

ARBITRATION ADVISORY

01-01

Suggestions For Late-Submitted Documentary Evidence

March 20, 2001

For submission of written evidence in fee arbitrations, SCCBA Rule of Procedure V(2) sets the following deadlines:

- For single arbitrators, five days before the hearing-date.
- For three arbitrators, eight days before the hearing.

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In general, arbitrators have wide discretion, but the following points may help when a party fails to meet the deadline:

- As the hearing begins, Arbitrators should ask the opposing party if the late evidence is acceptable.
 - If the opposing party agrees to admission of the late evidence, the sole Arbitrator or the Panel may proceed with the hearing.
 - In certain conditions, the sole Arbitrator or the Panel may proceed with the hearing against the opposing party's objection.
 - As fairness is essential to successful arbitrations, arbitrators should always consider whether fair consideration of late-submitted evidence would require a continuance.
 - Continuances should be granted only when review of late evidence would prolong the hearing beyond reasonable limits, and only when the resulting delay would cause no serious disadvantage to the arbitrators or the parties.
- Equal treatment is not always fair treatment. Attorneys who fail or refuse to comply with Rule V(2) should ordinarily be allowed less latitude than clients, who are often unfamiliar with procedural rules and inadequately prepared for the hearing.
- In respect of late-submitted evidence as in other aspects of their work, arbitrators should always be ready to explain their decisions and actions to attorneys and clients. This done, the results of arbitration will not only be fair, they will seem fair.