



Administered vs. Ad Hoc Arbitration: Which Should You Choose?

December 2, 2015 – 12:00 p.m. - 1:00 p.m. ET

PROGRAM SUMMARY

Speakers: Keith S. Burn and Richard Flake

Counsel who lack a thorough understanding of arbitration are often unwilling to trust the process and may be inclined to resort to the “comfort zone” of litigation. Effective management of the process by both the administering institution and the arbitrator, however, usually results in a faster, cheaper and more mutually satisfying process and makes selecting administered arbitration a no-brainer.

AGENDA

12:00 p.m.	Welcome and Introduction of Speakers	(5 minutes)
12:05 p.m.	Administration vs. Ad Hoc <ul style="list-style-type: none">• the myth that an ad hoc process is cheaper than administered arbitration;• potential problems involving disclosure;• the role that an administrative institution may play in reviewing the award;• arbitrator fee collection;• why familiarity with the rules being applied is so important.	(45 minutes)
12:50 p.m.	Conclusion and Questions	(10 minutes)
1:00 p.m.	Evaluation	(5 minutes)
1:05 p.m.	Adjourn	



Keith S. Burn, Esq.
Keith S. Burn, P.A.

Current Employer-Title Keith S. Burn, P.A.- Attorney/Owner

Profession Attorney

Work History Keith S. Burn, P.A., 2011 to present; The Pickett Law Firm, LLC, 2007-2011; Partner/Of Counsel, Cuddy, Kennedy, Albetta & Ives, LLP (and predecessor firm), 2001-07; Attorney, Keith S. Burn, P.A., 2000-01, 1992-98, 1975-82; Partner, Burn & Littlefield, P.C., 1998-00; Partner, Poole, Kelly & Ramo, 1990-92; Partner, Sutin, Thayer & Browne, 1986-90; Partner, Campbell, Reeves & Burn, 1982-86.

Experience General Experience: Since 1973, has represented many contractors, subcontractors, owners, material suppliers and design industry professionals in construction matters. Has also represented numerous business entities in general business negotiations and disputes. From 1973 to 1985, practice focused on construction law and general commercial matters. Transactional work included preparation of construction contracts, commercial and residential real estate purchase documents, sales, leases, shopping center leases, escrow contracts, documents for the purchase and sale of existing businesses including a number of automobile dealerships. Served as general counsel to and represented a wide-range of businesses such as title insurance companies, real estate developers, automobile dealers, contractors, subcontractors, architects, and engineers. Since 1986, practice shifted toward the litigation, arbitration, and mediation of business and construction industry disputes including breach of contract, warranty issues, personal guarantees, real estate matters, business torts, defective plans and specification, construction claims, changed conditions, geotechnical engineering, asphalt design mix, etc. Has also represented owners, architects, engineers, and prime and subcontractors equally.

Construction Experience: With respect to construction disputes and claims in litigation or arbitration, the following are representative of the type of work and issues: (1) represented the public owner of a hydroelectric power plant in connection with claims asserted by the prime contractor in state court for changed conditions and delay damages; (2) represented the public owner of another hydroelectric power plant in connection with millions of dollars of claims asserts by a large national contractor in state court for defective plans and specifications, acceleration, delay and liquidated damages; (3) represented a national engineering company in an arbitration brought by a prime contractor owned by an Indian Tribe over claims for asphalt mix design and rock crushing operations; (4) represented a national engineering company in a state court action involving soil subsidence and building settlement issues in connection with the construction of a regional hospital; (5) represented a public owner in an arbitration in connection with claims made by the owner against the prime contractor for defective installation of a roofing membrane on a convention center; (6) represented a public owner in an arbitration over the construction of a solid waste recycling center; (7) represented a

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Neutral ID : 125241

public owner in a state court action in a suit against the design professional over defective design of a drainage system of a school complex; (8) represented a private owner in a state court action against a prime contractor for defective construction of a roof truss system; (9) represented a general contractor in litigation in state court against the New Mexico Department of Transportation in connection with construction of a roadway and utility project; (10) represented a general contractor in a state court action against a major metropolitan area in connection with the construction of a sanitary sewer line; and (11) represented a material supplier in a case involving treated lumber used in the construction of a residential subdivision. AV rating by Martindale-Hubbell Law Directory.

