



## Addressing the Challenges of Demanding Arbitrations Part 1 – The Pre-Hearing Landscape

April 12, 2017 – 1:00 pm to 2:50 pm ET

### **PROGRAM SUMMARY**

**Speakers:** Reginald Holmes and Merriann Panarella

Part 1 of the speakers' "Critical Issues" series, will provide practical techniques and tips on addressing the oft-times thorny issues that present themselves during the pre-hearing phase of an arbitration and threaten to diminish the benefits of the process.

### **AGENDA**

- |                  |   |               |
|------------------|---|---------------|
| <b>1:00 p.m.</b> | <b>Welcome and Introduction of Speakers</b>   | (5 minutes)   |
| <b>1:05 p.m.</b> | <b>Pre-Hearing</b> <ul style="list-style-type: none"><li>• Setting the stage (avoiding disqualifying activities; the well-conceived disclosure; social media concerns; interviews; effective use of instructional letters);</li><li>• The preliminary hearing (the agenda; process confirmation; expectation of counsel; issue spotting; scheduling; preliminary issues that lead to good case management);</li><li>• Pre-hearing issues (discovery; protective orders; intentional delay; non-payment of fees; panel member difficulties; court injunctions and directives);</li><li>• Eve of the hearing obstacles (unavailable witness; newly discovered evidence; late addition of claims or parties; venue and counsel issues; expert witness problems; requests to continue);</li></ul> | (105 minutes) |
| <b>2:50 p.m.</b> | <b>Conclusion &amp; Evaluation</b>  | (5 minutes)   |
| <b>2:55 p.m.</b> | <b>Adjourn</b>  |               |



Reginald A. Holmes, Esq.  
The Holmes Law Firm

**Current Employer-Title** The Holmes Law Firm, APC (Los Angeles, Chicago)  
Holmes Law Dispute Resolution Services (Toronto, Shanghai, Atlanta, New York City)

**Profession** The Holmes Law Firm, APC (Los Angeles, Chicago)  
Holmes Law Dispute Resolution Services (Toronto, Shanghai, Atlanta, New York City)

**Work History** Chairman, The Holmes Law Firm APC (Dispute Resolution), Current;  
EVP and General Counsel, Horne Entertainment Inc. 1997-2001;  
General Manager/Asst. GC - Intellectual Property/ Licensing and Business Development, McDonnell Douglas Corp. (now Boeing), 1996-97;  
Of Counsel, Baker & Hostetler, 1995-96;

Pre -1995 Associations:  
Partner, Holmes and Associates, (Litigation, IP, Employment and International Law);  
General Counsel, West Region, Wang Laboratories Inc., (Computers/Applications Software); Dir. of Contracts/Pricing/Competition, Rockwell International Aircraft Operations (now Boeing);  
Patent Attorney, Wescom Inc. (now Rockwell Collins);  
Patents/Copyright Agent, Cushman, Darby & Cushman (now Pillsbury, Winthrop, Shaw and Pittman)

**Experience** Extensive and over arching in-depth blue chip and "in the trenches" experience as an attorney, litigator, business executive, professional consultant, "In House" corporate counsel, Judge and ADR neutral. Career has encompassed vast areas of complex business, commerce and conflict issues. The following is a narrative of some of that experience:

Extensive experience with major sophisticated nationwide franchise, dealers and third party representative agreements including Structuring, negotiating and enforcement and termination of all manner of complex and sophisticated franchise and distribution agreements; expert on management of franchisor/franchise relationship management; **FORMER PATENT ATTORNEY WITH DEEP EXPERIENCE WITH TECHNOLOGY AND INTELLECTUAL PROPERTY ISSUES** including the conceptionalization, funding, development, exploitation, protection and enforcement of technology and intellectual property rights through the use of contracts, patents, trademarks, copyrights, trade secrets.; invention, inventor and inventorship advice, counseling and planning; acquisition, commercialization and revenue generation from patents and other IP with strong emphasis on information, computer and telecommunication technology; litigation including infringement, antitrust and fraud claims, ADR, legislation and public

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*Neutral ID : 123892*

education; conduct of Markman Hearings; Consultant to private alternative "clean" energy investment group; Experience in the employment area include recruitment, executive compensation and termination of employees and executives; as well as harassment, sex and race discrimination, defamation, employee theft and fraud, privacy and secrecy protection, retaliation and wrongful termination claims; Experience in the entertainment and sports area include working as General counsel and EVP of business affairs and offering management and legal counseling directed towards movie and TV show production, internet gaming, and sports franchises and other Hollywood based entertainment assets; vetting TV and movie productions and clearing intellectual property rights.

