ASSOCIATION OF BUSINESS TRIAL LAWYERS SAN DIEGO
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Fall 2016

Luncheon Recap: "Addiction, Depression, And the Bar, Oh My! - Attorney Competence In Troubling Times."

By Brett Weaver

Brett Weaver

On July 28, 2016, the ABTL held the second of its three specialty lunch programs this year: "Addiction, Depression, And the Bar, Oh My! - Attorney Competence In Troubling Times." The program, which was sponsored by Shelburne Sherr Court Reporters, was given by attorney and mediator Stephen McAvoy from ADR Services, Inc. McAvoy's presentation was alarming, entertaining, and educational.

The alarming — Most people know the legal profession is extremely stressful. But did you know that, according to researchers at John Hopkins University, lawyers have the highest rate of clinical depression of all professions studied? Or that female attorneys have a higher rate of depression than their male counterparts (though male lawyers have a higher rate of suicide than female ones)? As a result, lawyers have twice the rate of addiction than the general population. That's because common personality traits — such as high achievement, an adversarial, competitive and controlling nature, obsessive compulsive behavior, and being more comfortable with thoughts than feelings — predispose attorneys to self medicate.

Self medication, in turn, leads to increased scrutiny by the state bar. Nearly 70% of all disciplinary cases involve alcohol or other substance abuse. Indeed, one of the surest ways to invite the state bar to go over your entire practice with a fine tooth comb is to get arrested for driving

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Navigating the Social Media Minefield: Exploring the Legality of Sponsorship and Endorsements in Advertising

By Katrina Wu

Katrina Wu

The use of social media has become so prevalent as to be an integral tool of every business. At the same time, the platforms are new enough that the rules of the game – including the legality of sponsorships and endorsement – are not always clearly understood or adhered to. While videos and posts may have started off with a strong "homemade" and "independent" connotation, one cannot help but notice an increase in product placements and endorsements in the supposedly "uncommercialized" media. This commercialization coupled with new Federal Trade Commission ("FTC") Guidelines warrant a closer analysis of how businesses advertise online.

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lunch to be provided

LOCATION: Robbins Geller Rudman & Dowd LLP,
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President's Letter

By Brian Foster

Brian Foster

The days are getting shorter and the nights colder. Within a few days there will be probably be pumpkin patches springing up all over San Diego, and before you know it, baseball playoffs will be under way.

It is likely that this year's world series will extend into November. I mention that because, like major league baseball, our ABTL chapter will present its own version of a "fall classic" in November, in our final dinner program of the year. Our program on November 15th will feature nationally-recognized criminal defense attorney Judy Clarke, who has a very rare perspective of the criminal justice system, and of the challenges in representing high profile defendants who have been the subject of widespread negative news coverage. Ms. Clarke has represented criminal defendants such as Unabomber Ted Kaczynski, Olympic Park bomber Eric Rudolph, Boston Marathon bomber Dzhokhar Tsarnaev, Tucson mass shooter Jared Loughner, and so-called "20th hijacker" Zacarias Moussaoui, among many others. Ms. Clarke has been the recipient of numerous professional accolades, including the Ninth Circuit's John Frank Award, which recognizes lawyers and judges who display "sterling character and unquestioned integrity," as well as "dedication to the highest standards of the legal profession." Watch for the event flyer to sign up, as this promises to be a fascinating evening.

Over the last three months, our programs have been oriented towards celebrating our judicial board members and their colleagues in the judiciary. In my last President's Letter I wrote in part about the Judicial Mixer that took place in July. In September, at our annual Judicial Roundtable dinner program, the focus shifted to a discussion of updates, issues and trends in the Southern District, San Diego Superior Court, and the 4th District Court of Appeal. The program featured expert panelists Judge Jeffrey Barton, Judge Cathy Ann Bencivengo, and Justice Judith Haller, with Judicial Advisory Board chairperson Judge Randa Trapp presiding over the discussion. We were fortunate to also have an additional 24 members of the bench, including state, federal, appellate, and retired judges, seated at our dinner tables to lead discussion on a variety of topics, ranging from changing procedures for electronic discovery, mediation and settlement, confidentiality and filing under seal, to pet peeves of judges. We thank all of the judges who participated, and reserve a special thanks to Judge Trapp for organizing the program.

While I am writing about the invaluable support ABTL enjoys from the local bench, I would be remiss in failing to mention the 50th anniversary of the Southern District of California. Up until 1966 the state was divided into two districts, the Northern and Southern District. Only in 1966 was the then-Southern District divided into three discrete judicial districts, the Central and Eastern Districts, and the Southern District that today encompasses San Diego and Imperial Counties. Judge Bencivengo mentioned this in her comments at the Judicial Roundtable, and on September 16th the Federal Bar Association presented a seminar entitled "Fifty Years of Justice in the Southern District of California: Views from the Courtroom and Beyond." The seminar was followed by a reception and dinner, which featured a number of prominent speakers and the presentation of an historical video produced in celebration of the 50th anniversary. If you missed the reception, the Learning Center at the courthouse is currently displaying materials relating to the program, including the specially-prepared video. You can also download the Historical Walking Tour brochure from the district's web site, and enjoy a walk past some of the points of interest associated with the Southern District through the years.

(see "President's Letter" on page 4)

President's Letter

(continued from page 3)

As we move into late September, we also find ourselves in the midst of an election year (perhaps you noticed). Once again ABTL has been asked to participate in the Informed Voters Project, a nonpartisan committee project of the National Association of Women Judges. The project seeks to combat the negative impact of big money and special interest propaganda directed to state judicial contests. The committee believes that public education is the only remedy to counter the large amounts of money special interest groups are capable of pouring into judicial campaigns to influence outcomes, and to provide voters with the tools they need to exercise an informed vote in favor of fair and impartial judges. ABTL will be staffing an exhibition booth for the project at the upcoming annual conference of the California Judges Association. We thank former ABTL president Marisa Janine Page for ABTL's involvement, and for once again leading the charge on this important project.

This month all five chapters of the ABTL convened for the 43rd Annual Seminar in Kapalua Maui. The theme of this year's seminar was "The Technology Enigma -- a 21st Century Trial." If you weren't able to attend this year, next year's seminar will be a little closer to home and easier to attend. The San Diego chapter will be hosting the 44th annual seminar a year from now, and it will be held here at the La Costa resort. If you've never attended one of these annual seminars, give it a try. We think you'll be pleasantly surprised at the quality of the programming, and the more relaxing social aspects of the meeting. We hope you'll be able to join us.