Alternative Dispute Resolution Experience

American Arbitration Association, court-appointed and selected privately as an arbitrator and mediator, and FEMA Cerro Grande Fire arbitrator. Arbitrates and mediates complex commercial and construction disputes. Member of panel of arbitrators in multi-party case with claims for construction defects, defective plans and specifications, foundation, excavation, acceleration, delay and quantity of materials issues in construction of large resort hotel. Member of panel of arbitrators in case involving construction of hundreds of cellular telephone towers in the Southeastern United States. Member of panel of arbitrators on cases involving computer contracts in automobile industry. Member of panel of arbitrators in case involving construction of solar field. Sole arbitrator in large cases involving claims of delay, acceleration, scheduling, defective construction of commercial buildings and residences involving materials specifications, stucco, framing, asphalt, concrete, foundations, geotechnical engineering and roofing. Sole arbitrator in a large public works construction case between prime contractor and subcontractor in a myriad of issues. Final award was almost \$9 Million.

Alternative Dispute Resolution Training

AAA Motion Practice in Arbitration, 2014; AAA Webinar, Managing the Costs of Exchanging ESI, 2013; Association of Attorney-Mediators Advanced Attorney-Mediator Training, 2013; AAA Essential Mediation Skills for the New Mediator, 2012; AAA Regaining Speed and Economy in Dispute Resolution, 2011; AAA Webinar, Lien on Me: Construction Lien Issues in Arbitration, 2011; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2010; Arizona State Bar, Private Arbitration Update, 2009; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2007; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2006; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2006; AAA Arbitrator Ethics & Disclosure (ACE003), 2004; AAA Arbitrator Update 2004; AAA Construction Industry Arbitrator II Training, 2001; AAA Construction Industry Arbitrator Training Workshop, 1997; AAA Arbitrator Training.

Professional Licenses

Admitted to the Bar: Colorado, 1973; New Mexico, 1975; U.S. District Court: District of Colorado, 1973; District of New Mexico, 1975; U.S. Court of Appeals, Tenth Circuit, 1984; U.S. Tax Court, 1979; U.S. Supreme Court, 1984.

Professional Associations

State Bar of New Mexico; New Mexico Supreme Court Disciplinary Board (Past Chair); American Bar Association (Construction Industry Forum; Public Contract Law Section); State Bar of Colorado.

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The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Education Duke University (BA-1970); University of Denver (JD-1972).

Publications and Speaking Engagements "How Arbitration Works - Avoiding Potholes," New Mexico State Bar Convention, 2009; "Alternative Delivery Methods for Public Works Construction," New Mexico School Boards Association School Law Conference, 2006; "The Procurement Code and Construction Projects," New Mexico School Boards Association School Law Conference, 2004, 2005; "Public Contracts and Procurement Regulations in New Mexico," Lorman Institute, 2003, 2004, 2005; "The Public Schools Facilities Authority; Review of Procedures and Contract Forms," New Mexico School Boards Association School Law Conference, 2004; "Construction and Procurement; Bringing Order Out of Chaos," New Mexico Schools Boards Association School Law Conference, 2002; "Construction Payment Remedies," NBI, 2000; "Understanding the Significant Changes to the American Institute of Architects Documents," Lorman Institute, 1998; "Advanced Construction Law in New Mexico," NM Bar Association, 1996; "Construction Contracting," Lorman Institute, 1994; "Construction Claims and Job Profitability," NM Bar Association, 1992; "Troubleshooting Your Construction Project," NM Bar Association, 1986; "Bridge The Gap Seminar," NM Bar Association, 1985; "Construction Law and Arbitration," NM Bar Association, 1984; "Construction Law in New Mexico," NM Bar Association, 1983.

Citizenship United States of America
Languages English
Locale Las Cruces, New Mexico, United States of America

Compensation

Hearing:	\$300.00/Hr
Study:	\$300.00/Hr
Travel:	\$1200.00/Day
Cancellation:	\$150.00/Hr
Cancellation Period:	30 Days
Comment:	Gross receipts tax will only be charged on work performed in New Mexico. No billing for travel time within the state of New Mexico (up to 4 hours) or for travel to Tucson, Phoenix, El Paso, Dallas, Houston or San Antonio. All travel expenses charged at the exact cost incurred (auto mileage will be charged at the federal rate.)