Background and experience in the financial and commercial area includes structuring, capitalizing, managing, growing, LBO and taking public corporations, partnerships and LLC's; counseling related to asset base financing and mortgage backed securities; advice directed towards the restricting, bankruptcy and reorganization of distressed businesses; Counseling fiduciaries on investment powers, duties and responsibilities; and management of consumer credit and debt. As an attorney and General partner in the real property and construction area experience includes "Deal making" and all manner of joint ventures and strategic engagements for the development and financing of sophisticated commercial, planned and multi-unit residential real estate projects including appraisal, environmental assessment, profitability analysis, development, construction, marketing and workout issues; have handled both sides of claims for construction defect and fraud.

In the international arena experience includes: Negotiation of joint venture arrangements, manufacturing and supply agreements and the Structuring, negotiating and enforcement of all manner international franchise and international distribution deals; Counsel directed towards Intellectual property rights acquisition and IP protection and enforcement strategies for China, Japan, India, the Pacific basin, Europe and Africa. Background also includes significant experience in intellectual property valuation and rate of return analysis, computer aided design , e-commerce law, aerospace, government contracts, managing multi-ethnic employees groups and developing self-directed employee learning programs, global dispute resolution, proper management of outside counsel and legal fees and "Line" P&L responsibility.

### **Alternative Dispute Resolution Experience**

Member of the AAA's Large Complex Case Panel for more than 10 years. Since 1988 has served as chair, sole and panel arbitrator, mediator, referee, private judge, private justice, Discovery Referee, Markman hearing officer or judge pro tem in hundreds of complex commercial disputes. Amounts in dispute have ranged from small dollar matters to amounts in controversy well in excess of \$200 million. Subject matters in dispute have ranged across the pantheon of referenced industries including software fraud, entertainment industry disputes, termination of distributorship, breach of a sports contract, patent infringement, race discrimination, sexual harassment, partnership dissolution, and stock, securities and investor fraud, construction defect, breach of entertainment distribution contract, breach of surety and trustee obligation, identity theft, defamation, and imaging rights theft, software defect fraud and breach of international distribution rights.

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*Neutral ID : 123892*

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.

Frequent panelist and lecturer on ADR, private justice and technology topics for various bar and business organizations. Former chair of the AAA's Los Angeles B2B Advisory Committee.

