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Discovery in Arbitration: What You Need to Know Now

Presentation by [Barbara A. Reeves](#); Moderated by [Joel Grossman](#) and [Deborah C. Saxe](#)

The pillars of discovery in employment arbitration in California:

1. Adequate discovery - *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83

In *Armendariz*, the California Supreme Court ruled that employment claims brought under California's FEHA are arbitrable if "the arbitration permits an employee to vindicate his or her statutory rights." The Court declared that the arbitration must meet certain minimum requirements, including the provision of "adequate discovery," a phrase that now controls discovery in employment arbitration, and requires that arbitrators strike an appropriate balance between the desired efficiency of limited discovery in arbitration and an employee's statutory rights. This requires the arbitrator and counsel to assess the amount of default discovery permitted under the arbitration agreement, the standard for obtaining additional discovery, and whether any requested discovery limitations will prevent the claimants from adequately arbitrating their statutory claims.

The recent case of *Davis v. Kozak* (2020) 53 Cal.App.5th 897, provides a useful analysis of the balancing that is required by the "adequate discovery" standard, including citations to authority. The Court of Appeal begins by confirming that a "limitation on discovery is an important way in which arbitration can provide a simplified and streamlined procedure for the resolution of disputes." (Citing *Dotson v. Amgen* (2010) 181 Cal.App.4th 975, 983, and *Armendariz*). The Court then emphasized that adequate discovery is indispensable for the vindication of statutory claims, citing *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 715, and "[t]he denial of adequate discovery in arbitration proceedings leads to the de facto frustration of" statutory rights" (*Armendariz*) while recognizing that "adequate" does not mean "unfettered" (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 184).

2. Third party discovery - *Aixtron, Inc. v. Veeco Instruments, Inc.* (2020) 52 Cal.App.5th 360 and *CVS Health Corp. v. Vividus, LLC* (9th Cir. 2017) 878 F3d 703



Under California law, an arbitration agreement may empower an arbitrator to issue subpoenas for nonparty depositions by incorporating CCP § 1283.05 into the agreement. (CCP § 1283.1(b); see *Aixtron* (2020) 52 Cal.App.5th 360, 396-397 arbitration agreement that neither referenced CCP § 1283.05 nor provided for full discovery under California Discovery Act did not authorize issuance of subpoenas for discovery purposes).

In employment arbitration alleging violations of FEHA, CCP § 1283.05 may be deemed incorporated into an arbitration agreement pursuant to CCP § 1283.1(a), on the ground that the FEHA claims assert wrongful personal injury, although there is not yet appellate authority following *Aixtron* on this point.

The parties may stipulate, in writing, after a dispute has arisen that CCP § 1283.05 applies to their arbitration agreement, if they desire third party discovery.

The FAA authorizes arbitrators to issue a subpoena to nonparties “to attend before them” and to produce any book, record, document, or paper that may be deemed material as evidence in the case. 9 USC § 7. The Ninth Circuit has held that restricts the subpoena power to hearings in the physical presence of the arbitrator. *CVS Health Corp. v. Vividus, LLC* (9th Cir. 2017) 878 F3d 703.

If a nonparty challenges the authority of an arbitrator to issue a discovery subpoena under the FAA or the CAA, and it would prejudice the parties to delay production of the evidence until the evidentiary hearing, an option is for the arbitrator to schedule a hearing for the sole purpose of compelling nonparties to testify and produce documents.

3. The applicable arbitration clause.

Assuming an arbitration clause is valid under applicable law (see *Armendariz* and keep track of applicable legislation), the arbitration clause can set limitations on discovery and provide for the use of more formal or less formal discovery procedures. For example, an arbitration clause could require use of the discovery provisions of the California Code of Civil Procedure, or specify that discovery is to be in accordance with the JAMS or AAA Employment Rules, or be silent on discovery.

4. The applicable arbitration rules.

[JAMS Employment Arbitration Rule 17](#)



Rule 17 of the JAMS Employment Rules requires the exchange of all relevant, non-privileged documents and ESI, including names of witnesses and experts who may be called at the Arbitration Hearing.

Rule 17. Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, names of individuals whom they may call as witnesses at the Arbitration Hearing and names of all experts who may be called to testify at the Arbitration Hearing, together with each expert's report, which may be introduced at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take at least one deposition of an opposing Party or an individual under the control of the opposing Party. The Parties shall attempt to agree on the number, time, location, and duration of the deposition(s). Absent agreement, the Arbitrator shall determine these issues, including whether to grant a request for additional depositions, based upon the reasonable need for the requested information, the availability of other discovery and the burdensomeness of the request on the opposing Parties and witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.



