

Welcome!

ARBITRATION PRACTICUM: ADJUDICATING GOD'S WAY!

CHRISTIAN LEGAL SOCIETY

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Matthew W. Argue, Esq., CCC, Arbitrator
Institute for Christian Conciliation

Harold Coleman, Jr., Esq., CCA, Arbitrator
Institute for Christian Conciliation

Matthew W. Argue and Harold Coleman, Jr.
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OVERVIEW

- *Arbitral Service -- Nature of the Office*
- *Arbitration & Christian Conciliation*
 - *Your Story*
 - *Our Stories*
- *Rules of Procedure for Christian Conciliation*
- *Process Phases, Challenges*
- *Further Help, Next Steps*



ARBITRAL SERVICE – NATURE OF THE OFFICE

WHAT IS “ARBITRATION?”

***HOW IS IT DIFFERENT FROM OTHER FORMS
OF DISPUTE RESOLUTION?***



ARBITRAL SERVICE – NATURE OF THE OFFICE

- *Quasi-judicial and adjudicative, with finality*
- *Mediation-Arbitration-Litigation contrasted*
- *Relaxed procedures, evidentiary standards*
- *Features confidentiality/privacy, tribunal expertise*
- *Contractually based – jurisdiction by party agreement*
- *No delegation of authority*
- *Immunity from civil liability (some jurisdictions)*



KEY DISTINCTIONS: MEDIATION v. ARBITRATION

***WHAT ARE KEY DISTINCTIONS BETWEEN
MEDIATION AND ARBITRATION?***



KEY DISTINCTIONS: MEDIATION v. ARBITRATION

Mediation

- *Non-adjudicative, informal, discussion-focused process*
- *Parties own process/outcomes*
- *Resolution is negotiated*
- *Party “needs and interests” outweigh “law and facts”*
- *Goal is resolution and reconciliation, not fault and blame*

Arbitration

- *Adjudicative, formal, adversarial hearing process*
- *Arbitrator controls process*
- *Resolution is imposed*
- *Arbitrator finds facts, rules on law, decides/awards matter*
- *Parties bound by arbitrator’s award, enforceable in court*
- *Determines fault and blame, right and wrong*



KEY DISTINCTIONS: ARBITRATION v. LITIGATION

***WHAT ARE SOME KEY DISTINCTIONS BETWEEN
ARBITRATION AND LITIGATION?***



KEY DISTINCTIONS: ARBITRATION v. LITIGATION

Arbitration

- *Formal, adjudicative, adversarial hearing process*
- *Private, confidential forum*
- *Decision-making tribunal is sole or panel arbitrator*
- *Arbitrator finds facts, rules on law, decides and awards case*
- *Parties bound by arbitrator's award, enforceable in court*
- *Very limited grounds of appeal*

Litigation

- *Formal, adjudicative, adversarial hearing process*
- *Public forum*
- *Tribunal is judge and/or jury; judge controls process*
- *Judge rules on law; jury finds facts and determines outcome*
- *Formal rules of evidence and procedure apply*
- *Automatic right of appeal*



When is Arbitration superior to Litigation?

How does Arbitration relate to “Christian Conciliation?”



ARBITRATION & CHRISTIAN CONCILIATION

- *Matthew 18:15-18*
- *1 Corinthians 6:1-8*
- *Authority of the Church over Believers*
- *Glorifying God*
- *Resolution + Reconciliation of brethren*
- *Personal repentance/transformation/growth*
- *Final conflict resolution step (conflict coaching > mediation > arbitration)*



RULES OF PROCEDURE FOR CHRISTIAN CONCILIATION

What are the “Rules of Procedure for Christian Conciliation?”

How do they govern the arbitration process?



RULES OF PROCEDURE FOR CHRISTIAN CONCILIATION

- *Purpose (R1)*
- *Definitions (R3)*
- *Application of Law (R4)*
- *Commencing Conciliation (R5)*
- *Administrator (R8)*
- *Confidentiality (R16)*
- *Arbitration Rules (R25-42)*



***WHAT ARE THE ARBITRATION PROCESS PHASES AND
UNIQUE CHALLENGES IN CHRISTIAN ARBITRATION?***



PROCESS PHASES

- *Intake / Willingness to Participate in Christian Arbitration*
- *Pre-Hearing Conferences & Preparations*
- *Preliminary Hearings*
- *Evidentiary Hearings*
- *Deliberation & Award*
- *Post-Award Proceedings*



UNIQUE CHALLENGE #1

What is the role of prayer in Christian arbitration?



UNIQUE CHALLENGE #2

***May an arbitrator in Christian arbitration
lawfully task parties with addressing
biblical principles in their legal briefs?***



UNIQUE CHALLENGE #3

***Can the Christian arbitrator encourage parties to
reconcile during the arbitration process
(see Rule 1)?***



UNIQUE CHALLENGE #4

What is the role of federal and state laws in Christian arbitration (see Rule 4)?



UNIQUE CHALLENGE #5

Are the Holy Scriptures (the Bible) the supreme authority in Christian arbitration (see Rule 4)?

Should the Holy Scriptures (the Bible) apply only to Christian mediation but not to Christian arbitration since the latter is fundamentally a legal process?



UNIQUE CHALLENGE #6

***Is it permissible for an arbitrator in
Christian arbitration to research Scripture
in rendering an award?***



OTHER CHALLENGES

Pre-Hearing Conferences & Preparations:

- *How does one initiate arbitration?*
- *What happens when a party challenges “arbitrability?”*
- *What safeguards exist to prevent conflicts of interests?*



OTHER CHALLENGES

Preliminary Hearings:

- *What is the purpose of preliminary hearings in arbitration?*
- *How do seasoned arbitrators conduct effective preliminary hearings?*
- *What issues should be considered when structuring the preliminary hearing agenda?*



OTHER CHALLENGES

Evidentiary Hearings:

- *How do effective arbitrators exercise firm control over arbitration hearings to deliver process fairness, speed and economy, efficiency and expertise?*
- *What process safeguards must arbitrators observe to avoid exceeding their jurisdiction?*
- *What should seasoned arbitrators do to ensure fundamental fairness to all parties and maintain the integrity of the overall arbitration process?*



OTHER CHALLENGES

Deliberation & Award:

- *How do seasoned arbitrators receive/weigh relevant evidence and determine witness credibility?*
- *How do the rules of evidence apply in arbitration?*
- *How might seasoned arbitrators prevent arbitration from looking/feeling too much like formal litigation?*



OTHER CHALLENGES

Post-Award Proceedings:

- *What review of arbitration awards is permitted by law? by ICC rules?*
- *How are arbitration awards upheld/enforced? attacked/vacated? What judicial standards apply?*
- *What do seasoned arbitrators do to protect the “sanctity of the award” they fashion?*



FURTHER HELP, NEXT STEPS

Now Available!!

- *Comprehensive 8-hour arbitration training hosted by ICC Peace – by and for Certified Christian Conciliators™*
- *Arbitration fundamentals + law + hearing management*
- *“Practicum” based – participants ‘learn by doing!’*



“NOW GO AND BE RECONCILED”

THANK YOU FOR ATTENDING!!

Matthew W. Argue, Esq., CCC

mattargue@onemediator.net

Institute for Christian Conciliation

Harold Coleman, Jr., Esq., CCA

mediatorcoleman@verizon.net

Institute for Christian Conciliation

Matthew W. Argue and Harold Coleman, Jr.

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