

Mock Trial Arbitrations and Mediations: A New Approach To Case Resolution

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In many cases, the stumbling block to settlement is the parties' polar opposite views of what the likely jury verdict will be. Impasse is typically reached in these situations when the parties dig their heels in, often declaring either: "The jury is going to nail the defendant and award a huge amount of money to the plaintiff" or "No jury is going to award a sum anywhere near the figure you suggest". In such situations, a mock trial arbitration or mediation may be the solution.

A mock trial arbitration or mediation allows for the arbitration or mediation process to proceed with the use of mock trial jurors who deliberate and decide the selected issues. This process is designed to provide objective results of how real individuals react to the case – thus enabling the parties to move beyond their impasse. This process can also permit the parties to bypass the costs and delays of trial and appeal.

The mock trial arbitration offers a cost effective and efficient alternative for parties who are at an impasse and desire to conclude and liquidate the case without further cost or delay. This format is well suited for cases of uncontested liability, where the potential range of damages is perceived by the parties to be quite broad. A suggested format in such cases is as follows:

- Select two sets of jurors demographically matched to the forum venue. An independent judge is chosen.
- The parties submit their proposed presentations for the mock trial, with the judge having final say on what can be presented, consistent with the law of the forum.
- The presentations are made to the mock jurors, who are then put into two groups to deliberate as juries. The average award of the two juries is then used as the binding arbitration award.
- The parties may elect to enter into a high-low agreement prior to the mock trial arbitration.

The concept of mock trial arbitrations and mediations is just beginning to be utilized around the country. It is a new approach to case resolution that should be considered in the appropriate case.

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