

Joan B. Kessler and A. Kelly Turner on

The Innovative Online Arbitration Evaluation Tool: CaseXplorer® Arbitration™

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You are the lead lawyer on a big, complex arbitration case. You know your case inside and out. You've lived with it for months—reviewing case law and documents, interviewing witnesses, deposing the other side, and drafting various pleadings. You know the facts and the law, and you have a story to tell that your client and your colleagues all agree is a winner. But then you wonder, “What would real arbitrators think of my case?”

Until recently, it was hard to get an answer to that question without substantial cost and time commitment. Until recently, you would have to go the route of an in-person mock arbitration. For that, you would identify and retain one or more arbitrators (independently or through a trial consulting firm), have the arbitrators review various materials in preparation, and proceed with usually a full day, if not multi-day, in-person mock arbitration. There is no denying the benefit of mock arbitrations in terms of the feedback the evaluative arbitrators can provide.¹ The process, however, is time-consuming. Working around the schedules of the evaluative arbitrators, the lawyers, and your client, and taking into account the extensive preparation involved, it might take months before the mock arbitration actually takes place. Additionally, the time the evaluative arbitrators spend on the matter—preparing for and attending the mock arbitration—adds up quickly, along with the cost to your client of the lawyers' time involved in the process.

Enter CaseXplorer® Arbitration™. A collaboration between the American Arbitration Association® (AAA®) and DecisionQuest®, CaseXplorer Arbitration is an online case evaluation tool, providing a lower cost and faster alternative to in-person mock arbitrations. Using CaseXplorer Arbitration, in-house counsel or their outside lawyers can receive an objective evaluation of their case from experienced arbitrators. You can use CaseXplorer Arbitration before an arbitration case has been filed or while an arbitration is pending.

With the CaseXplorer Arbitration online case evaluation tool, you will obtain feedback from three or five AAA evaluative arbitrators available for CaseXplorer Arbitration who are not associated with the actual arbitration. You choose whether to proceed with either three or five evaluative arbitrators, and you will use the AAA's CaseXplorer Arbitration Arbitrator Search Platform to search for and select those evaluative arbitrators (from a database of about 1,700 AAA arbitrators). This online search tool will allow you to peruse the AAA's full roster of CaseXplorer Arbitration evaluative arbitrators, or you can narrow your focus by searching a keyword, expertise and locale. As part of the process, you will be required to provide party information regarding you and your

1 See Sussman, Edna, *Improving Your Arbitration Presentation with a Mock Arbitration: Two Case Studies*, 5 *New York Dispute Resolution Lawyer* 2 at 15 (Fall 2012); Rothstein, Amy, *Mock Arbitrations: A New Kind of 'Jury' Research*, 242 *New York Law Journal* 50 (Sept. 10, 2009).

client as well as the other side to the dispute (*i.e.*, names of persons, firms, companies) in order to facilitate conflict checks and disclosures by the prospective evaluative arbitrators.

On the CaseXplorer Arbitration platform you can draft an introduction to the case, summarizing the facts and legal arguments at issue. You may upload to the site up to five key documents—pleadings, contracts, deposition summaries, chronologies, etc. Images and videos may be provided as well.

Next, you prepare for the evaluative arbitrators a series of questions, drafting your own questions, selecting from template questions (prepared by DecisionQuest consultants based on their experience with mock arbitrations), or combining both your own and pre-prepared questions. You can ask about the case as a whole: Should your client win or lose? You can ask the evaluative arbitrators to weigh the strengths of differing or potentially contradictory legal theories. You can ask whether your story makes sense and is believable.

The evaluative arbitrators will answer your questions through the arbitrators' portal on the CaseXplorer Arbitration platform. You will receive their written responses once all evaluative arbitrators have completed their responses. The evaluative arbitrators are asked to submit their responses within 48-72 hours of receiving access to your CaseXplorer Arbitration case study.

Like an in-person mock arbitration, CaseXplorer Arbitration can be used to clarify the key issues in a case and to focus your arbitration strategy. It also can provide you and your client with a “reality check”: Is your claim or your defense as strong as you think? Using the evaluative arbitrators' responses, you can better analyze the potential value of your case as well as potential risks in moving forward. And better understanding the value and risks of your case may help to develop or hone your client's settlement strategy. CaseXplorer Arbitration can provide you this information in less time and at less cost than an in-person mock arbitration.

If you are interested in learning more about CaseXplorer Arbitration and how it can be an important resource for your client and you, please contact Joan Kessler at jkessler@casexplorerarbitration.com or (310) 552-9800 or Kelly Turner at turnerk@adr.org or (312) 361-1116.

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