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6 ways plaintiffs' lawyers can fast-track arbitration

Arbitration promises speed and efficiency — but too often delivers delays. Here's how attorneys can take control and move the process forward for their clients.

By Michael R. Wilner

Arbitration is supposed to be faster and more efficient than litigating in court. But too often, attorneys representing employees, consumers and insureds complain that arbitration takes just as long.

If you and your client want to speed up the arbitration process, here are some tips to consider.

1. Get the arbitration agreement early. When you meet with a new client to discuss a claim, they may not even know that they signed an agreement to arbitrate the dispute. Call HR or the general counsel's department at their employer or the insurer to find out if there's an arbitration agreement. Read it to learn whether your client must arbitrate the grievance rather than go to court.

2. File the action directly with the arbitration provider. If your client is required to present the claims in arbitration, consider filing a demand directly with the arbitration organization identified in the agreement. If you file a complaint in state or federal court, you run the risk of spending time responding to a motion to compel arbitration, waiting for a hearing on the motion and waiting beyond that for a ruling. Given the overwhelming caseloads in our courts today, it's quite common for cases to be stalled for over a year during this process. Yes, there are circumstances when you should attempt to challenge an arbitration provision in court. But in the ordinary consumer or employment case, this delay may not benefit your client. You can shortcut that by starting your case in arbitration.

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3. Do your arbitration paperwork quickly—and make sure the company does too. There's a flurry of tasks at the initiation of an arbitration. Each provider has standard forms for the parties to fill out. The provider then follows the arbitrator selection process outlined in the parties' agreement or applicable arbitration rules, which may include a strike-and-rank list or another agreed-upon method. You (or a designated staff member) should prioritize these tasks and get the materials back to the provider as quickly as possible. After that, the arbitration won't proceed until the responding party pays a retainer to the arbitration provider. Lean on the defense lawyers to make that payment promptly. If they don't — and if you can establish that they acted willfully or fraudulently — that can get your case back to court. Cal. C. Civ. P. § 1281.98; *Hohenshelt v. Superior Court*, 18 Cal. 5th 310 (2025), No. S284498 (Aug. 11, 2025).

4. Ask the arbitrator for an early hearing date. At the first meeting with the assigned arbitrator, you should affirmatively ask to schedule the final hearing as quickly as possible. Too many plaintiff's lawyers ask me to conduct the arbitration more than a full year after our initial conference. Any lawyer who asks me for a hearing date within about six to eight months gets my attention. There are many reasons to expedite the hearing of an individual's case that you can present to the arbitrator. Is your client ill and needs to conclude the hearing before their condition worsens? Are key witnesses about to move out of state? Are you willing to forego extensive discovery to get to a final hearing promptly (see below)? By contrast, the scheduling convenience of a large defense law firm is a poor reason to delay a final hearing, particularly where the firm's client forced the case into arbitration. If your arbitrator doesn't have time for a quick trial, don't give up. Ask if they will let your case "trail," or be waitlisted for, the requested early dates. If the other case ahead of you settles (as many employment and consumer cases do), you'll be available to fill the arbitrator's calendar.

5. Do less discovery. The typical plan of attack for a plaintiff's lawyer is to thoroughly investigate and pre-try the case. That means exchanging written discovery, obtaining voluminous records and deposing potential adverse witnesses. But think about whether you can be ready for the hearing with less formal discovery. Perhaps all you need is the client's employment file instead of years of email and text messages. And the key issues at the hearing may simply boil down to whether your client or the main defense witness is the most persuasive. While you may need to depose a company's representative before trial, remember that you'll have the ability to subpoena a broader group of witnesses for the final hearing. Many arbitrators will essentially let you depose these witnesses (a work supervisor, an HR official, a perci-

pient co-worker, an insurance adjustor, etc.) during the hearing to determine what they have to add to the case. Take advantage of the lack of a jury; an experienced arbitrator should understand that you need to question a witness broadly if you didn't talk to them before trial.

6. Leverage the short time frame. Most cases — whether in court or arbitration — don't go to a final hearing. Instead, they often settle 60 to 90 days before the hearing date. When you advance the hearing date in an arbitration, you can also accelerate the settlement discussions in the case. Additionally, your demand for a quick hearing will convey real confidence to the defense about your client, your claims and the value of the case. The shorter time to hearing may force the defense to make quicker decisions regarding the resolution of your case.

Give thought to strategies that can reduce your time to hearing in arbitration. The tips I've listed above can help eliminate delay and get your client to a successful resolution sooner.

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