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Navigating the Social Media Minefield

(continued from cover)

In 2009, the FTC published endorsement guidelines, and in 2015, supplemented its guidelines to provide a FAQ covering a range of marketing techniques from product placement to endorsements to testimonials and online reviews. While the Guide is merely an administrative interpretation of the laws and does not have the force of law, the FTC does have authority to bring enforcement actions against violators of the FTC Act.[1] These guidelines are invaluable in guiding clients to a compliant and effective social media presence. Below, we discuss a few key guidelines to keep in mind.

What is Social Media Marketing?

A marketing expert would refer to YouTube marketing as a form of "native advertising"[2], where the advertisement is seamlessly integrated into the video content itself, so the viewers are not disrupted from the experience of watching a YouTube video. Product placement is a representative example of such, where brands and logos are meticulously placed into posts or videos to trigger both a conscious and subliminal registration of the product. An "advertorial"[3], includes a post or video that is tutorial and educational by nature, but the content is sponsored by a brand. Sponsored activities can largely be found in three forms: explicit sponsorships, based on an agreement between the sponsoring company and the content creator, affiliated marketing, resembling commission-based arrangements and involving affiliated links where purchases are made through a link or coupon code; and free product sampling, perhaps the most elusive kind of marketing where companies send out free products to content creators with an eye towards increasing product exposure. The ultimate goal is to induce the content creator to feature the product in a video or create a review of the product, thereby generally achieving exposure.

Engaging in marketing through social media channels allows companies to select the desired target segments based on a particular audience. Because of this possibility to target desired segments with heightened precision, social media marketing can be much more effective than traditional above-the-line marketing.

What is an Endorsement?

The Guide defines "endorsement" as "any advertising message… that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser."[4] The Guide then proceeds to provide an objective facts and circumstances test to determine whether there is a deemed endorsement, and these factor include: whether the speaker is compensated by the advertisers, whether the product or service was provided for free by the advertisers, terms of any agreement, the length of the relationship between the advertiser and speaker, the previous receipt of products or services from the same or similar advertisers, the likelihood of future receipt of any such products or services, the value of the items received, and the degree of advertiser's control over the statement.[5]

"A disclosure is required when some consideration is given by a company to an endorser, particularly when the endorser receives compensation or another incentive to provide a testimonial."

Thus, endorsements can include the traditional paid celebrity sponsorship based on a flat fee or a certain amount per view; commission-based marketing affiliate arrangements where content creators earn commissions on sales from affiliated links, or even product placements, in some circumstances.

The Endorsement Guides apply equally to all types of media and forms of endorsement, whether they have been around for decades (like television and magazines) or are relatively new (like blogs and social media), including Facebook, Twitter, YouTube and LinkedIn.[6]

Disclosures Are Required For All Endorsers

A disclosure is required when some consideration is given by a company to an endorser, particularly when the endorser receives compensation or another incentive to provide a testimonial. "The question you need to ask is whether knowing about that gift or incentive would affect the weight or credibility your readers give to your recommendation. If it could, then it should be disclosed."[7] As set forth by the FTC, even the

(see "Navigating the Social Media Minefield" on page 6)

opportunity to be entered into a sweepstakes or contest to win a prize is deemed consideration that must be disclosed.[8] Specifically, the FTC recommends that promoters require entrants to use a hashtag that includes the words "sweepstakes" or "contest" in their entry to notify readers that posts were incentivized.[9]

Endorsers Must Include Clear and Conspicuous Disclosures.

In determining whether a disclosure is clear and conspicuous, the FTC considers the proximity of the disclosure to the advertising statement, the prominence of the disclosure, whether the disclosure is unavoidable, whether other parts of the ad distract the attention from the disclosure, whether a disclosure needs to be repeated at different places on the website, and whether the language of the disclosure is understandable to the intended audience, whether the disclosure displays properly across different programs/mediums such as on iPhones versus Android devices.[10]

For example, disclosures on YouTube generally run afoul of the test in two ways: disclosures are either inconspicuous, or if they are, are inconsistent channel to channel.

For many sponsored posts or videos, the disclosure often appear at the very bottom of the description box, which requires a user to actively click on a "show more" button and sometimes scroll down through a long field of text before finally reaching the disclosure. This renders the disclosure neither unavoidable nor proximately close to the claim in the video. The FTC warns that the presence of scroll bar alone is not sufficiently effective of a visual cue to encourage viewers to reach the disclosure.[11]

For affiliated links, some companies notate the links with an asterisk,[12] and some include a general disclaimer at the bottom that some links are affiliated.[13] The FTC recommends that to meet this requirement, the disclosures should be: (1) Close to the endorsement or claims to which they relate; (2) in a font that is easy to read; (3) in a shade that stands out against the background; (4) for video ads, on the screen long enough to be noticed, read, and understood; and (5) for audio disclosures, read at a speed and cadence in words that are easy for consumers to follow and understand.[14]

Overall Suggestions for Social Media Endorsements

FTC's revisions to its Endorsement Guides demonstrate its intent to apply well-settled principles of false advertising law to social media platforms. Companies that are actively engaged in using social media marketing to promote brands, products and services, must adhere to the FTC's requirements to ensure compliance with transparency and disclosure requirements for all testimonials and product endorsements. Companies should continue to review advertisements in social media to confirm compliance with Section 5 of the FTC Act.

(Endnotes)

[1] 16 C.F.R. § 255.0 ("The Guides provide the basis for voluntary compliance with the law by advertisers and endorsers"); F.T.C., .COM Disclosures: How to Make Effective Disclosures in Digital Advertising 2 n.5 (2013).

[2] "Native advertising" is defined as marketing strategies that allow brands to promote content by integrating the ad into the endemic experience of a website or app. Native advertising differ from traditional digital ad formats such as pre-roll commercial because they are integrated to the visual design of a publisher's site. What is native advertising?, Sharethrough Inc. (Mar. 16, 2013), http://www.sharethrough.com/2013/03/what-is-native-advertising. "Stealth advertising" is defined as a way of advertising your products so that people do not realize that you are trying to make them buy something. Stealth Marketing Definition, Cambridge Dictionaries Online, http://dictionary.cambridge.org/us/dictionary/business-english/stealth-marketing (last visited Feb. 18, 2015).

[3] "Advertorial" as an advertisement that imitates editorial format. Advertorial Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary/advertorial (last visited Feb. 10, 2015).

[4] 16 C.F.R. § 255.0 (b) ("including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization.").

[5] Guides Concerning the Use of Endorsements and Testimonials in Advertising, 74 Fed. Reg. 53124, 53126 (Oct. 15, 2009) (amending 16 C.F.R. § 255).

