

Legal Perspective

Arbitration: Often Efficient, Economical and Effective

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Parties need not take their cases to court and risk having to spend months and possibly years in litigation. The American Arbitration Association (AAA) and the American Health Lawyers Association (AHLA) provide alternative and often cost-effective forums for parties to dispute commercial and healthcare issues respectively in the form of a binding arbitration proceeding. This type of dispute resolution is often mandated in legal documents initially executed by the parties, or it may be agreed upon by the parties at the outset of litigation.

Prior to arbitration, parties may want to (or, if their legal documents so provide, be required to) mediate the dispute prior to arbitrating or litigating. Both the AAA and the AHLA can provide neutral mediators to help the parties attempt to reach a settlement. If the mediation is not successful, then litigation or arbitration will ensue. However, even where the mediation is unsuccessful, the opposing parties can find mediation useful, as it can often help them understand better the strength and weaknesses of their respective cases, and also that of their opponents.



In both the AAA and the AHLA, once two parties agree in writing to submit their case to arbitration, either one or three arbitrators are appointed, depending upon the election of the parties or the requirement of the legal documents that mandate arbitration. The parties must agree upon the arbitrator or arbitrators.

In this article, we will assume that only one arbitrator is appointed. This arbitrator acts as a judge but, unlike judges in the court system, an arbitrator is not bound by strict federal or state procedural rules throughout the arbitration process. Thus, because of the wide ambit of discretion granted to the arbitrators, arbitration is generally a more relaxed, less-constrained manner in which to resolve a dispute.

Parties may request normal arbitration proceedings or elect to have expedited arbitration proceedings. In either case, the arbitrator will set a hearing date. In an expedited proceeding, the hearing date must be set no later than 30 days after the appointment of the arbitrator. In a normal proceeding, the arbitrator may allow the parties to conduct discovery prior to the hearing. However, in an expedited hearing, an arbitrator will not allow for discovery, which greatly aids in reaching a decision more quickly. Again, the arbitrator's discretion is key to the spirit of arbitration, and therefore, an arbitrator could allow for discovery albeit limited if the parties so request.

The arbitration hearing proceeds similar to a regular court trial, with the petitioner presenting his opening arguments and evidence first followed by the respondent's opening arguments and evidence. Evidence is admitted in the form of documentation from the parties. Since the arbitrator will not be bound by federal or state evidence rules hearings do not need to be hindered and lengthened by needless objections. However, the more significant the evidence, the more likely the rules of evidence will apply and double and triple hearsay are rarely admitted.

The hearing is deemed complete once the arbitrator closes the hearing. The length of an expedited hearing must not exceed two days. In an AHLA arbitration, an award shall then be issued within thirty days of the close of a regular hearing and within 20 days of the close of an expedited hearing.

With the AAA, the cost of the arbitration varies according to the amount of petitioner's claim but there are reasonable and already fixed fees with the AHLA. For example, for the parties' first panel of arbitrators in the AHLA, the parties must share the cost of \$2,000, whereas in the AAA, the parties' prospective estimate of damages, which may vary as the proceeding goes forward, determines the parties' arbitration fees. In any case, the AHLA's fees are not subject to the parties having to estimate their future damages but rather provides a more clear fixed fee schedule. For a list of the AHLA's guidelines and fees, go to www.healthlawyers.org.

There are potential disadvantages to arbitration, and not all attorneys prefer it. For one thing, the arbitrators cost money, while judges do not. Sometimes the parties agree that the loser in arbitration pays all the fees of the arbitrator.

Also, arbitration is final; there is no appeal. Furthermore, while arbitration usually proceeds faster than if the matter was in the court system, often considerably faster, that is not always true, particularly when significant discovery is involved. In addition, sometimes a party with much deeper pockets than the other, as part of its strategy, may attempt to increase costs through cumbersome discovery requests and delay the proceeding. Finally, in some matters one side or both want a jury trial, which cannot happen in arbitration.

Nevertheless, arbitration and mediation provisions in healthcare contracts are becoming more common, and even where they don't exist, the parties may elect to arbitrate anyway.

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