

## • PREFACE •

---

### THE EVER-EXPANDING ARTISTIC ROLE OF THE EFFECTIVE ADVOCATE

What is your favorite movie/streaming show? Probably one that is well-written and seamlessly produced with fantastic actors. Effective advocacy requires practitioners to produce interesting and seamless stories with which to convince the factfinder to rule in your favor. As an arbitration advocate, you—the attorney—are screenwriter, director, and an actor all in one.

Advocates (effective ones, anyway) are artists and scientists, whether we wish to be or not. We can't help it. As lawyers, we train in the science of advocacy, i.e., thinking and reasoning, and find comfort there. Analytical thinking lulls us into expecting results that are objective, predictable, stable, and secure.

And then real life launches us into the art of advocacy, which is subjective, ambiguous, unpredictable, and risky. The intuitive-creative aspects of advocacy require us to use our imaginations and see things not only as they are but as they could be, and attempt things in ways we have never tried before. When first encountered, this side of advocacy seems governed by charisma alone. In reality, you can master it with the skills in this book.

In addition to teaching the intuitive-analytical model of effective advocacy, this book uses what we call a “pracademic” approach, blending practice and theory throughout. Organized into eleven chapters and an appendix section of arbitration checklists, the book provides a full range of features to help the arbitration advocate represent their client competently and efficiently. Chapter 1 introduces uninitiated advocates to the two principal ADR processes, arbitration and mediation, and provides basic information regarding the nature of the two processes and their advantages and disadvantages in relation to the court adjudication process. Chapters 2 through 7 provide useful information and practice tips for advocates regarding every stage of representation in the arbitration process. Each of these chapters has a related checklist in the appendices detailing key actions to take at critical stages of the arbitration process. Chapter 8 addresses the hybrid ADR processes (mini-trial, summary jury trial, etc.) and describes successful applications. Chapters 9 and 10 address the topic of effective advocacy in online arbitration. Chapter 11 provides an

overview of a sample arbitration proceeding. The appendices also contain a listing of ADR providers and a listing of online dispute resolution (ODR) providers.

We wrote *Arbitration Advocacy* with several audiences in mind. First, we have written for alternative dispute resolution (ADR) practitioners—advocates representing clients who have either opted or who have been mandated to have their disputes resolved through an ADR process. Our second audience consists of the organizers of and participants in continuing legal education (CLE) programs around the country. The step-by-step approach, analyses of critical process and advocacy issues, and succinct presentations of useful information in chart form make it an ideal teaching tool for arbitration seminars.

A third audience we have geared this publication to is the teachers and students of law school courses on arbitration advocacy. At this writing, there are very few, if any, law student textbooks providing detailed, hands-on instruction in effective representation of clients in arbitration. This book seeks to fill that gap in ADR literature currently available for law school instruction.

Finally, ADR neutrals, especially arbitrators, may find that chapters 5, 6, and 10 on effective advocacy in arbitration sessions provide insight into how the advocates appearing before them can most effectively present information and bring the dispute to closure.

A section of this book deserves special mention. Parts of chapters 5 and 6 concerning advocacy during the arbitration hearing are adapted from J.C. Lore and Steve Lubet's book, *Modern Trial Advocacy*, 6th ed. (NITA 2020). These chapters present, in an abbreviated form, many of the useful trial advocacy principles directly applicable to an arbitration hearing. Space limitations prevent inclusion of the in-depth explanations and the many helpful examples contained in the *Modern Trial Advocacy* book. Chapters 5 and 6 cross-reference *Modern Trial Advocacy* so you can quickly find those explanations and examples. Throughout the text, these references will be made parenthetically as (Lubet & Lore, *MTA*), followed by the chapter or section number in that book, if appropriate.

In conclusion, we would like to make a few observations about the style and architecture of this book. At our editor's good suggestion, we have made every effort to use a personable and personalized writing style, as if we were having a face-to-face conversation with you. We hope you find this style to be friendly and engaging as intended. At various locations throughout several chapters, you will happen onto anecdotes—some funny, some not; some about famous people; some about ordinary people. We have done this for several reasons. First, anecdotes enliven and invigorate instructional passages that would otherwise be hortatory and didactic. Second, we consider anecdotes to be the "origin of all teaching," helping readers not only understand the teaching points, but also remember when and how to apply them later in practice. Third, CLE and law school instructors can use the anecdotes as teaching devices in ADR advocacy seminars and courses. Additionally, advocates

can use them (particularly the ones appearing in chapter 4) to explain to their clients the “dos and don’ts” of client conduct during arbitration hearings.

We sincerely hope this book will significantly enhance the quality of arbitration advocacy, both nationally and internationally, for many years to come.

John W. Cooley & Steven Lubet, 1997, 2003

Steven Lubet & Ariana R. Levinson, 2024