(see "Navigating the Social Media Minefield" on page 7)

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[6] F.T.C., The FTC's Endorsement Guides: What People Are Asking, at 1 (2015) https://www.ftc.gov/system/files/documents/plain-language/pdf-0205-endorsement-guides-faqs_0.pdf.

[7] Id., at 4.

[8] F.T.C., supra note 6, at 4.

[9] Id., at 14.

[10] F.T.C., supra note 5, at i-ii.

[11] F.T.C., supra note 5, at 9 ("Although the scroll bars may indicate to some consumers that they have not reached the bottom or sides of a page, many consumers may not look at the scroll bar and some consumers access the Internet with devices that don't display a scroll bar.").

[12] E.g., RachelJade, YouTubers getting FREE STUFF? Behind The 'Tube, YouTube (Sept. 20, 2014), https://www.youtube.com/watch?v=FBxHmkMmbkQ.

[13] E.g., ItsJudyTime, Thank You for 1 Million, YouTube (May 9, 2014), https://www.youtube.com/watch?v=JPy1bDPMRW4 ("*Amazon link(s) are affiliate links."); FrmHeadtoToe, January 2015 Favorites, YouTube (Jan. 31, 2015), https://www.youtube.com/watch?v=JOt7NAXsWQc ("Disclaimer: This video is not sponsored by any of the companies mentioned. Some of the links above are affiliate links. Thanks for your love & support!").

[14] Lesli C. Esposito, Intellectual Property and Technology Alert (June 3, 2015), DLA Piper Publications, https://www.dlapiper.com/en/us/insights/publications/2015/06/ftc-updates-qa-on-endorsement/.

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under the influence or a drug-related offense. McAvoy hoped one of the take aways from his presentation was that, in this day of Uber and Lyft, no attorney should ever drive home after having more than two drinks at a firm happy hour or other social occasion.

Perhaps the most alarming statistic McAvoy gave was just how addicted Americans have become to opioids. In 1996, total profits from prescription opioids (e.g. OxyContin, hydrocodone, dilaudid, morphine, fentanyl) were $45 million. In 2010, that number was $3.1 billion. And although Americans represent just 5% of the world's population, we consume 80% of the world's opioids. Sadly, every 19 minutes, someone dies from an opioid overdose in America.

The educational — In a manner resembling a good closing argument, McAvoy educated his audience about the various types of addictions, the chemical effects different substances have on the human brain, the stages of addiction, the reasons why lawyers with a problem are hesitant to seek help, and the ethical obligations attorneys have when it comes to addiction.

Generally speaking, there are two types of addiction: Substance addiction, which includes things like alcohol, drugs, nicotine, and food; and process addition, which covers certain behaviors such as gambling, sex, pornography, and hoarding.

Both types of addiction alter the chemistry of the brain by reducing the number of dopamine receptors. For example, when alcohol is consumed in moderation, the neural network in the brain rewards itself by producing just the right amount of dopamine to create the "good feeling" that comes from drinking. When alcohol consumption becomes excessive, however, the brain's dopamine transmitters trigger a rapid surge in dopamine that, in time, causes the brain to reduce dopamine production and the number of dopamine receptors. This leaves the brain demanding more alcohol to get the "good feeling" it has become addicted to.

There are three stages of addiction: use, abuse and self medication, and finally addiction. Symptoms of addiction include: tolerance; habituation; cravings; and loss of control. Addiction is progressive and never gets better. It is not curable. Instead it must be managed in order to prevent relapse. It is also often fatal if left untreated.

Unfortunately, lawyers who are addicts are hesitant to seek help for a variety of reasons. For one thing, addiction is often seen as a moral failing or weakness of character. Indeed, even labeling yourself a "recovering alcoholic" can cause adverse consequences for an attorney. In addition, the strong ego defenses inherent in most lawyers, along with their argumentative, judgmental, and controlling nature often preclude addicted lawyers from getting the treatment they need.

Finally, attorneys need to be aware of their ethical and legal rights and obligations if they, or one of their colleagues, has a substance abuse problem. The law affords privacy and insurance coverage for addiction. Although an employee cannot be fired for having the disease, he or she can be fired for behavior resulting from it. There is no ethical obligation in California to report the misconduct or substance abuse of another attorney. But under Rule 3-110(A) of the Rules of Professional Conduct, addiction may prevent an attorney from providing "competent" representation. Further, Rule 3-700(B)(C) allows for permissive, and in some cases requires mandatory, withdrawal from legal representation if the lawyer's addiction renders it unreasonably difficulty to effectively carry out representation. Moreover, a law firm has a duty to protect the interest of its clients by, if necessary, not allowing an addicted attorney to work on a case. ABA Formal Opinion 03-429 (2003).

The entertaining — In addition to these, and other, stark facts, McAvoy mixed in trivia and funny anecdotes throughout his presentation. For example, while just about everyone knows Coca-Cola originally contained cocaine, most people probably don't know it was not the first beverage to do so. Mixing wine with cocaine was a common practice in France at the time. Because of the temperance movement in America, however, a pharmacist in Georgia came up with a less "sinful" concoction for America's teetotalers. Another interesting bit of trivia: In the early 1900s, Bayer Pharmaceuticals developed a cough suppressant to combat tuberculosis. Since one of its side effects was that it made people feel like a hero, Bayer named it "heroin."

(see "Luncheon recap" on page 9)

Luncheon Recap

(continued from page 8)

McAvoy also spent a great deal of time discussing just how dangerous methamphetamine is; often emphasizing his point with some pretty disturbing pictures. For example, McAvoy showed a picture of the damage meth does to a person's teeth or "meth mouth" as it is commonly called and a picture of the scabs meth heads get on their face from trying to dig out the "crank bugs" living under their skin. In truth, these imaginary insects are just the skin's natural reaction to all the nasty solvents and chemicals that are used to make meth.

On behalf of the ABTL, and my co-chair of the Specialty Lunches Program, Jason Ohta, I would like to thank Steve for putting on such a great presentation, Shelburne Sherr for providing a delicious lunch, and Robbin Geller Rudman & Dowd for letting us use their beautiful conference room. The third and final specialty lunch for 2016 will take place in early December and will focus on the elimination of bias. Please stay tuned for more details.