(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

The American Arbitration Association's Employment Arbitration Rules take a different approach, leaving discovery to the discretion of the arbitrator, without guidance, saying simply that:

Rule 9

The arbitrator shall have authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.



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Biography

Available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom.

Joel M. Grossman, Esq. has been exclusively devoted to mediation and arbitration since 2004, following his 25-year legal career as a litigator, labor negotiator, and in-house counsel overseeing complex entertainment disputes.

Mr. Grossman has presided over more than 1500 mediations and arbitrations and developed a stellar reputation for fairness. Sought after by both plaintiffs' and defense counsel, he has resolved extremely complex disputes with a combination of excellent problem-solving skills and a wonderful sense of humor.

He has been named to the *Daily Journal's* list of the top neutrals in California for three consecutive years.

ADR Experience and Qualifications

- Mediated or arbitrated over 1500 cases since January 2004 as a full-time neutral
- Mediated all manner of employment cases including claims of discrimination based on race, gender, age, disability, sexual orientation, and medical condition; claims of sexual harassment; wage-and-hour claims, both individual and class actions; trade secret claims arising out of an employee leaving a company and allegedly appropriating trade secrets; and claims arising under collective bargaining agreements
- Used his broad experience in entertainment-related claims, after serving as head of the Litigation Department of a major motion picture studio, to resolve disputes involving copyright infringement,

trademark infringement, idea submission, and profit participation claims, as well as disputes between talent and agent or manager

- Mediated and arbitrated a wide variety of general business disputes, such as commercial landlord-tenant matters, business valuations, and breach of contract

Representative Matters

Entertainment

Copyright Infringement Claims

- Mediated claims that musical compositions had been appropriated by online service providers in breach of performers' copyrights
- Mediated claim that motion picture infringed copyright of a novel
- Mediated claim that television series infringed copyright of earlier television series produced in a foreign country
- Mediated claim by writer that a film in development at a major studio was based on his screenplay which he had submitted to the studio

Agent-Client Claims

- Mediated dispute over which agency should get commissions when actor left one agency and was represented by a second agency
- Arbitrated dispute between actor and agency over commissions
- Arbitrated dispute between performer and manager over commissions

Writers Guild – Producer Disputes

- As a member of the arbitration panel in the WGA-Producers Minimum Basic Agreement, arbitrated claims including claims of unpaid writing fees, merchandising rights, and separated rights

Profit Participation Claims

- Arbitrated audit claim on major motion picture brought by participant

Idea Submission Claims

- Mediated several cases regarding various submissions for television shows and feature films

Additional IP Disputes

- Handled several matters involving creditors and debtors in connection with entertainment/intellectual property rights
- Mediated claims by franchisees against a franchisor who sold investigative agency franchises
- Mediated claims by garment producers that competitor's garments infringed copyright
- Arbitrated 50+ domain name disputes in which trademark holder claimed that domain name infringed its trademark

Employment

Wage-and-Hour Class Action Mediations: Successfully mediated over 500 wage-and-hour class actions, with class sizes ranging from 100 or less to 22,000 class members. Issues resolved include:

- Meal breaks, including claims related to “on-duty” meals
- Rest breaks
- Overtime, including but not limited to “off-the-clock work”
- Minimum wage violations
- Claims for reimbursement of mileage, tools, uniforms, and other expenses
- Claims that class members were misclassified as exempt
- Claims that class members were misclassified as independent contractors
- Claims for pay stub violations
- Claims under out-of-state check provisions of Labor Code
- Claims brought under Private Attorney General Act of 2004 (PAGA)

Wage-and-Hour Arbitrations

- Arbitrated claim by several employees that they were improperly classified as independent contractors when they were employees
- Arbitrated claim that restaurant manager had been misclassified as exempt when most of her time was spent performing rank-and-file duties
- Arbitrated wage-and-hour class action concerning on-duty meal periods
- Arbitrated claim by truck driver that he was misclassified as an independent contractor

Discrimination claims based on race, age, gender, disability, medical condition, religion, sexual origin, etc.: Successfully mediated many cases raising one or more discrimination claims including:

