

Effective Use of Technical Experts in Arbitration Tips for Success and Avoiding Pitfalls

The logo for the Silicon Valley Arbitration & Mediation Center is a red square with white text. The text is arranged in five lines: "SILICON", "VALLEY", "ARBITRATION", "& MEDIATION", and "CENTER".

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When And When Not To Use A Technical Expert

- Determine The Technical/Scientific Issues
- Consider Role Of Expert Testimony
- Present Experts On Issues That Matter

What Types of Experts Are Most Persuasive

- Experts Who are Knowledgeable in The Specific Technology/Science
- Independent Experts (Consider Academics)
- Experts Who are Able To Fully Support Their Opinions
- Expert Who Do Not Overreach on Their Opinions

How to Present Expert Testimony Most Effectively

- Standard Examination in Each Party's Case
- Witness Statements And Live Cross-Examination
- Hot Tubbing
- Examining Experts Separately, But by Topic
- Questioning By Arbitrator(s)

How to Avoid Wasting Time And Money

- Consider Arbitrator(s) Background
- Open Dialog Early So Experts Are Engaged On Topics That Will Aid The Arbitrator(s)
- Consider:
 - a. Written Background Report
 - b. Joint Expert Tutorial
 - c. Agreement on Journal or Other Technical Articles
- Provide an Opportunity For Arbitrator(s) To Ask Questions
- Tribunal Appointed Expert(s)

Avoiding Common Pitfalls

- Not Considering How To Jointly Address
 - i. Experts
 - ii. Establish Technical Issues And Background
- Focusing Experts On Legal Issues

References:

1. “Party-appointed and Tribunal-appointed Experts”, International Arbitration Practice Guidelines, Chartered Institute of Arbitrators, 2015.
2. “Guideline 13 -- Guidelines for Witness Conferencing in International Arbitration”, Chartered Institute of Arbitrators, April 2019.
3. “Expert Rules”, ICC, February 2015.
4. “Expert Determination Rules”, WIPO, January 2016.
5. “Chapter 31 – Using Experts in Arbitration”, AAA Handbook on Arbitration Practice (© JurisNet LLC 2016).