



## **If You Want to Arbitrate in Kentucky, You Must Say So.**

By: Ryan M. McLane

I recently read an article on the “essential terms” needed in an arbitration clause to achieve cost-effective arbitration. I then reviewed a Nashville lawyer’s thoughtful commentary on the article. See [Essential Terms to Include in an Arbitration Clause](#). Being a lawyer, after all, I felt compelled to throw in my two cents.

The original article states six “essential terms” for the arbitration clause. I generally like and agree with five of them: 1) insist on a single arbitrator (as opposed to a three-arbitrator panel); 2) limit the time to the hearing, the length of the hearing, and the time to decision; 3) adopt a notice pleading standard; 4) limit discovery; and 5) authorize sanctions. These five terms all provide ways to economize the dispute, which is a primary goal of arbitration (as opposed to litigation) in the first place.

However, I need to address one *major* problem I found with their sixth “essential term.” In Kentucky, for example, along with a number of other states operating under a version of the Uniform Arbitration Act, using the sixth “essential term” could render your arbitration clause *unenforceable*, i.e. worthless. The sixth term seeks to “ease the confirmation process” by “vesting every district court in the United States with the jurisdiction to confirm and enter judgment on the arbitration award.” This will not work for a dispute in Kentucky and many other states.

In Kentucky, the arbitration clause must provide that the arbitration proceedings “shall be held in Kentucky.” Otherwise, a Kentucky court will not have jurisdiction to compel arbitration or enforce the arbitration award. *Ally Cat, LLC v. Chauvin*, 274 S.W.3d 451 (Ky. 2009). You cannot “agree” that Kentucky has subject matter jurisdiction over the arbitration. You have to follow the Kentucky Arbitration Act, which provides that the arbitration must be held in the Commonwealth. Similarly, you cannot manufacture federal subject matter jurisdiction by agreeing so in the arbitration clause.

Economizing arbitration with the first five “essential terms” is almost always a good idea. But, be careful! The sixth term can ruin the whole arbitration clause. An unenforceable arbitration clause is worthless! Before messing with jurisdictional terms, you should consult a lawyer.