- Claim by female worker that she was not permitted to perform a traditional “man’s job”
- Claim by African-American worker that he was harassed by co-workers who left crude drawing of lynching on his desk
- Claim by worker with cancer that he was terminated to avoid necessary leaves of absence
- Claim by disabled worker who was denied a leave of absence allegedly because her position was crucial, and leave would cause undue hardship
- Claim by disabled worker that the company failed to engage in interactive process and search for jobs which she could do with her medical restrictions
- Claim by Orthodox Jewish worker that he was terminated because he wore a yarmulke during work hours
- Claim by older worker who claimed he was selected for layoff due to his age

Sex Harassment Claims: Successfully mediated many claims alleging sexual harassment, including claims for hostile work environment, claims of *quid pro quo* harassment, and claims of unwelcome touching including the following:

- Claim by three employees that manager continually ogled them and made suggestive comments
- Claim by worker that manager, during out-of-town business trip, came to her hotel room and insisted on a sexual liaison
- Claim that manager, after consensual relationship was over, continually called employee demanding that they renew relationship
- Claim that manager texted a photo of his private parts to employee during work hours
- Claim that television writer was told she could not return for another season unless she gave in to producer’s demands for sex

Honors, Memberships, and Professional Activities

- Recognized as one of California's Top Neutrals, *Daily Journal*, 2007-2009 and 2012
- Selected as a Southern California Super Lawyer in the field of Alternative Dispute Resolution, 2007-2011, 2013, 2019-2020
- Selected as entertainment law "Power Mediator," *Hollywood Reporter Esq.*
- Member, Los Angeles County and Beverly Hills Bar Associations Labor and Employment Law Executive Committee
- Associate Member, California Employment Lawyers Association (CELA)
- Contributing Writer, Alternative Dispute Resolution for the *California Labor and Employment Law Review*, published by the State Bar of California Labor and Employment Law Section
- Co-author, *Modern Law of Employment Contracts*, a leading treatise on the law of wrongful termination and other aspects of employment law
- Received comprehensive training in JAMS in-house Entertainment Law workshops including, but not limited to:
 - *"Net Profits and New Media: The Future of Entertainment Litigation"*
 - *"Legal Issues and Developments in Video Game Law"*

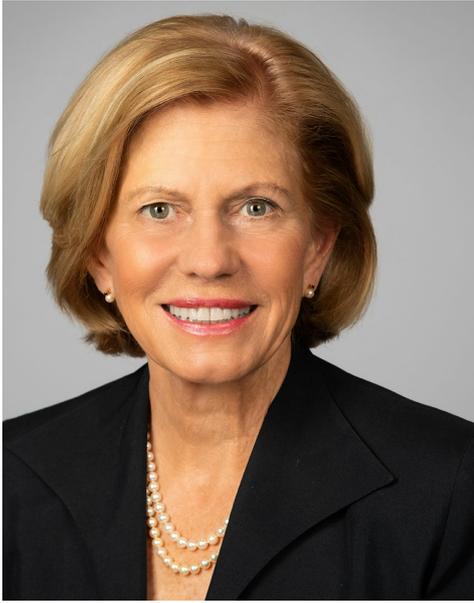
Background and Education

- Full-time Mediator and Arbitrator, 2004-present
- Senior Vice President, Head of Labor And Litigation Divisions, Sony Pictures Entertainment, 1989-2003
- Partner, Selvin and Weiner, 1985-1989
- Associate, O'Melveny & Myers, 1980-1984
- Law Clerk, Hon. Eugene A. Wright, 9th Circuit Court of Appeals, 1979-1980
- J.D., UCLA School of Law, 1979, Order of the Coif
- M.A., University of California Santa Barbara, 1976
- B.A., *with honors*, University of Pennsylvania, 1972

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Biography

Available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom.

Barbara A. Reeves, Esq. is a highly regarded and well-respected mediator and arbitrator. She is a quick study, prepared, personable, creative, and flexible.

As an arbitrator, Barbara Reeves is known to be fair, practical, and not afraid to make tough decisions. As a mediator, she is strong, good at listening and reading people, and a tenacious closer. She is known for her ability to quickly establish rapport with parties and counsel and enable them to recognize their legal risks. She connects and communicates with clients emotionally involved with their positions and ushers parties toward mutually acceptable solutions. She is adept at working with parties to craft practical and commercially advantageous solutions to disputes at any stage.