Cancellation policy - the lesser of the fee for three hearing days or 50% of the fee for the scheduled hearing if cancelled within 10 days of the date of the scheduled hearing.

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Richard P. Flake, Esq.
Cokinos, Bosien & Young

Current Employer-Title	Cokinos, Bosien & Young - Partner
Profession	Attorney, Arbitrator, Mediator, Municipal Court Judge, Adjunct Professor
Work History	Shareholder, Cokinos, Bosien & Young, 1991-present; Vice President/General Counsel, Spaw-Glass Construction, Inc., 1985-91; Assistant County Attorney, Montgomery County, 1984-85; Attorney, Walsh, Flake & Stovall, 1982-84.
Experience	Primarily engaged in construction, business, labor and employment law. 80% of practice in construction and business law, primarily representing general contractors, owners, sub and specialty contractors, sureties/insurers, suppliers/manufacturers and designers (80%). Public, private and international projects include commercial, heavy/highway, industrial, petrochemical, power, institutional and residential structures, both onshore and offshore, public and private. Experience in all typical claims and defenses presented in construction matters. Also 20% of practice in employment law, particularly in labor disputes, wrongful termination, discrimination, sexual harassment, unfair labor practices, drug and alcohol testing and Americans with Disabilities Act matters. Adjunct Professor in Construction Law and Ethics for construction management degree at the University of Houston.
Alternative Dispute Resolution Experience	Arbitrated over 300 cases to hearing, and mediated approximately 1500 cases. Cases involve commercial, construction, securities, and employment matters, with some claims valued in excess of \$30 million. Member of the AAA Construction Arbitration Master Panel. Faculty trainer of arbitrators for AAA since 1998.
Alternative Dispute Resolution Training	AAA What We Have Here is a Failure to Communicate 2014; Faculty, AAA Arbitration Fundamentals and Best Practices for New AAA Arbitrators, 2007-present; Faculty, AAA Essential Mediation Skills for the New Mediator, 2012; AAA/ICDR Neutrals Conference, 2012, 2010; Faculty, AAA Advanced Mediator Training, 2011; AAA Regaining Speed and Economy in Dispute Resolution, 2011; AAA, ADR Strategies That Save Time and Money, 2010; AAA Advanced Mediator Training, 2009; DRBF, Using Dispute Boards to Corral Construction Disputes, 2009; AAA Train the Trainer: Arbitration Fundamentals and Best Practices for New AAA Arbitrators, 2007; Faculty, AAA Construction Arbitrator II: Advanced Case Management Issues, 2006, 2001-03; Faculty, AAA Arbitrator I: Fundamentals of the Arbitration Process, 2002-05; Faculty, AAA seminar, Straight Talk About Construction Arbitration, 2005; AAA National Forum on Conflict Management in the Construction Industry, 2004; Faculty, AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2004, 2003; AAA Arbitrator Update 2001; AAA Mediator Retreat, 2000; Faculty, AAA Commercial Arbitrator Training, 1999-00; AAA Construction Train the Trainer Course, 2000; attended AAA Mediator Retreat, 2000; Faculty, AAA Commercial Train the

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Trainer Course, 1998; AAA Panel Retreat, 1997; AAA Continuing Arbitration Training, 1997; AAA Construction Industry Arbitrator Training Workshop, 1996; NASD Introductory Arbitrator Training, 1996, 1994; AAA 40-Hour Mediation Training Course; various other ADR training.

Professional Licenses

Admitted to the Bar: Texas, 1982; U.S. District Court, District of Texas, 1982.

Professional Associations

Houston Bar Association (Construction Law Section, Past Chair); State Bar of Texas (Construction Law Section, Past Council; ADR Section, Current Council member 2009-2011, Real Estate Section; Municipal Judges Section).

Education

University of Texas (BA-1979) Phi Beta Kappa; University of Houston (JD-1981).

