What Makes an Arbitrator Attractive to Counsel and Parties?

By Jeffrey T. Zaino

One of the most important aspects of the arbitration process is the ability to select your own decision maker. Unlike in court where you are assigned your decision maker, arbitration affords the parties several avenues to select the tribunal (i.e. sole arbitrator or panel of three arbitrators). The ideal scenario is when the parties come to the process mutually agreeing to the arbitrator. In most cases, however, the parties must develop an arbitrator selection process either by contract pre-dispute or mutual agreement post-dispute. An arbitral institution can assist in arbitrator selection (and case administration), working alongside party autonomy and the party-driven process that is arbitration. Therefore, parties are not strictly bound by the institutional rules or procedures for selecting an arbitrator unless they are completely at odds and unable to reach a mutually agreeable process, where such rules and procedures assist in efficiency and economy. Of note, many institutions favor party selection in lieu of institutional, administrative appointment.

This article focuses on why an arbitrator is an attractive decision-maker to both counsel and parties.

Subject Matter Expertise

Now more than ever, parties seek subject matter expertise in their arbitrator. This was historically true in areas including construction, employment, and labor arbitrations. By way of example, panels of construction neutrals are often comprised of industry experts – architects, engineers, and contractors – in addition to lawyers. Subject matter expertise is now equally important in commercial arbitrations, where panels of commercial neutrals often reflect attorneys specialized in specific industries and areas of practice (in addition, e.g., to being skilled accountants), instead of generalists in the law. Some arbitral institutions, like American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR), where I work, also offer an enhanced arbitrator selection process where the arbitrator can be interviewed by the parties. This process allows the parties to further ensure that the arbitrator has the requisite subject matter expertise for a given dispute.
Arbitration Experience

Arbitration is unique when compared with litigation in areas of both time and cost. Most arbitrators appreciate this different approach, conscious that the parties selected arbitration and both the parties and the institutions encourage a streamlined, efficient, and cost-effective process. Therefore, both parties and institutions are cautious to select as arbitrators those with a high level of experience and keen understanding of the mechanics, to ensure the arbitration does not mirror the style (and even vices) of court litigation.

Streamlined Resume & Video

An arbitrator’s resume is an essential decision-making and selection tool used by counsel. It is important to note that, much like applying for any other job, an arbitrator’s resume should be eye-pleasing and easy to read. Subheadings are often helpful in this regard to organize cases run as counsel and as arbitrator, in addition to the industries and general topics of past matters, alongside published works. Some arbitral institutions, like the AAA-ICDR, now offer video links of arbitrators on their sites, in parallel with videos on the sites of independent arbitrators, each of which may help provide guidance and key insights into the arbitrator candidate.

Lawyers with Other Degrees

As lawyers with multiple degrees are in high demand, counsel and parties find arbitrators with multiple degrees equally attractive. Areas of increasing interest and growth include accounting and finance.

Billing Practices

One of the top complaints arbitral institutions receive about arbitrators is billing practices (for example, excessive billing, lack of details, unreasonable cancellation fees, etc.). An arbitrator should strive to be as detailed as possible when invoicing, and reasonable with respect to cancellation and postponement fees (as these heightened fees can derail settlement discussions).
Positive Social Media Presence

Arbitrators will benefit from realizing that social media has become a part of the legal industry similar to most other industries. Most large law firms do extensive social media research on potential arbitrators, reviewing available social media sites (e.g. LinkedIn, Facebook, etc.). We should all strive for a positive social media presence, with several social media guidelines available to arbitrators.

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