Before becoming a full-time neutral, Barbara Reeves had an extensive and varied litigation practice, beginning with the United States Department of Justice, Antitrust Division in Washington, D.C. and Los Angeles, then a partner at national law firms, and finally Associate General Counsel and Vice President for Southern California Edison and Edison International with responsibility for Procurement/Supply Chain, Real Estate and Transportation, before joining JAMS in January 2006.

Barbara Reeves is a Fellow of the Chartered Institute of Arbitrators and the College of Commercial Arbitrators (Secretary-Treasurer 2020-2021), an arbitrator on the Court of Arbitration for Sport in Lausanne, Switzerland, and a certified mediator with the International Mediation Institute. She is also a certified e-discovery specialist. She received her J.D. *cum laude* from Harvard Law School.

Representative Matters

Representative Matters Handled through Arbitration, Mediation and Special Master Assignments

Antitrust

- International dispute between competitors involving standard essential patents (SEP) and FRAND licensing and allegations of Sherman Act violations
- Refusal to license and discriminatory licensing disputes between and among industry members in standard setting organizations
- Indirect purchaser class actions involving computer components, pharmaceuticals, life insurance and telecommunications industries
- Civil damages actions arising from international cartels and price fixing distribution arrangements
- Disputes involving joint ventures in the healthcare industry
- Served as court-appointed master for discovery and settlement issues in patent/antitrust case in the pharmaceutical industry
- Sherman Act, state antitrust issues in the healthcare and bio tech industries, including tying and abuse of patent positions

Business/Commercial

- Procurement and supply chain disputes involving distribution to supply, labor shortages, and impact of local regulations on supply contracts
- Trade secrets disputes involving alleged theft of technology, strategic plans, confidential information, and customer information of former employees in industries including entertainment, autonomous vehicles, cloud computing, pharmaceuticals, medical equipment, electrical equipment, computer chips, sports agency, performance supplements and cannabis
- Class actions involving credit card privacy statute and the entitlement to attorney fees under Code of Civil Procedure Section 1021.5 (private attorney general statute)
- Breach of contract actions between European sellers of products (including agricultural and technology industries) and U.S. companies
- Trademark infringement and copyright suits in industries including bio-pharma, medical testing, jewelry, and sports teams
- Partnership and corporate governance disputes involving professional business, legal and medical corporations and partnerships, and valuation of the businesses
- Disputes involving investment fraud, investment advisors and breach of contract
- Disputes involving a failed partnership involving a large commercial property development
- Disputes arising out of mergers and acquisitions, fraud, corporate disclosure issues, franchising, accounting disputes, and partnership dissolution, including professional corporations and partnerships
- Disputes arising out of private equity acquisition of health care groups
- Disputes involving medical billing services and their clients
- Disputes involving breach of fiduciary duty between client and investment advisor
- Franchise agreement disputes

Class Actions

- Mediated class actions involving consumer fraud, antitrust, health insurance, wage and hour, and employment discrimination issues
- Served as special master in employment and civil rights class action matters
- Served as special master allocating funds among claimants to a government fund
- Served as special master allocating funds among claimants in a real estate investment fund
- Settlement distribution issues in class actions involving misclassified employees of gig economy company

Construction and Engineering

- Construction disputes involving large residential developments with environmental issues
- Engineering dispute involving the construction of highway bridges
- International cases involving construction of wind turbines for generating units
- Mediator in dispute arising out of the construction of natural gas pipelines and owners of rights of way
- Special master to resolve allocation of payments among subcontractors in a highway construction project
- Dispute by contractors against a public entity arising out of a tunneling operation that encountered unexpected conditions and weather problems
- Claims between a public entity and contractor and insurance companies involving nuclear power plant
- Disputes arising out of qualified facility power plant construction

Consumer

- Mediated disputes involving violations of state and federal consumer protection acts, including unauthorized collection and use of a consumer's personal information, Unfair Competition Law, false advertising, and TCPA

E-Discovery

- Court-appointed discovery referee for predictive coding process and protocol for e-discovery disputes in various matters, most often involving competition issues and trade secret disputes

Employment

- More than 100 matters involving employee termination, disability discrimination, whistle blower claims, retaliation, wage and hour disputes, sexual harassment, and labor code violations, including wage and hour class actions
- Union contract disputes
- Disputes arising out of alleged employee theft of trade secrets
- Claims by senior executives of alleged breaches of employment contract
- Disputes involving allegations of sexual discrimination, hostile work environment, and constructive wrongful termination
- Sexual harassment and discrimination cases involving #MeToo allegations
- Whistle blower claims based upon retaliation and wrongful discharge
- Matters involving sexual harassment and hostile work environment issues, including #MeToo claims
- Wrongful termination cases involving allegations of incompetence and insubordination
- ERISA cases