Publications and Speaking Engagements

PUBLICATIONS: "Mediating Construction Disputes: What Works and What Doesn't " HANDBOOK ON MEDIATION, 2D EDITION, JurisNet, 2010, "Nuances of Med/Arb, A Neutral's Perspective, HANDBOOK ON CONSTRUCTION ARBITRATION & ADR, 2D EDITION, JurisNet 2010, "Construction Delivery Systems", 22d Annual Construction Law Conference" State Bar of Texas Construction Law Section 2009, "Curtailing Litigation Costs: Effective Use of Arbitration," BUILDING PROFITS (CFMA), March 2006; "Mediating Construction Disputes What Works And What Doesn't," DISPUTE RESOLUTION JOURNAL, May-July 2003; "Arbitration 101 - What Every Advocate Should Know," video ONLINECLE, 2003; "From the Neutral's Perspective: What Arbitrators Want From the Process," State Bar Association of Texas, Arbitration Law Course, 1998; "Construction Liens and Bond Claims in Texas," Lorman Educational Services, 1996; "Indemnity Revisited: The Duty to Defend," STATE BAR CONSTRUCTION LAW SECTION NEWSLETTER, vol. 1, no.3, 1991.

SPEAKING ENGAGEMENTS: "Practical Arbitration Tips," Houston Bar Construction Law Section 201, "Advanced Mediator Training: Mediating Construction Disputes, A.A. White Dispute Resolution Center of The University of Houston Law Center, 2011, "Construction Delivery Systems", 22d Annual Construction Law Conference" State Bar of Texas Construction Law Section 2009, "Construction Mediation Advocacy," 19th Annual Construction Law Conference, State Bar of Texas, 2006; speaker, "Construction Mediation, What Works and What Doesn't," 15th Annual Construction Law Conference, 2002, State Bar of Texas Convention, 2002; speaker, "Construction Manager at Risk: What's in a Name?" 14th Annual Construction Law Conference, 2001; speaker, "Construction Law/Alternative Dispute Resolution," Texas A&M Construction Executive Program, 1996-02; "Residential Construction Update," University of Texas, 7th Annual Construction Law Conference, 1993; "Risk Shifting in Contract Documents," University of Texas, Fourth Annual Construction Law Conference, 1991.

Awards and Honors

Lawyer of the Year, Construction Law in Houston, Texas from Best Lawyers; Arbitrator of the Year, Southwestern U.S. Better Business Bureau, 1993; Phi Beta Kappa, University of Texas at Austin, 1979. Texas Super Lawyer, 2006-2011, Texas Monthly Magazine.

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Citizenship
Languages
Locale

United States of America
English
Houston, Texas, United States of America

Compensation

Hearing:	\$3000.00/Day
Study:	\$350.00/Hr
Cancellation:	\$1500.00/Day
Cancellation Period:	14 Days
Comment:	Cancellation policy: if any case (scheduled for a minimum of three days of hearing) settles or is continued within fourteen (14) days of the hearing date, up to one-half (1/2) of the daily fee times the number of hearing days may be charged. This charge will be made only if the prescribed time cannot be filled with other paying work.

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CONSTRUCTION ARBITRATION

Understand and control your arbitration costs.



AMERICAN ARBITRATION ASSOCIATION®

Top 10 ways in-house counsel can control time and cost:



1. Pay Attention to **Your Arbitration Clause**
2. Select Attorneys **Experienced in Arbitration**
3. Request and **Enforce Budgets**
4. Choose an **Arbitrator with Experience**
5. Limit Discovery to **What is Essential for the Arbitration**
6. Participate in the **Preliminary Hearing**
7. Limit **Motion Practice**
8. Remain **Open to Settlement**
9. Trust the **Expertise of the Arbitrator**
10. Present the Case **Efficiently and Professionally**



One Arbitrator



Three Arbitrators

A single arbitrator instead of a panel of three is a great way to lower costs.

Parties that select a single arbitrator instead of three can reduce arbitrator compensation costs by **77%**.

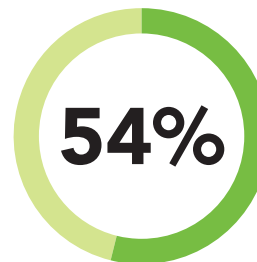


VS.



Do you really need three arbitrators for a million dollar construction dispute?

More than half of the parties with a large construction dispute select a single arbitrator.

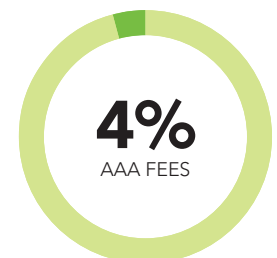


Case Study:

Even in a construction case with a **\$50 million** claim, the parties selected a single arbitrator.

85%

of the cost of an arbitration is derived from attorney fees, which emphasizes the importance of selecting counsel experienced in arbitration.





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