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Shumaker, Loop & Kendrick, LLP

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NOT YOUR FATHER'S **ARBITRATION**

The oft-spoken criticism of arbitration is that it's just as slow and expensive as litigation. The major arbitration providers -- AAA, JAMS, and CPR – have heard this criticism clearly, and have responded by training arbitrators the last few years to promote speed and economy. (The AAA also just released revised rules aimed at speed and economy.)

By Peter R. Silverman

Here's a proposed schedule that the best arbitrators' would look on favorably:

- Fact and expert discovery will be focused, limited, and done within two to four months.
- Discovery disputes will be raised by e-mail or short letter; promptly opposed by e-mail or short letter; and ruled on within three days, with a telephone conference optional.
- No motions will be allowed unless the movant first makes a strong showing that the motion would be dispositive of a significant issue and likely to prevail.
- Hearing will be finished within six months of preliminary conference, and will finish within the number of days set at the preliminary conference.
- Any deviation from these standards, and continuances of any dates, will be strongly disfavored.

If you want to be sure you don't get stuck with the slow, expensive arbitration you may remember from years back, write specific speed-and-economy procedures into your arbitration clause. Discuss your arbitration clause carefully with your counsel, as clauses also need to be tailored to the business relationship in the contract.

Bottom line -- this isn't your father's arbitration. If you're looking to resolve disputes quickly, economically, and confidentially, put a well-written arbitration clause into your contracts.

(This article is an offshoot of an article Mr. Silverman published in THE FRANCHISE LAWYER 16:3 (Summer 2013))

For additional information, contact Peter Silverman at psilverman@slk-law.com or 419.321.1307.