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ARBITRATION & MEDIATION Alternative dispute resolution

NEW BAR RULE OPENS FLORIDA FOR INTERNATIONAL ARBITRATION

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For arbitrations and mediations in Florida, the times have definitely changed for the better in the past several years. Just a few years ago, due to a Florida Bar rule that the Florida Supreme Court has since wisely corrected, experienced and accomplished attorneys and arbitrators from out of state who were not licensed to practice in Florida were avoiding most alternative dispute resolution proceedings in the state altogether. Now, Florida appears to be poised to become the venue for more arbitrations and mediations of complex cases than ever before. The future for these ADR proceedings in the state is bright.

Several years ago, it did not seem so. Our firm and others in the state were involved with prominent out-of-state attorneys in high-profile, complex commercial arbitration cases. Even though they had been approved by the courts to participate as counsel before the arbitration proceedings, these lawyers were eventually denied their attorney fees in arbitration.

These attorneys, who were pivotal in helping their clients prevail, were denied all of their fees based on the Bar rule on the unauthorized practice of law. There simply was no provision covering out-of-state attorneys participating in arbitration in Florida. While many other states allowed out-of-state attorneys to serve and be compensated in arbitrations, Florida had no such rule. Even where judges approved the appearance of out-of-state

counsel in the court proceedings to which the arbitration was linked, fees for the arbitration were denied the foreign counsel. Many arbitrators acknowledged their frustration that attorneys who were quite competent and deserving of fees were precluded from recovering them because of the absence of an exception to the general rule. The arbitrators felt "constrained by the law" and therefore could not award fees to the foreign counsel.

For the most experienced attorneys and arbitrators in major commercial and construction arbitration proceedings, the fee denials put a chill on their willingness to take on major ADR proceedings in Florida. The toll was significant even though Florida was a natural venue for cases involving Caribbean and South American concerns represented by experienced counsel from throughout the country and abroad. Given South Florida's strategic location, abundance of hotel and meeting facilities as well as its accessibility through air travel, the area would normally be a mecca for dispute resolution proceedings.

On Jan. 1, 2009, the Florida Supreme Court made effective a rule change allowing out-of-state lawyers not licensed or resident in Florida to practice in the state up to three times in a calendar year. Now it appears the disincentive to resolving disputes here has been removed and, as a result, we are seeing more of such ADR proceedings in South Florida.

The growth of major ADR proceedings is being fueled not only by South Florida's status as a natural venue, but also by the increased acceptance of arbitration as a preferred means of dispute resolution.

In comparison with the costs of complex commercial litigation in federal court, arbitration is considered quicker and more cost-effective. Expensive discovery, common in litigation, is more limited in arbitration, and arbitrations are generally not appealable, lending greater finality to the process.

Arbitrators also have years of specialized knowledge and experience in the corresponding field for a particular proceeding compared with the general knowledge a judge may possess. For example, we have years of experience on construction issues and are able to understand the vocabulary and issues more quickly than a judge who must first learn the basics. Arbitration also allows for more creative means of fact finding as it is not bound by the rigid rules of evidence and procedure.

The perception of arbitrations for complex commercial cases continues to become more and more favorable in the legal profession. In tough economic times such as these, ADR is expected to grow considerably as litigants seek ways to streamline the dispute resolution process. With the new Bar rule allowing lawyers who are not licensed in Florida to serve in these proceedings, South Florida is now set to realize its ultimate potential for major national and international arbitrations.

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