## **Alternative Dispute Resolution Training**

Out of Sight, Out of Mind: What You Need to Know about Preventing and Arbitrating Business-to-Business ("B2B") Data Breaches, 2017; California International Arbitration Summit, 2016; Faculty, AAA Best Practices for Counsel - Mediating and Arbitrating The Complex Employment Dispute, 2016; Faculty, AAA Exploring Critical Issues in Arbitration, 2016; Faculty, AAA The Role of Fairness and Justice in Arbitration, 2016; Faculty, AAA Master Techniques for Counsel Mediating and Arbitrating the Large Complex Intellectual Property Case, 2016; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA Roundtable - Arbitration Panels, 2015; AAA How You Can Make the Most of Mediation's Global Growth 2015; AAA The 31st Annual Joint Colloquium, NY, 2014; AAA ICDR International Symposia in Advanced Case Management Issues, 2014; AAA eDiscovery 2.0, 2014; AAA Advanced Mediation Series: Managing the Dynamics of a Multi-Party Class, 2014; AAA Winning at Arbitration: More than 30 Specific Tips Advocates Can Use to Improve Arbitration Outcomes, 2014; AAA Managing a Successful Arbitration, 2013; AAA/ICDR Neutrals Conference, 2012, 2009; College of Commercial Arbitrators Annual Meeting, 2011, 2008; AAA Regaining Speed and Economy in Dispute Resolution, 2011; ICDR/IBA Four Roundtables in Times Square - Putting the Spotlight on International Arbitration on Broadway, 2011; AAA Due Process Dilemmas: How Far to Go in the Name of Fairness, 2011; AAA Spring Construction Conference, Mediation: It's Not New, So What's Next?, 2011; AAA Better, Faster, Cheaper: Reducing Costs in Labor Arbitration, 2011; AAA Workplace Bullying: The Role of Policies and ADR Systems, 2011; AAA Dealing with Delay Tactics in Arbitration (ACE004), 2010, 2005; AAA How to Prevent Arbitrations from Transforming into Litigations, 2009; AAA Electronic Discovery in Arbitration: What You Need to Know, 2009; AAA Current Issues in Employment Arbitration: The Arbitration Fairness Act of 2009 Legislation and Recent Court Decisions, 2009; AAA Hot Topics in International Construction Arbitration, 2009; AAA Alternative Investments Meet Alternative Dispute Resolution, 2009; ICDR Joint Colloquium on International Arbitration, 2008; AAA Construction Mediation Conference, 2007; ICDR International Symposia in Advanced Case Management Issues, 2007; NAA Beyond the Protocol: The Future of Due Process in Workplace Dispute Resolution, 2007; AAA Neutrals Conference, 2006, 2005; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2006; DRS/LA Bar, 30-Hour Mediator Training, 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2005; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2001; Price Waterhouse Company, Directing Efficient High Stakes ADR Proceedings, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; AAA Commercial Arbitrator Training, 1999; Los Angeles County Bar, Arbitration and Mediation Seminar, 1998; various other ADR training.

## **Professional Licenses**

Admitted to the Bar: Virginia, 1978; Illinois, 1979; California, 1981; U.S. Patent Bar (inactive), 1979.

## **Professional**

State Bar of California (International Law Section, Executive Committee;

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*Neutral ID : 123892*

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<b>Associations</b>	Franchise Law Section, Executive Committee); Los Angeles County Bar Association (Board of Trustees, Judicial Appointments Committee); Langston Bar Association (Past President); California Judicial Council; Public Counsel (Past Board of Directors); College of Commercial Arbitrators (Fellow); California Association of Distinguished Arbitrators (Fellow); Association for International Arbitration; Kappa Alpha Psi (Life Member); NB United Fund (Past Chairman).
<b>Education</b>	University of Florida (BS, Electrical Engineering); Georgetown University Law Center (JD)
<b>Publications and Speaking Engagements</b>	<p>"Navigating the High Intensity Mediation", California Department of Fair Employment and Housing, January 6, 2015; "Challenges and Issues with Bias and Culture in International arbitration", Third Annual LACBA &amp; ICDR International Arbitration Conference, May 9, 2014; "Mediating and arbitrating USA v. Canada commercial franchise and distribution disputes" Toronto, Canada, Toronto, June, 2014; "How to get your mediator to see things your way", LACBA Labor and Employment law Section, May 4, 2014; "Arbitrating and mediating disputes with China connected parties and issues", Guangzhou, China, April, 2014; "Dispute resolution and conflict management in the corporate board room", ABA DRS spring meeting, Washington, DC, April 2013; "Cutting edge techniques for winning the international arbitration case", Tokyo, Japan, December 2013; "Dispute Resolution for the Billion dollar Intellectual property disputes – from an arbitrator who has presided over one", ABA, San Francisco, June 2014; "The Ins and Outs of acting as private Settlement Counselor", ACR annual convention, San Diego, October 14, 2013; "Achieving Justice for small players and corporate persons in hotly contested arbitrations", College of Commercial Arbitrators, Santa Fe, New Mexico, October, 2013; "Preventing Runaway Arbitrations", ABA annual convention, San Francisco, Ca., August 2013; "Protecting Mediator confidentiality", Beverly Hills Bar Association, May, 24, 2012; The great debate: Arbitration v. Litigation, ABA annual meeting, Chicago, August 2012; "Fostering private Justice", DePaul University Law School, June 22, 2011; "How to build a successful mediation or arbitration practice", ABA DRS section, Denver, April, 2011; "Master Techniques for Winning the Large Complex Case," The Emerging Issues Forum, 2010; "Private Justice-ADR's Only Legitimate Objective," LOS ANGELES LAWYER, 2010; "The Many Splendid Roles of the Lawyer in ADR," Pepperdine Law School, Straus Institute, 2010; "Arbitrating international commercial disputes in Georgia", ICLE in Georgia, 2010; "Mediating Employment disputes in Georgia", ICLE in Georgia, 2010; "An Essential Toolbox for the Champions of ADR," 2009; The Private Justice System in a Post-ADR World," AAA, 2009; "A Primer on Mediating and Arbitrating the Multimillion Dollar Franchise Dispute," 2008; "A Primer on Arbitrating International Intellectual Property Cases," 2008; "A Better Option: Mediating and Arbitrating the High Stakes Employment Case," 2008; "Understanding and Winning Consumer Arbitration Cases," 2008; "When the Building Must Go On: The Med/Arb Option for Construction and Real Estate Projects," 2007; "Avoiding Armageddon Through ADR," 2006; "Keys for Successful USA Based International Arbitration," 2005; "Winning Mediation Strategies," 2001; "Winning Arbitration Strategies for the Large Complex Patent Case," 1999; "The Legalities of Exporting," Department of Commerce, 1992-94; "Structuring Distribution Agreements in Asia," Computer</p>