ASSOCIATION OF BUSINESS abtl TRIAL LAWYERS SAN DIEGO

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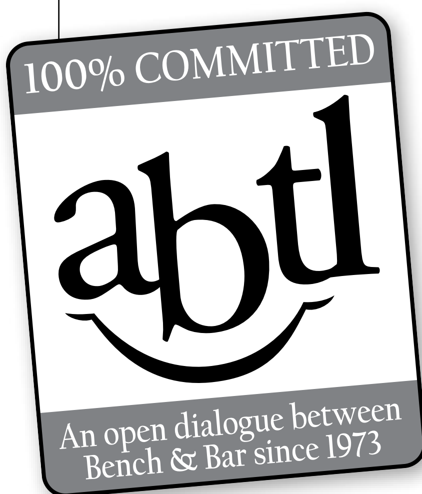

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Claims, Claims Everywhere, Not A Court In Sight

Rupa G. Singh

By Rupa G. Singh

Arbitration has long been viewed as a civil defendant's best friend. Relatively efficient, less expensive, and private, it has become an attractive alternative to highly public, discovery-ridden, drawn-out court proceedings—particularly class actions. But in a recent decision, the California Supreme Court made the courts unavailable as the default forum to adjudicate at least one basic issue of arbitrability that even defendants hoped fell under their purview.

The Majority in Sandquist

In Sandquist v. Lebo Automotive, Inc., a divided California Supreme Court determined that, where an arbitration agreement is silent with respect to the arbitrability of class claims, arbitrators—and not courts—should decide in the first instance if it permits or prohibits classwide arbitration. 1 Cal. 5th 233 (2016). Sandquist involved putative class claims for race discrimination, hostile work environment and constructive discharge under federal and California state law by an African-American car salesman against the car dealership where he worked. The dealership moved to compel bilateral arbitration pursuant to plaintiff's employment agreement, which neither included a class action waiver nor addressed the arbitrability of class claims. Finding that only plaintiff's individual claims were subject to arbitration, the trial court struck the class allegations, and dismissed the class claims with prejudice. Determining that the dismissal of class claims was appealable under the death knell doctrine, the Court of Appeal (Second District) reversed in part, concluding that the availability of classwide arbitration was an issue of contract interpretation for the arbitrator to decide in the first instance.

Granting review, the California Supreme Court affirmed in a 4-3 decision, concluding that, because the arbitration agreement did not specify otherwise, an arbitrator should decide whether class claims are arbitrable. The majority began with the premise that parties are free to include a class action waiver,1 or specify who should decide the arbitrabilty of class claims. But absent such specification, the Court reasoned that the ambiguity as who resolves whether class claims are arbitrable should be decided through the prism of state law principles of contract formation, to the extent not in conflict with the Federal Arbitration Act. The Court relied on two interpretive principles in particular—first, that all doubts regarding the allocation of a claim to arbitration or the courts are resolved in favor of arbitration, and second, that ambiguities in written agreements are construed against their drafters.

Because the dealership in Sandquist drafted the arbitration agreement, but failed to either include a class action waiver or specify who should decide whether class claims are arbitrable, the Court concluded that the arbitrator should resolve the ambiguity about the availability of classwide arbitration. Notably, the Court rejected the argument that the availability of classwide arbitration is a "gateway" issue of arbitrability that the FAA presumptively requires courts to decide, unlike two types of questions that are for courts to decide—whether there is an enforceable arbitration agreement or whether an arbitration agreement applies to a particular dispute. Instead, the Court deemed the availability of classwide arbitration a "procedural" question for an arbitrator to decide, much like other questions about the manner in which an arbitration should be conducted and how it should proceed. The Court found persuasive a plurality opinion in Green Tree Financial Corporation v. Bazzle, 539 U.S. 444 (2003) that the availability of class arbi-

(see "Claims, Claims Everywhere..." on page 11)

Claims, Claims Everywhere...
(continued from page 10)

tration does not concern the two threshold issues subject to a pro-court presumption—the validity of an arbitration clause and its applicability to an underlying dispute.

The Dissent in Sandquist

As the dissent noted, however, this conclusion is contrary to the United States Supreme Court's own observations about Green Tree's import, as well as the nature of class arbitration. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 348-51 (2011) (describing in detail how class arbitration is qualitatively different from bilateral arbitration, and thus, unlikely to be subject to implicit agreement); Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010) (noting that the issue of who decides whether class claims are arbitrable was not conclusively decided in Green Tree and rejecting notion that the issue is purely procedural). Moreover, the dissent also noted that every other federal circuit court to address the issue has concluded that the question is a "fundamental" question for arbitrators to decide, including because courts as independent decision makers resolve whether and how parties have exercised their right to choose to arbitrate. See Communities, Inc. v. Carlson, 817 F.3d 867, 873-77 (4th Cir. 2016);Reed Elsevier, Inc. v. Crockett, 734 F.3d 594, 597 (6th Cir. 2013); Opalinski v. Robert Half Internat'l Inc., 761 F.3d 326, 334 (3d Cir. 2014). Thus, consistent with this Supreme Court jurisprudence, the dissent found it inescapable that, because of its fundamental importance, classwide arbitrabilty cannot be deemed a mere procedural matter for an arbitrator to decide.

Bottom Line

Upending the conventional wisdom that standard arbitration agreements are good for defendants, Sandquist favors plaintiffs. As defendant in Sandquist argued, albeit unpersuasively, arbitrators may have background incentives in the form of potential higher fees that would cause them to favor contract interpretations allowing for class arbitration. And classwide arbitration negates virtually every advantage of bilateral arbitration—informality, speed, cost, and procedural simplicity. And in the employment context in which Sandquist arose, the cost of classwide arbitration may be higher for defendants because the employer pays the costs of arbitration—including for arbitral proceedings to determine whether an arbitration agreement permits or prohibits classwide arbitration. And finally, the resulting arbitral ruling is effectively unreviewable given the severe limitations on judicial review of arbitral awards to unlikely instances where the arbitrator expressly declines to follow the law, exhibits bias, or has a conflict of interest.

In light of Sandquist, defendants must review and amend existing arbitration agreements that are silent with respect to class claims, and draft future agreements by taking into account how courts will resolve any ambiguity as to the arbitrability of who decides whether classwide arbitration is permitted or prohibited. Otherwise, defendants relying on standard arbitration agreements should be careful what they wished for in trying to avoid the courts in adjudicating their disputes—they may just get what they wished for in spades.

Rupa G. Singh is a partner at Hahn Loeser & Parks LLP, where she co-chairs the firm's appellate practice and litigates complex commercial matters.