Energy

- Practiced for many years handling litigation and regulatory matters for electric public utility, alternative energy providers and co-generators
- Disputes in energy industry involving public utility matters, natural gas pricing disputes, cogeneration construction disputes, oil and gas environmental issues, and construction contracts
- Disputes involving construction of a biogas facility
- Claims of breach of Power Purchase Agreement between a power company and a renewable power project developer
- Disputes involving the construction of an alternative energy (wind) facility
- Disputes between a natural gas pipeline and landowners

Entertainment and Sports

- Serve as an arbitrator on the Court of Arbitrations for Sports (CAS)
- Disputes involving accounting for royalties and contractual payments arising out of television syndications
- Trade secret and employment disputes between studios, new media, and streaming platforms
- Dispute between and among artists, agents and art publisher
- Dispute between e-sports team and sponsor
- International dispute between movie producer in U.S. and distributor in China
- Disputes involving international investment in movie production and related international tax credits
- Dispute between sports agents and promoters in the United States
- Dispute involving investment by well-known athletic brand in launching products in South America
- Mediated disputes between celebrities involving #MeToo allegations
- Disputes involving post-production services for an international series of television broadcast episodes
- Disputes between talent and agents, talent and advertisers, and production and distribution companies
- Employment disputes involving employees, on the one hand, and studios, productions companies, and new media, on the other hand
- Arbitration between music festival producers involving co-promotion agreement
- Numerous arbitrations and mediations involving insurance coverage issues arising in the entertainment field
- Serves as an arbitrator handling cases in the Court of Arbitration for Sport (CAS), including cases involving sports federation governance, doping and interpretation of rules, including equestrian and track and field, ice skating, and swimming
- Serves as an arbitrator in numerous SafeSport cases, including the sports of equestrian, weightlifting, track and field, sailing, water skiing, and gymnastics
- Disputes involving exhibitors and venues for athletic events
- Title IX disputes involving sexual misconduct at universities

Equine Law

- Disputes involving purchase/sale agreements and disputes involving show managers and exhibitors/vendors
- Cases before CAS involving federation governance, rule violations and doping
- Claim by owner against an equestrian trainer for misappropriation of proceeds from sale of an elite level show jumper (horse)

Government Contracts, Procurement, False Claims

- Served as a mediator in several *qui tam* cases involving parallel civil and criminal proceedings against government contractors in diverse industries, including health care, aerospace, and food and beverage concessions
- Mediated False Claims Act cases involving health care

Health Care

- Major reimbursement disputes between hospitals and health care plans and insurance companies involving issues of reasonable value, Medicare coverage, managed care, use of leased networks, stability determinations and alleged inappropriate coding, risk sharing, and administrative issues
- Employment dispute in medical groups and hospitals arising out of whistle blower complaints
- Disputes relating to Mental Health Parity Act
- Disputes preemption issues between state law causes of action and ERISA
- Disputes over experimental/investigational disputes where plaintiff contended the drugs or devices had not been determined and effective
- Numerous contract and reimbursement disputes between providers, insurers and health plans
- Disputes arising out of private equity buyouts of health care systems
- Disputes over ancillary services, including laboratory billing disputes
- Disputes involving health care joint ventures
- Dispute between a hospital and supplier of nuclear medicine equipment and technical assistance
- Discovery Referee in *qui tam* whistle blower case involving drug prices charged to government health care programs

- Benefits disputes regarding health plans and insurers with insureds/members
- False Claims Act cases involving surgical center and non-physician charges
- Dispute between purchaser and seller of dialysis practice
- Employment contract disputes between physicians and medical groups or between physicians and hospitals (including covenants not to compete)
- Shareholder disputes within physician practices
- Disputes between third party vendors, durable medical equipment providers and unauthorized distributors
- Accounting dispute over the dissolution of a medical group
- International contract dispute involving pharmaceutical company and joint venture partner for distribution
- Dispute involving non-contracted providers alleged to have engaged in practices to induce insureds to treat out of network
- Medical malpractice cases covering alleged improper prescribing of medication, improper use of restraints, failure to prevent drug-resistant infections, failure to diagnose cancer and numerous instances of failure to prevent medical condition from deteriorating
- Action challenging a public health citation against a skilled nursing facility for violations leading to a patient's death
- Declaratory relief dispute between major health care providers regarding contract interpretation