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Law Institute, 1988; Contributing Editor, "Negotiating Computer Contracts," 1984, 1992.

**Citizenship**  
**Languages**  
**Locale**

United States of America

Chinese

Pasadena, California, United States of America

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## Merriann M. Panarella, Esq.

<b>Current Employer-Title</b>	Merriann Panarella, Esq.-Commercial, Transactional, Intellectual Property Arbitrations
<b>Profession</b>	Arbitrator, Mediator, Consultant-Commercial, Transactional and Intellectual Property Disputes in New York City and Boston
<b>Work History</b>	Arbitrator, Mediator, Consultant, 2007- present; Litigation Partner, Intellectual Property and Complex Commercial Practice Groups, Wilmer Cutler Pickering Hale and Dorr LLP, 1980-2007; Law Clerk for The Honorable W. Arthur Garrity, 1979-1980.
<b>Experience</b>	<p>Over 30 years experience in all aspects of complex litigation including lead trial counsel at the pretrial, trial, and appellate levels, and in Markman hearings in patent cases. Has managed trial teams including lawyers, scientists, experts, paralegals and technical support personnel and has negotiated and drafted complex settlement, licensing, and confidentiality agreements.</p> <p>Litigation experience includes:</p> <ul style="list-style-type: none"><li>-Contractual and commercial matters</li><li>-Licensing and technology development agreements</li><li>-Patent cases in diverse industries and technologies</li><li>-Trade secret and non-compete claims</li><li>-Partnership and other collaborative disputes</li><li>-Deceptive trade claims</li><li>-Employment disputes both contractual and statutory</li><li>-Antitrust matters</li><li>-Securities lawsuits</li><li>-Real estate development agreements</li><li>-Environmental matters involving gas storage tank liability and other issues</li><li>-Trademark and copyright claims</li><li>-Insurance matters</li></ul> <p>Industry experience including:</p> <p>Telecommunications, medical devices, life sciences, pharmaceuticals, software, oil and gas, plastics, health care, sporting goods, and various methods of manufacture (laser, ink jet, plastics, and thermistor technologies). Domestic and foreign clients have included large New York Stock Exchange listed companies as well as small venture backed start-ups and individuals.</p> <p>Litigation clients included, for example:</p> <ul style="list-style-type: none"><li>-Global manufacturer of high performance analogue semiconductors for use in</li></ul>

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mobile phones in a multi-million dollar dispute involving 12 patent and related trade secrets

-Worldwide provider of innovative medical devices in a multi-million dollar dispute involving five patents related to thoracic drainage devices

-National manufacturer of open programmable switches in a technology development dispute over the miniaturization of proprietary switching technology  
-U.K. medical device manufacturer in a dispute involving multiple patents directed to vascular foot pumps

-Leading manufacturer of temperature control devices in a trade secret dispute over thermistor manufacturing

-Canadian telecommunications company in an antitrust matter

-Global oil and gas refining and marketing company in multiple cases involving environmental issues, product liability claims

### **Alternative Dispute Resolution Experience**

Arbitration experience including in large, complex cases, for example: a multi-million dollar dispute over the development of a medical device, licensing disputes, a hospital accounting dispute.