(Endnotes)

1 Notwithstanding the Ninth Circuit's recent ruling that the National Relations Labor Act ("NLRA") prohibits class action waivers in employment agreements, *Morris v. Ernst & Young, LLP*, No. 13-165992016 U.S. App. LEXIS 15638, at *4 (9th Cir. Cal. Aug. 22, 2016), such waivers are enforceable under California law, including under the NLRA, except for claims under the California Private Attorneys General Act of 2004, which are not subject to arbitration. *See Iskanian v. CLS Transp. Los Angeles LLC*, 59 Cal. 4th 348, 360 (2014).

Maintaining Public "Secrets:" Ethical Pitfalls of Disclosing Publicly Available Client Information

By Brian Hazen

Brian Hazen

Clients trust lawyers with their secrets. Lawyers are bound by the ethical duty of confidentiality not to disclose those secrets. In California, attorneys are required by statute to "preserve the secrets[] of his or her client" "at every peril to himself or herself."[1]

But what counts as a "secret?"

Certainly confidential client communications covered by the attorney-client privilege qualify as secrets. And most would agree that client secrets include non-public information the lawyer obtains about a client in the course of representation. But what if previously private or confidential information later becomes publicly available? Is a client secret no longer a "secret" if it later becomes a matter of public record? And what about information that is not obviously a product of that representation, such as information that seems tangential or even unrelated to the representation, but nevertheless may potentially embarrass the client if exposed to a broader audience?

> *"...when [Donald] Trump phoned me for legal advice in 1996" and that he was "now figuring out whether our talk was privileged."*

The answers to these questions are not immediately obvious. Even experienced lawyers can find themselves in hot water for making statements related to their representation of a client that may appear innocuous at first glance. Legendary Harvard Law School professor Laurence Tribe, for example, recently faced a social media firestorm for publicly announcing on Twitter that he has "notes of when [Donald] Trump phoned me for legal advice in 1996" and that he was "now figuring out whether our talk was privileged."[2]

Thankfully, a recent formal opinion from the Standing Committee on Professional Responsibility and Conduct provides guideposts for California lawyers in deciding whether to keep silent about client-related information.[3] Formal Opinion No. 2016-195 addressed what duties a lawyer owes to current and former clients to refrain from disclosing potentially embarrassing or detrimental information about the client, including publicly available information the lawyer learns during the course of representation.

"Secrets" Include More Than Just Privileged Client Communications

Because the duty of confidentiality is not limited to confidential communications between a lawyer and his or her client, "client secrets," as used in Business and Professions Code section 6068, covers a broader range of information than that covered by the attorney-client privilege. Privileged communications "are merely a subset of what are considered client secrets." Indeed, the Standing Committee pointed out that the duty of confidentiality "applies to information relating to the representation, whatever its source." See California Professional Rule of Conduct 3-100 (emphasis added).

Client secrets also cover information that is not traditionally thought of as a "secret." For example, the California State Bar's Review Department held in an attorney discipline case that the ethical duty of confidentiality "prohibits an attorney from disclosing facts and even allegations that might cause a client or a former client public embarrassment." Matter of Johnson (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 189.

"Secrets" Include Publicly Available Information

Previous formal opinions have noted that the duty of confidentiality "has been applied even when the facts are already part of the public record or where there are other sources of

(see "Maintaining Public "Secrets" on page 13)

(continued from page 12)

information." Cal. State Bar Formal Opn. No. 2004-165. In Matter of Johnson, for instance, an attorney told one of his clients, in the presence of others, that another client had been previously convicted of a felony. (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179. Even though that conviction was a matter of public record, the Review Department held that the lawyer violated his duty of confidentiality by disclosing the client's conviction without his consent. Id.

The Standing Committee observed in a footnote that there is a difference between client information that is "publicly available"—i.e., information "available to those outside the attorney-client relationship, [but that] must be searched for (e.g., in an internet search, a search of a public court file, or something similar)"—and information that is "generally known"—i.e., information "most people already know . . . without having to look for it." However, the Standing Committee pointed out that although ABA Model Rule 1.9(c)(1) provides that such generally known or widely disseminated (as opposed to merely publicly available) information ceases to be a client secret, no equivalent rule exists in California, and the Standing Committee declined to take a position either way on the issue. It concluded only that "client information does not lose its confidential nature merely because it is publicly available."

A Practical Example

So how might this principle apply in practice? The Standing Committee gives a hypothetical example of a lawyer who represented a Hedge Fund Manager. Sixteen of the Manager's former investors filed a lawsuit alleging the Manager was operating a Ponzi scheme. During the course of representation, the lawyer interviewed one of the Manager's former investors. The former investor told the lawyer that several years earlier she had accused the Manager of fraud related to the hedge fund. She said the Manager had settled that dispute for $100,000 before she filed suit. After the interview, the former investor forwarded the lawyer a link to a blog post she had written about her prior accusations against the Manager. The lawyer forwarded the blog post to several friends, saying only "interesting reading."

The Manager later settled the lawsuit with the sixteen plaintiffs. The settlement was documented in a non-confidential settlement agreement, which was submitted to the court in connection with a motion for determination of good faith settlement. The court granted the motion, and the lawyer's representation ended. The settlement made local headlines but was not picked up by the national press.

Several months later, the lawyer read about an interview the former investor gave to the Wall Street Journal, in which the former investor recited the details of her prior dispute with the Manager. The Lawyer responded with a letter to the editor of the Wall Street Journal, disclosing his representation of the Manager and stating, "I did a great job of getting Hedge Fund Manager out of the lawsuit for only a seven-figure settlement."

Finally, many years after the sixteen-investor lawsuit settled, the Manager was arrested for a DUI. The lawyer commented on the arrest on his Facebook page, stating, "Drinking and driving is irresponsible."

In which disclosures did the lawyer go wrong?

Forwarding the Blog Post.

As an initial matter, the information the lawyer learned from interviewing the former investor was a client secret because (1) it was obtained in the course of the lawyer's representation of the Manager, and (2) its "disclosure likely would be embarrassing or detrimental" to the Manager. Therefore, the lawyer was bound to keep that information confidential "[e]ven

(see "Maintaining Public "Secrets" on page 14)

(continued from page 13)

though former investor made her information publicly available by writing a blog post about it." As a result, the Lawyer breached the duty of confidentiality by forwarding the blog post to friends and affirmatively exposing his client's secret to a wider audience.

Writing the Letter to the Editor of the Wall Street Journal.