Insurance

- Disputes involving complex coverage matters including professional liability, specialty lines, D&O and EPLI; environmental; advertising; personal injury; product liability, including asbestos and chemical exposures; and construction defect cases
- Claims of bad faith and improper claims handling
- Dozens of coverage disputes between FEMA and policyholders arising out of Hurricane Sandy and damage to a variety of structures and whether the damage was covered under existing policies
- Sale of life insurance and retirement policies by a major insurer
- Claims against surety for failure to pay under construction performance bond
- Coverage claims arising out of a major environmental contamination in Southern California
- Applicability of directors and officers liability insurance and cyber breaches to allocation of defense costs among insurers in environmental cases

Intellectual Property

- Numerous trade secret theft cases arising out of misappropriated computer data, hiring away of corporate executives, joint ventures and corporate acquisitions
- Licensing disputes arising by use of copyrighted material in video games
- Patent and technology disputes involving a wide variety of industries and fields, including voice recognition patented technology, licensing of technology used in flat screen panels, SEP and FRAND licensing in several industries, biosimilars, traffic control technology, diagnostic treatment methods, GPS applications, development and marketing of a point-of-care screening test
- Copyright disputes involving music sampling, screen play submissions, fashion design, and original art works
- Contract disputes involving pharmaceutical supply chain performance issues, including patent issues
- Disputes involving software piracy claims

Life Sciences

- Contract disputes between and among biotech companies and drug manufacturers over failure to use proper marketing efforts
- Disputes between biotech company and drug manufacturer over wrongful termination of development agreement
- Supply chain disruption disputes and termination of long-term supply agreement
- Dispute arising out of premature termination of clinical trial between members of a joint venture
- Dispute between development and distribution rights and obligations
- Post-acquisition dispute over failure to achieve sales and revenue targets

- Valuation of ownership interests in joint venture
- Securities violations, including fraud class actions

Professional Liability

- Legal, accounting and medical malpractice claims
- Legal malpractice cases regarding alleged conflicts of interest and multiple representations
- Matters involving breach of fiduciary duty by financial advisers, legal advisers, and talent agents

Real Property

- Case involving damage to real property, negligence, and insurance issues
- Breach of contract case brought by a landowner and developer against major retail company
- Cases involving environmental cleanup liability, contractual indemnifications, and real property leasing issues
- Dispute between hotel developer and owner arising out of political unrest in the affected country
- Dispute among owners of commercial property over whether and when to sell
- Actions alleging enforcement of CC&Rs by homeowners' association
- Real property purchase/sale agreements, and landlord/tenant disputes

Securities

- '34 Act class action claims in retail and financial industries
- Securities class action against directors and officers and outside auditor of financial institution
- Breach of fiduciary duty claims alleging flawed processes, fraud or fairness of merger transactions
- Claims arising out of leveraged buy-out
- Disputes arising out of post-closing adjustment claims

Special Master/Discovery Referee

- Served as court-appointed discovery referee and special master in cases involving electronically stored information (ESI), corporate dissolutions, partnership dissolutions and division of assets, contract disputes, employment discrimination, civil rights, and professional liability

Trade Secrets

- Trade secrets disputes involving alleged theft of technology, strategic plans, confidential information, and customer information of former employees in industries including entertainment, autonomous vehicles, cloud computing, pharmaceuticals, medical equipment, electrical equipment, computer chips, sports agency, performance supplements and cannabis
- Trade secret dispute between Chinese and US former business partners in the athletic equipment business
- Misappropriation of trade secrets case involving aspects of self-driving vehicles
- International misappropriation of trade secrets dispute between long-standing supplier-distributor involving the high-tech security business
- Theft of trade secret cases in the entertainment industry and fashion industry
- Served as special master and court-appointed discovery referee in cases alleging theft of trade secrets in industries ranging from high tech to electrical equipment to entertainment

Honors, Memberships, and Professional Activities

- **Honors and Memberships**
 - Fellow, Chartered Institute of Arbitrators
 - Fellow, College of Commercial Arbitrators
 - Fellow, Academy of Court Appointed Masters
 - Arbitrator, Court of Arbitration for Sport