Mediation experience including as counsel and mediator, intellectual property disputes, licensing and technology agreements, contracts, deceptive trade claims, real estate and environmental matters.

Panels:

-American Arbitration Association (Arbitration)

-International Chamber of Commerce (ICC)

-World Intellectual Property Association (Arbitration and Mediation)

-Financial Industry Regulatory Authority (Arbitration)

-Mediation Works, Inc. (Mediation)

-Massachusetts Fee Arbitration Board (Arbitration)

### **Alternative Dispute Resolution Training**

-ICDR Awards and Commentaries - Just How Different Is International Arbitration Than Domestic Arbitration? 2015;

-Chartered Institute of Arbitrators (CI Arb), Fellow

CI Arb Diploma in International Arbitration (2012)

CI Arb International Commercial Arbitration Training (Montreal 2011)

-International Chamber of Commerce (ICC)

Ninth Annual ICC New York Conference (2014)

ICC International Commercial Arbitration Workshop (Florence 2014)

ICC International Dispute Resolution (2004)

-American Arbitration Association (AAA)

"Exceeded Powers": Recent Trends in Cases Challenging Arbitrator Authority (2014)

Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing (2013)

Advanced Case Management Issues (2006)

Arbitrating Intellectual Property Disputes (2005)

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Fundamentals of the Arbitration Process (2005)

-Financial Industry Regulatory Authority (FINRA)  
Live Video Basic Arbitrator Training (2013)  
Basic Arbitrator Training Part II: Expungement Training (2013)  
Basic Arbitration Training Part I (2013)

-American Bar Association  
12th Annual Advanced Mediation and Advocacy Skills Institute (2014)  
-Harvard Law School Program of Instruction for Lawyers  
Mediation Workshop (40 hours) (2003)

-World Intellectual Property Organization (WIPO)  
Mediation Training, (16 hours) (Geneva 2005)

-Mediation Works, Inc. (MWI)  
Mediator Roundtables (2014)  
Mediation Training for Volunteers (2005, 2013)

**Professional Licenses**

Admitted to the Bar: Massachusetts, 1980; New York, 1980; U.S. District of Massachusetts, 1980; U.S. Court of Appeals, First Circuit, 1981; U.S. Federal Circuit Court of Appeals, 1993.

**Professional Associations**

-Chartered Institute of Arbitrators, Fellow  
-American Bar Association (Dispute Resolution, Co-Chair Intellectual Property Committee, WIDR Member, Intellectual Property Law and Litigation Sections)  
-International Chamber of Commerce (ICC)  
-CPR Institute for Dispute Resolution, International Commission on Patent Disputes (past)  
-American Intellectual Property Law Association (AIPLA)  
-Boston Bar Association (past council member)  
-Boston Bar Foundation (Fellow)  
-Boston Club  
-Wellesley College Business Leadership Counsel (invitation only)

**Education**

Wellesley College (B.A., Summa Cum Laude, Economics, Phi Beta Kappa, 1975);  
University of Virginia (J.D. 1979).

**Publications and Speaking Engagements**

Boston Bar Association, Moderator, "Grow Your ADR Practice: Advice From the Experts"; "Considering a Legal Career", Wellesley College Keynote Address; "Moving for Injunctive Relief", MCLE, (Second Edition); "Presentation to Mass Medic: "Intellectual Property: What it is and How to Obtain It"; "Stemming the Patent Litigation Tide," Medical Device and Diagnostic Industry, and China Legal Manager (Inaugural Issue); Has spoken and written on alternative dispute resolution, litigation and intellectual property matters.

**Citizenship Languages Locale**

United States of America  
English  
Natick, Massachusetts, United States of America

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## Compensation

Hearing:	\$400.00/Hr
Study:	\$400.00/Hr
Travel:	\$0.00/Hr
Cancellation:	\$0.00/Hr
Cancellation Period:	0 Days
Comment:	No charge for travel in New York City and Boston only charge travel in other locales.

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