By the time the lawyer wrote his letter to the editor of the Wall Street Journal, the Manager was a former client. But the duty of confidentiality survives the attorney-client relationship. See Wutchumna Water Co. v. Bailey, (1932) 216 Cal. 564, 573-74. The Standing Committee concluded that the Lawyer's letter discussing the settlement constituted a disclosure of a client secret. Even though the settlement agreement "resides in the court file . . . and, thus, is publicly available, Lawyer's statements nonetheless could be considered a disclosure of a client 'secret'" because it "likely caused Hedge Fund Manager harm or embarrassment," and the lawyer had learned those details "by virtue of his representation of Hedge Fund Manager." Two things about the content of the letter were particularly problematic: (1) disclosure about the "facts of the settlement (and, by necessity, the existence of the lawsuit);" and (2) the suggestion that the lawyer was privy to bad facts about the Manager's defense such that a "seven-figure settlement" was a good one.

Commenting on Facebook about Former Client's Unrelated DUI.

The information about the DUI was not a client secret because (1) it was not acquired by virtue of (or in the course of) lawyer's representation, and (2) it "bears no relationship to the lawyer's prior representation of the Hedge Fund Manager." As a result, the duty of confidentiality did not preclude the lawyer from publicly discussing the Manager's DUI arrest. [4]

Conclusion

Lawyers must not disclose client secrets, which include not only privileged communications between lawyer and client, but also:

1. Publicly available information;
2. That the lawyer obtained "by virtue of" or "during" the professional relationship;
   a. Which the client has requested to be kept secret; or
   b. The disclosure of which is likely to be embarrassing or detrimental to the client.

Importantly, this prohibition on disclosure survives termination of the representation, and therefore applies equally to current and former clients.

Although these rules appear straightforward in theory, they will not be easy to apply in the complex cases at the margin. When in doubt about whether discussing client information could be embarrassing or detrimental to your client or former client—even publicly available information that is a matter of public record—silence is the best policy.

(Endnotes)

[1] Cal. Bus. & Prof. Code § 6068(e)(1)

[2] Katelyn Polantz, *Laurence Tribe Takes on Twitter Bar Over Trump Tweet*, Nat'l Law Journal (August 19, 2016), *available at* http://www.nationallawjournal.com/id=1202765439578/Laurence-Tribe-Takes-on-Twitter-Bar-Over-Trump-Tweet?slreturn=20160806013238.

[3] Opinions issued by the Standing Committee are advisory only. "They are not binding on the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar." Cal. State Bar Opn. No. 2016-195.

[4] This does not mean, however, that the lawyer was not bound by other ethical duties not to discuss the DUI arrest. The Standing Committee noted that if the lawyer had learned this information during his representation of the Manager, rather than after termination of the representation, the lawyer's duty of *loyalty* would likely have precluded the lawyer from publicly discussing even the drunk driving case. *See Flatt v. Superior Ct.*, (1994) 9 Cal. 4th 275, 284.

[5] The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect views or opinions of the law firm with which he is associated.

Judges Are Human Too: Who Knew? (New approach to breaking the ice reveals sides of the judiciary you won't hear about anywhere else)

Sara McClain

By Sara McClain

On June 28, 2016, the ABTL San Diego Chapter held its seventh annual Judicial Mixer. For several weeks prior, the Judicial Advisory Board and the Leadership Development Committee spent considerable time brainstorming to build on the success last year's event. They decided not to mess with a good thing and left certain elements unchanged. DLA Piper, with its enviable indoor/outdoor lounge space and spectacular views of downtown, was again the setting. Girard's Gourmet gave a repeat stellar performance with delicious bite-sized food and various libations. And the weather was San Diego's typical "72 and sunny." It was the perfect environment for coaxing judges and lawyers to come together outside of the courtroom. But attendance alone doesn't make or break this event. The critical distinction of a successful judicial mixer is, well…mixing with the judiciary.

Some might think social interactions between attorneys and judges in a causal environment come naturally and don't require any prodding or structured program. After all, we are cut from same cloth, right? Judges should be less intimidating when they shed their robes and can converse with you at the same eye level. But for lawyers, especially less experienced ones, and even for judges, forging social relations can be about as easy as extracting an impacted tooth. This left the hosts with the task of facilitating interactions you could only have at the Judicial Mixer without seeming like two best friends forcing their children to be friends.

The JAB, led by Hon. Randa Trapp with assistance from Hon. Katherine A. Bacal and Hon. Lorna A. Alksne, was clear with its objectives. It wanted to develop a new approach to finding unique commonalities amongst the judges and lawyers. Getting people to show up at 5 p.m. on a Tuesday is fairly easy when you offer good (and free) food and drink with a gorgeous backdrop. But breaking up the typical clusters of judges, senior attorneys, and young associates…not so much. The "ice breaker" needed to foster an expansive scope of discussions without being too vague or invasive – something more than asking a judge where they went to law school and how many years since they were appointed to the Bench. The LDC, represented by David Lichtenstein, Jess Booth, and Sara McClain, along with our invaluable Executive Director, Maggie Shoecraft, were responsible for implementing this vision.

The ice breaker was anything but specific and many people would have some difficulty formulating the appropriate answer. If posed to a witness in court, a judge would undoubtedly sustain objections of vague and ambiguous and overbroad. But that was the goal, and it proved to be just the nudge needed for the younger (and timid) attorneys to approach and engage our esteemed judiciary.

The premise was simple: find out one or two interesting things about the judges. The results were wide-ranging: a chance meeting with Chief Justice John Roberts, attending college with actor Edward Norton, and a recent sky-diving adventure. Another judge, who was promised anonymity in exchange for candor, once represented an actor from Deep Throat in an unrelated matter. Certainly not the kind of anecdotes you hear while attending a Brown Bag Lunch.

After remarks from our President, Brian Foster, and Judge Trapp (who fearlessly and quite admirably scaled the ledge-adjacent bench in heels to address the group), some LDC members shared what they learned about our judges. We learned about one judge's stint as a Minnesota Vikings cheerleader, and another's once-in-a-lifetime up-close encounter at a Bruce Springsteen concert with the Boss himself (the colloquial term for which is not suitable for print). Surely there is even more to discover about our judges, but there was only so much time. We certainly learned there is more commonality between the Bench and Bar than we thought. And fortunately, the ABTL offers future opportunities to learn more without having to wait for next year's mixer.

Shifting Expert Witness Fees in Contract Litigation.

By Rebecca Reed

Rebecca Reed

While expert witness fees, which are not ordered by the court, are not recoverable as statutory costs under Cal. Code of Civil Procedure section 1032 et seq., a contractual prevailing party cost provision can serve as a powerful vehicle for recovery of expert fees, but only if the requisite procedures are followed.