- Board Member, California International Arbitration Council
 - Former President, Association of Business Trial Lawyers (Los Angeles Chapter)
 - Former board member or chair: Antitrust Sections of the State Bar of California and Los Angeles County Bar Association; ADR Committee, LACBA; Trustee, LACBA, Women Lawyers of Los Angeles
 - Current and/or former board member of numerous public interest organizations, including Public Counsel, Western Center on Law and Poverty, and a Founder of the Alliance for Children's Rights
 - Member, California State Bar and the Bar of the District of Columbia
 - Certified E-Discovery Specialist
 - Chambers National Mediator List - 2016-2020
 - National Law Journal ADR Champion - 2017
- **Recent Publications and Speaking Engagements**
 - Speaker at the Emerging Issues Conference of the ABA Health Law Section (2016-2019); California Society of Health Attorneys Annual Meeting (2016, 2017); ABA Insurance Coverage Litigation Committee Conference (2017-2019)
 - "A Special Master's Role in Hospital Merger Cases," LAW360 (2016)
 - "Whose Arbitration is This, Anyway?," JAMS Global Engineering and Construction Newsletter, Fall 2013
 - Author, Updates to Rutter Group Employment Law Treatise, ADR chapter, 2012-2016
 - "Litigation Solutions: Referees and Special Masters," Daily Journal, June 13, 2012
 - "It's Time to Fix Arbitration Discovery," Los Angeles Lawyer, January 2010
 - "Ordered to arbitration? Take advantage!" Advocate Magazine, CAALA, September 2010
 - "Uprooting the Decision Tree," Advocate Magazine, CAALA, September 2018
 - "How Third-Party Funders change the Chemistry of Settlements," Advocate Magazine, CAALA, September 2017
 - "As the Economy Stumbles, Employment Discrimination Claims Climb," Employment Law Strategist, Law Journal Newsletters, December 2008
 - Author or co-author of leading articles of ADR, international and domestic commercial arbitration and mediation, and managing costs in ADR; frequent trainer and lecturer on arbitration, mediation and e-discovery
- **ADR Profiles**
 - "People Person," *Daily Journal*, ADR Profile, March 2, 2018
 - "Well Rounded," *Daily Journal*, ADR PRofile, March 26, 2010

Background and Education

- JAMS, 2006-Present
- Associate General Counsel and Vice President, Southern California Edison and Edison International, 1999-2005
- Partner at major international law firms (Paul Hastings; Fried Frank; Morrison & Foerster), 1981-1999
- United States Department of Justice, Antitrust Division: various positions including Chief of the Los Angeles office, Trial Attorney, and Special Assistant to the Assistant Attorney General
- Law Clerk to Judge Alfred T. Goodwin, United States Court of Appeal for the Ninth Circuit
- J.D., *cum laude*, Harvard Law School

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Biography

Available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom.

Before becoming a full-time neutral, **Deborah Crandall Saxe, Esq.** was a litigator and appellate lawyer at Jones Day, Heller Ehrman, and Seyfarth Shaw for more than 30 years. When she was practicing law, she was lead counsel in litigation matters resulting in more than 30 reported court decisions. She litigated cases before state and federal trial courts, the California Court of Appeal, the United States Courts of Appeals for the Fourth, Sixth, Seventh, Eighth, Ninth, and District of Columbia Circuits, the California Supreme Court, and the United States Supreme Court. Chambers USA called her “an aggressive and highly capable litigator” with “substantial experience in the courtroom as a trial lawyer.” More recently, Chambers USA called her a “talented mediator.”

Ms. Saxe is highly regarded and well-respected. She is a quick study, prepared, personable, approachable, creative, and flexible. As an arbitrator, she is known to be fair, practical, unflappable, and not afraid to make tough decisions. As a mediator, she is strong, good at listening and reading people, and a tenacious closer. She is known for her ability to quickly establish rapport with parties and counsel and enable them to recognize their legal risks. The perspective gained from her extensive trial and appellate court experience allows her to offer valuable insights as to how a case is likely to proceed in the courts and how it is likely to appear to a judge and jury.

