

As Courts Reopen, the Backlog Looms. Is Arbitration the Answer to Delayed Trust & Estate Disputes?

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The COVID19 crisis has forced California courts—and courts across the country—to a screeching halt. Courthouses shuttered their doors and vacated months' worth of hearings. In San Diego alone, the court is faced with a backlog of over 48,000 events that need to be rescheduled. And Los Angeles is expected to extend its stay-at-home order through the end of August, which will inevitably impact courts' efforts to reopen. It's been made clear that—for the indefinite future—there won't be any jury trials for civil or probate cases. Criminal, dependency, and family law matters will all take precedence.

As courts reopen, attorneys will be bombarded with one question: *what's the timeline?* Nobody knows: courts are cautiously beginning to resume operations, with the understanding that the doors could be closed again if the crisis reignites. Even if it doesn't, courts don't have a complete understanding of how long it will take to undo the backlog.

And clients—especially ones with strong emotions about their case—will have a hard time hearing that answer. That is especially true when a person's livelihood may be on the line, for example when someone is expecting an inheritance that they need to support their family.

How can parties move their cases forward when they can't expect a trial anytime in the foreseeable future? And when it comes to trust, estate, and probate disputes—which are often contentious and families often have deep-seeded feelings about having their day in court—a yearlong delay might not be enough to convince the parties to try mediation or other settlement vehicles. So, what's the best way forward?

The solution may lie in arbitration—where the parties all agree to pay a private judge to review their suit, often on an expedited basis. And arbitration has many advantages that may appeal to litigants eager to resolve their case.

10 Reasons Arbitration Beats Traditional Litigation

1. It's Faster

Parties usually get to hearing within a year of filing and even quicker for simpler and expedited disputes, whereas a court case will often wind its way through the system for two to five years before trial depending on the jurisdiction. Now add the backlog of closed courts, reduced public funding, criminal case priority, and pandemic-related lawsuits, and arbitration becomes significantly quicker than the court system. Even the decision-making process can be swifter. Most arbitrators render an award within thirty days of closing the hearing, whereas an overworked judge or appellate court may require months to issue a final decision.

Traditional litigation's delay becomes even more troubling when the parties consider the ticking of the pre or post judgment interest clock.

2. It's More Flexible

Parties can schedule discovery, conferences, deadlines, motion practice, and hearings around their schedule, not the beleaguered, overcrowded court docket. Most arbitrators will accommodate scheduling conflicts and personal plans, whereas the courts expect the parties to work around their calendars. Parties can also narrow the scope of the issues presented to the arbitrator for resolution without the need for a summary adjudication process.

3. It's Confidential

Parties can ensure confidentiality. Only participants can attend the arbitration because the proceedings remain private, unlike traditional litigation open to the public. Even the arbitration filings remain private, while anyone can access court filings. Parties may also like the non-precedent setting nature of arbitration, especially if they have similar cases coming behind this dispute.

4. It's Affordable

Faster hearings mean lower costs. Instead of the litigation expense mounting over years of protracted conflict, the parties can curtail the amount of discovery, conferences, motion practice, and time to hearing and thereby significantly reduce their attorneys' fees and costs.

5. It Provides More Choice

Parties typically select their arbitrator. They agree upon the decisionmaker of their choice instead of the random assignment of a court judge or the jury pool in traditional litigation.

6. Arbitrators are Sometimes Better Prepared

Parties can also choose an arbitrator with specific subject matter expertise, skill, or experience. Especially in highly technical cases, the parties can save a lot of time, expense, and effort when their jurist already understands the landscape. Some parties choose to forgo expert testimony because, unlike the jury, the arbitrator has the specialized knowledge to follow the presentation of evidence without an expert's explanation.

7. It's Simpler

Parties can schedule a quick call with the arbitrator to settle a discovery dispute or email a subpoena request; they do not have to file a costly motion with

traditional notice. Most arbitrators relax the rules of evidence and eliminate burdensome procedures.

8. It's More Predictable

As every seasoned litigator knows, no one can predict how a jury will decide. Arbitrators, however, pride themselves on following the law, applying it to the facts, and eschewing emotional appeals. They remain far less susceptible to sympathy than a jury.

9. It Puts Control in the Parties' Hands

Parties can control the arbitration process either through their arbitration contract or by post-dispute agreement. They decide how much discovery to afford, what law will apply, which procedural rules will apply, where the dispute will be heard, how the dispute will be heard – in person, video conference, telephonic, or documentary - and much more. The arbitrator will implement the parties' choices as long as they agree. In fact, the parties can amend, modify, or reject most arbitral rules of the forum if they want.

10. It's Final and Binding

Parties can only appeal arbitration awards on limited grounds. Accordingly, they can put their dispute to rest and get back to business quicker, faster, and cheaper – something we all want to do as soon as the pandemic permits.

Everyone Benefits When Parties Arbitrate a Trust or Estate Dispute

If parties choose to seek arbitral resolution of the trust and estate disputes, they are not the only ones who come out ahead. Other litigants—perhaps those whose matters are uncontested and merely need court approval to proceed—won't have to wait as long in line. The courts can hear their matters without spending extensive resources hearing the contentious and often time-consuming disputes that have gone to arbitration. This means that the courts catch up quicker, other matters get resolved sooner. So arbitrating a trust or estate dispute is a service not only to the litigants themselves, but also the community at large.

In short, if clients are worried about how COVID19 will affect their case, A\arbitration may be the answer.

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