Preliminarily, the overwhelming weight of authority in California holds that expert fees are not a component of attorney's fees recoverable under Civil Code section 1717. Thus, the procedure governing recovery of attorney's fees is inapplicable to expert fees. See *Ripley v. Pappadopoulos (1994)* 23 Cal.App.4th 1616, 1625-1626; Hsu v. Semiconductor Systems, Inc. (2005) 126 Cal. App. 4th 1330, 1342; *Benson v. Kwikset Corp.* (2007) 152 Cal.App.4th1254, 1280-1281. Instead, one must plan for the recovery of expert fees from the outset of the case, starting with a judicious review of the language in the contract.

Many prevailing party cost provisions contain verbiage permitting recovery of reasonable costs without identifying the specific costs that may be recovered. When confronted with a generic cost provision, the law provides that it must be interpreted in light of Civ. Proc. Code 1033.5's limited definition of costs. Artnz Contracting Company v. St. Paul Fire and Marine Insurance Company (1996) 47 Cal. App. 4th 464, 491. However, the law also provides that sophisticated parties are free to choose a broader standard authorizing recovery of reasonable litigation expenses. Id. at 492. Thus, in order to recover expert fees as "costs" under a general contractual provision, there are two critical procedural prerequisites.

The first requirement is pleading the expert fees by setting forth the basis for their recovery and pleading them in the prayer for relief in the operative pleading. Unless a contractual provision clearly and unambiguously specifies that certain costs are recoverable under the contract, "(a)dverse parties must be put on notice through the pleadings that this contractual theory will be asserted…" First Nationwide Bank v. Mountain Cascade, Inc. (2000) 77 Cal. App. 4th 871, 879. Secondarily, one must prove up the expert fees by presenting evidence of them at trial, or if applicable, other prejudgment evidentiary proceeding. Recovery cannot be had by summary postjudgment motion. Id. See also, Carwash of America-PO v. Windswept Ventures No. 1, LLC (2002) 97 Cal. App. 4th 540. As such, even if properly plead, expert fees cannot be recovered pursuant to a generic cost provision by way of a memorandum of costs.

If the contract specifically provides for recovery of "expert fees," it is important to note that there is a split of authority on the appropriate mechanism for expert fee recovery. In Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC (2010) 185 Cal. App. 4th 1050, the Fourth District, Division Three considered the procedure for recouping expert fees when a contract specifically permits recovery of "expert fees" as opposed to undefined "costs". The court held that where the parties have freely negotiated an express expert fees provision, it is unnecessary to plead and prove expert witness fees. Instead, the expert fees can be recovered as an item of cost. In so holding, Thrifty rejected Carwash, supra, which held that regardless of the language in the contractual cost provision, expert fees must be pleaded and proved if they are to be recovered. Carwash, supra, 97 Cal. App. 4th at 544. Considering that the reason for the pleading and proof requirement enunciated in Carwash is to permit the trier of fact to ascertain the intent of the contracting parties (see First Nationwide Bank, supra, 77 Cal. Ap. 4th at 879), the rationale in Thrifty is sound. If a contract expressly and unequivocally provides for recovery of expert fees, the issue is a matter of law. Whether the amount was actually incurred or is

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reasonable can be determined in a motion to tax costs or at an evidentiary hearing if necessary.

However, until the foregoing split of authority is resolved, the most prudent practice is to plead and prove expert fees when any contractual cost provision is in play.

Even assuming a contract contains a cost provision, it is important to ascertain whether the language is unilateral to the detriment of your client. While attorney's fees provisions are made reciprocal by operation of law, the same is not necessarily true of a cost provision. The reciprocity bestowed by Civ. Code section 1717(a) is limited to attorney's fees and there is no authority extending reciprocity to expert witness fees. Cf. First Nationwide Bank, supra, 77 Cal. App. 4th at 879; Garden Grove Galleria, LLC v. Cathay Bank G050394 (2015 unpublished).

As readily inferred by the foregoing, expert fee recovery must be teed up at the outset of the case when a contract includes a prevailing party cost provision. One must include expert fees as a measure of relief in the operative pleading and plan for the introduction of evidence of the fees at trial or other applicable prejudgment evidentiary proceeding.

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In Defense of Arbitration

By Charles Dick

Charles H. Dick

For many in the legal profession, "Arbitration" is a "four-letter word." Trial Lawyers in particular take offense at the very notion of arbitration as an alternative to traditional litigation, often suggesting that a cherished constitutional right to a jury trial is in jeopardy. I took the oath to preserve the constitution; I believe in the jury system and bemoan the "vanishing jury trial," but I dissent from those who are single-minded in their criticism of arbitration.

Critics of arbitration often observe that our common law system is advanced by appellate decisions that become stare decisis and shape the law to address the needs of contemporary society. To the extent legal precedent is reasonably clear, predictability is beneficial; people can foresee their rights and obligations.

Advocates for traditional litigation point to the value of "open courts," where justice is meted out in the light of day. Jury trials particularly give voice to jurors serving as the conscience of the community. And a case is made for the right of every citizen to sit in judgment as a member of a jury. These are not trifling arguments, but they miss the point.

Loud voices in the legal community notwithstanding, there is evidence the public disagrees with those who advocate for resolving all disputes in court. In a recent white paper, the National Center for State Courts asked voters whether they agreed with the statement, "The court system is the best way to resolve disputes, because it protects individual rights and is accountable to the rule of law." More than half the respondents disagreed and favored ADR as an alternative to the court system. [1] That study may not be definitive, but it is instructive.

Any resolution of a dispute outside the courtroom, including settlement, risks losing some positives we ascribe to our court system. Nevertheless, many people decide it is better to find a quicker, less expensive resolution. Rational people are concluding the values of an open court system and stare decisis, as important as they may be in theory, do not tip the scales against more attractive dispute resolution modalities, such as arbitration. A price is paid for everything, but it should not be surprising many are willing forego a jury trial, punitive damages, and an appeal of right in exchange for other perceived advantages.

It is a fact that most individual consumer and employment disputes can be resolved fairly, more quickly, and with less cost to both sides in arbitration. If there is any problem, it may have less to do with arbitration per se and more to do with limits on class arbitration. Yes, there is a constitutional right to a jury trial, but there also is constitutional right to receive the benefit of private agreements, so why not cure the problem rather than deprive the parties of a choice in the means of dispute resolution? Notwithstanding proposed rule-making by the Consumer Financial Protection Bureau and decisions by the National Labor Relations Board, arbitration in consumer and employment matters will remain viable, largely because properly designed and administered arbitration has the potential for resolving these matters more quickly and less expensively for all concerned.