ADR Experience and Qualifications

- Has mediated and arbitrated legal disputes for decades, first as an advocate and later as a mediator and arbitrator
- Began serving as a neutral on a part-time basis in January 2007 (while a partner at Jones Day)

- Full-time neutral since July 2012
- Extensive trial and appellate court experience as an advocate
- Extensive mediation and arbitration training through Straus Institute of Dispute Resolution, JAMS, AAA, and other organizations
- Has mediated and arbitrated hundreds of cases
- Has served as Chair of a tripartite panel of arbitrators

Representative Matters

Contract disputes, including those involving:

- Executive employment contracts
- Law firm and other partnership agreements
- Non-disclosure agreements
- Confidentiality and trade secrets agreements
- Inventions agreements
- Independent contractor agreements
- Consulting agreements
- Severance pay contracts
- Release agreements
- Corporate transactional documents

Business torts, including those involving:

- Invasion of privacy, including alleged misappropriation of voice and likeness
- Intentional and negligent infliction of emotional distress
- Interference with contractual relations
- Interference with prospective economic advantage
- Defamation
- Fraud

Attorneys' fees disputes

Employee pension and health insurance matters, including those involving:

- Vesting of benefits in defined contribution pension plans
- Withdrawal liability under the Multiemployer Pension Plan Amendments Act (MEPPA)
- Withdrawals from multiple employer pension plans
- Whether private sector employers with collective bargaining agreements providing for retiree health insurance had right to change or terminate retiree health insurance plan for employees who already had retired
- Whether public sector school district with collective bargaining agreements providing for lifetime retiree health insurance for its teachers had right to alter deductibles, premium payments, and/or covered benefits for teachers who already had retired
- ERISA class action alleging partial termination of pension plan

Labor and employment matters of all kinds, including those involving:

- Employment discrimination
- Harassment
- Retaliation
- Reasonable accommodation

- Leaves of absence
- Wage and hour issues arising under the Fair Labor Standards Act (FLSA), the California Labor Code (including PAGA), California's Wage Orders, and California Business & Professions Code §§ 17200, *et seq.*
- The Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), and the California Pregnancy Disability Leave Law (PDL)
- Non-compete agreements (including issues arising under California Business & Professions Code §§ 16600, *et seq.*)
- California Labor Code § 1102.5
- Employee raiding
- Alleged misappropriation of trade secrets under the Uniform Trade Secrets Act
- Wrongful termination in violation of public policy

Honors, Memberships, and Professional Activities

- Listed in *Best Lawyers in America*, 2005-2017, 2019-2021
- Recognized as a Southern California Super Lawyer, Alternative Dispute Resolution category, 2019, 2020
- Recognized as a Southern California Super Lawyer, Top 50 Women, 2019
- Fellow, Chartered Institute of Arbitrators, 2014-present
- Fellow, International Academy of Mediators, 2015-present
- Fellow, College of Labor & Employment Lawyers, 2001-present
- Ranked by *Chambers USA* as a "leading lawyer" in employment law, 2004-2012
- Identified as one of the 100 Most Powerful Labor & Employment Lawyers in the Nation, 2010, 2011, 2012
- Recognized by peers as a Southern California SuperLawyer in the field of ADR, 2014-2017
- Recognized by peers as one of the Top 50 Women SuperLawyers in L.A. and Orange Counties for 10 consecutive years, 2004-2013
- Recognized by peers as one of the Top 100 SuperLawyers in L.A. and Orange Counties, 2010
- Member, American Bar Association, Labor & Employment Law Section, 39 years
- Member, American Bar Association, Dispute Resolution Section, 6 years
- Member, California Bar Association, Labor & Employment Law Section, 32 years
- Trustee, Los Angeles County Bar Association (LACBA), 2005-2008 and 2010-2013; Member, 32 years
- Chair, LACBA Labor & Employment Law Section, 2002-2003; Member 32 years
- Associate Member, California Employment Lawyers Association (CELA), 2012-present
- Member, Board of Governors, Women Lawyers Association of Los Angeles (WLALA), 2012-2013
- Lifetime Member, WLALA
- Associate (neutral) member, California Employment Lawyers Association (CELA)
- Listed in Marquis' *Who's Who in America*, *Who's Who of American Women*, and *Who's Who in the World*

ADR Profile

- "Speedy Synthesizer," ADR Profile, *Daily Journal*, May 27, 2016

Background and Education

- Full-time neutral since July 2012 (part-time since January 2007 - July 2012)
- Partner, Jones Day, 1988-1996 and 2006-2012
- Shareholder, Heller Ehrman, 1997-2005
- Associate, Jones Day, 1983-1987
- Associate, Seyfarth Shaw, 1978-1983
- J.D., UCLA School of Law, 1978 (Member, *UCLA Law Review*)
- M.A., Comparative Literature, UCLA, 1973
- B.A., English Language & Literature, *magna cum laude*, Penn State, 1971
- B.A., Russian Language & Literature, *cum laude*, Penn State, 1971

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