and efficient dispute resolution process and the will to own the process and 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 do not have a preference per se. I am very comfortable being sole arbitrator however I greatly enjoy the process of deliberating over a complex case with colleagues.

- 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 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?

  For an arbitrator committed to the goal of cost efficiency, it is important to be clear about that commitment from the first encounter with counsel and to encourage them to support the goal for the benefit of their parties. Having counsel working toward a cost effective resolution makes it much more likely that decisions along the way will lead to such efficiency. Prior to the preparatory conference, it is important to review the causes of action and consider the key factual questions and anticipate the nature of the evidence which the parties must uncover through disclosure in order to prove their positions. This is very helpful to achieving an appropriate balance 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 I also believe that it must be recognized as quite small. This is largely because of the increased risk that an award based on a summary disposition may be vacated. I fully support the pre-screening and approval

procedure employed in Rule R-33 of the Commercial Arbitration Rules of the American Arbitration Association to interpose a cost-benefit analysis into the process.

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

  This can be assessed after considering the legal system composition of the parties. If there is a civil law system party involved, counsel may not be accustomed to cross-examination and consideration should be given to imposing a limitation on cross-examination. That said, cross-examination has become more commonplace in international arbitration and is generally permitted to some degree.

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

  Use of written witness statements is a powerful cost and time savings tool which the parties should be encouraged to voluntarily accept. In appropriate circumstances, written witness statements may be imposed on the parties, especially as a means to reduce the amount of time allocated for the hearing of the case.

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

  Treaty-based arbitration is public and has a political component which may impose outside pressures and collateral considerations. There are different governing norms, of course.

- 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 an extremely complex case could involve a number of exhibits or level of clerical or administrative burden which justifies such assistance. 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. If the number of subpoenas appears to be clearly excessive, limitations may be imposed.

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

  I believe the parties are entitled to present their cases as they see fit and that arbitrators should not assume that an omission was not deliberate. Thus, arbitrators should generally not conduct their own research. In the unusual event that the arbitrators believe it is appropriate to do so, the issue researched and results of the research should be disclosed to the parties and they should be given the opportunity to respond to the arbitrators findings.