The most notable advantage of arbitration is the ability to select the decision-maker. Randomly assigning judges leaves much to chance, but parties in arbitration can self-define the attributes in a fact-finder that are desirable and choose an arbitrator on that basis. Potential arbitrators can be interviewed in advance, allowing the parties and their counsel to assess the temperament, attitudes, biases, and compatibility of candidates for appointment. When considering a particular individual, it is possible

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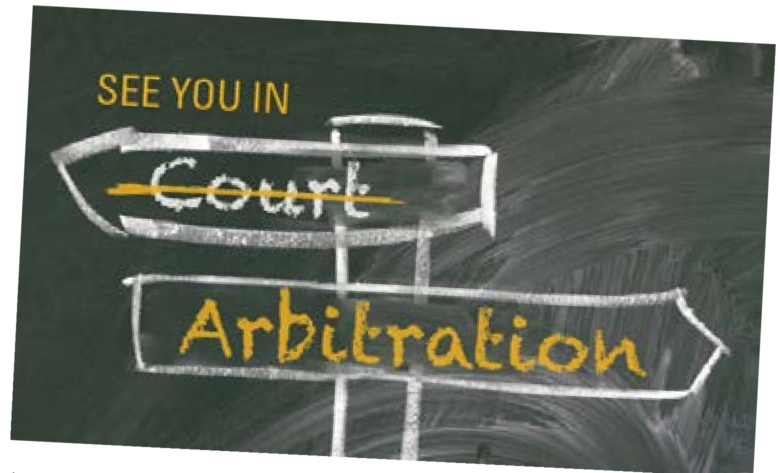
to determine in advance what case management procedures will be employed and what approach will be applied to questions about discovery; a candidate's schedule also can be considered. Most important of all, particularized expertise can be a qualification for service. Rather than being resigned to a trial before a judge or jury who know nothing about any technical aspects of the dispute, parties in arbitration can enjoy the benefit of fact finding based on subject expertise.

It is inescapable that the burden of civil discovery has inflated the cost of litigation. Even with new federal rules designed to inject proportionality into the discovery process, knee-jerk discovery remains the norm. Litigators have become addicted to broad form document production, interrogatories of marginal value, and as many depositions as allowed. Litigation may not need to be conducted that way, but more often than not, it is. Traditional litigation risks being strangled by senseless discovery that produces little of use in an actual trial.

In international arbitration, be it commercial or investor-state in nature, the presumption is that discovery as we know it is unnecessary. The parties generally will be expected to produce their documentary evidence and summaries of witness testimony without the need for request. In domestic arbitration, discovery is more available if the parties choose, but absent the parties' express agreement, counsel will be expected to show good cause why something more than basic document discovery will be needed for case preparation. If there is a reason for limited deposition discovery, it may be allowed, but the default environment will be to impose sensible limits on otherwise time-consuming, expensive discovery.

Traditional litigation is governed by established rules of procedure that apply without regard to the size or complexity of the dispute. To be sure, there are special procedures in place for small claims, and judicial intervention may curtail procedures that seem to lack usefulness. Usually however, there is one set of rules that will apply, which is quite different from arbitration. Pretrial submissions, trial readiness reporting, memoranda of contentions, complicated assembly of exhibits and deposition testimony are just a few examples of time-consuming, expensive pretrial activity that arbitration permits the parties to modify or avoid. Forget the universal application of "local rules." Instead, procedures that work for the parties and the arbitrator can be fashioned to minimize make-work and reduce time and expense.



Unnecessary expense results from the unpredictability of court calendars, and continuances cost everybody money. Obtaining an initial trial date within 18 months of case filing may be as good as one could hope, but it is widely understood that the trial date only is a "target" that may change depending on other court commitments. Parties and counsel to an arbitration can expect an early hearing date that will be firm. Absent good cause, it is rare for hearing dates to be vacated by arbitrators; continuances should be presumed to be the exception, not the rule.

Arbitration hearings normally consume an entire work day, and if the convenience of witnesses or the parties requires, sessions can extend beyond the normal end of the day. Testimony routinely is obtained telephonically, submitted in written summary form, or presented by videoconferencing. Equally important for an expedited hearing, skilled arbitrators will be quick to distinguish between the quality and the quantity of evidence, which affords the parties the chance to streamline the presentation of evidence, eliminate redundancy, and corroborate with declarations or other writings.

(see "In Defense of Arbitration" on page 20)

In Defense of Arbitration

(continued from page 19)

Very few federal or state court judges today have unlimited time to digest the facts and carefully consider all the subtleties of the evidence. That is not a criticism; it is reality. Faced with relentless criminal dockets that take priority, federal courts are hampered in their ability to ensure trial dates are firm. And a state court judge, with untold hundreds of cases, has to budget time. In contrast, parties in arbitration should expect the arbitrators to bring a singular focus, without the distraction of a busy docket. Having the time for a careful consideration of all the issues is of inestimable value, and the parties are the winners.

Arbitration is not intended to generate precedent, although submitting test cases to arbitration can result in a resolution of issues by an arbitrator with subject expertise, giving the award credibility and raising the prospect of it being a better predictor of future outcomes than ever could be produced by a jury. And the parties may not want their dispute to be laundered in public. Arbitration allows parties to benefit from a confidential, objective resolution of disputed issues without the risks of public ridicule.

What arbitration offers is a quicker, less expensive route to finality. That ordinarily means the prevailing party will be known with the entry of an award, and parties need not fear years of expensive appellate litigation. Interestingly, although an appellate review mechanism has been fashioned by some of the better known institutional arbitration administrators, to date very few parties have availed themselves of this option. Why is that? Most people want an end to the dispute, and arbitration allows the parties to reach the end point more expeditiously.

Arbitration may not be right for every dispute. Some cases must make new law to vindicate rights that previously have not been articulated. Some cases will benefit from a sizable jury deciding controverted facts, but that is untrue of most cases. Most litigants have a problem they need solved; they do not need or desire to invest years of emotional energy and inordinate financial resources to find peace of mind. Most litigants are likely to compromise their legal position in mediation. When compromise is not forthcoming, most will be better to consider arbitration with a fact-finder of choice who can guide the parties through an expedited and cost-effective resolution. In my experience, most clients will be happy they did.

(Endnotes)

[1] Analysis of National Survey of Registered Voters, November 17, 2015, http://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2015_Survey%20Analysis.ashx .

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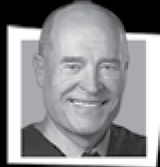
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