

6 California Procedure (5th), Proceedings Without Trial

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(2) [§426] Preferential Setting Denied.

(3) [§427] Preferential Setting Required.

D. Mandatory Dismissal for Delay in New Trial.

1. [§428] In General.

2. [§429] After Mistrial or Jury Disagreement.

3. [§430] After New Trial Is Granted.

4. After Decision on Appeal.

(a) [§431] Order Granting New Trial.

(b) [§432] Judgment Reversed With Remand for New Trial.

(c) [§433] Distinction: Judgment Reversed Without Remand for New Trial.

5. Extensions, Exceptions, and Excuses.

(a) [§434] In General.

(b) Trial Impossible, Impracticable, or Futile.

(1) [§435] In General.

(2) [§436] Requirement of Reasonable Diligence.

(c) [§437] Estoppel.

E. Discretionary Dismissal for Delay.

1. In General.

(a) [§438] Power To Dismiss.

(b) [§439] Criteria Governing Exercise of Discretion.

(c) [§440] Premature Dismissal Is Improper.

(d) [§441] Extensions, Exceptions, and Excuses.

2. Delay in Service.

(a) [§442] In General.

(b) Time for Service.

(1) [§443] Amended Complaint.

(2) [§444] Doe Defendant.

(3) [§445] Complaint in Intervention.

(c) Excuse for Delay.

(1) [§446] Necessity for Showing.

(2) [§447] Sufficiency of Showing.

(d) [§448] Prejudice to Defendant.

(e) Review.

(1) [§449] Dismissal Upheld.

(2) [§450] Abuse of Discretion.

3. Delay in Trial.

(a) [§451] In General.

(b) Excuse for Delay.

(1) [§452] Former Rule: Dismissal Required Absent Adequate Showing.

(2) [§453] Current Rule: Discretion of Trial Court.

(3) [§454] Necessity for Some Showing.

(4) [§455] Attorney's Neglect Imputed to Client.

(c) [§456] Prejudice to Defendant.

(d) [§457] Effect of Judicial Arbitration.

(e) [§458] Effect of Trial Preference.

(f) [§459] Effect of Trial Setting.

(g) Review.

(1) Dismissal Upheld.

(aa) [§460] Earlier Decisions.

- (bb) [§461] Later Decisions.
 - (2) Abuse of Discretion.
 - (aa) [§462] Earlier Decisions.
 - (bb) [§463] Later Decisions.
- 4. [§464] Delay in New Trial.
- 5. Procedure.
 - (a) [§465] Notice of Motion.
 - (b) [§466] Opposition, Response, and Reply.
 - (c) Ruling on Motion.
 - (1) [§467] Ruling May Be Conditioned.
 - (2) [§468] Absent or Incorrect Statement of Grounds.
 - (d) Dismissal on Court's Own Motion.
 - (1) [§469] In General.
 - (2) [§470] After Motion To Specially Set.
 - (e) Relief From Order.
 - (1) [§471] Review of Order.
 - (2) [§472] Relief Under C.C.P. 473.
 - (f) [§473] Effect of Dismissal.

XIII. INVOLUNTARY DISMISSAL FOR REASONS OTHER THAN DELAY

- A. [§474] In General.
- B. Failure To Appear at Trial.
 - 1. [§475] When Dismissal Is Proper.
 - 2. [§476] Trial of Uncontested Matter as Alternative to Dismissal.
- C. [§477] Demurrer Sustained.
- D. [§478] Motion To Strike Granted.
- E. [§479] Failure To Bring Small Claims Court Appeal to Trial.
- F. [§480] Improper Grounds for Dismissal.

XIV. ALTERNATIVE DISPUTE RESOLUTION

- A. In General.
 - 1. [§481] Nature and Scope of ADR.
 - 2. [§482] Programs and Legislation.
 - 3. [§483] Judicial Standards and Rules.
 - 4. [§484] Immunity of Persons Performing Dispute Resolution Services.
- B. [§485] Negotiation.
- C. Mediation.
 - 1. [§486] In General.
 - 2. [§487] Confidentiality.
 - 3. [§488] Regulation of Mediation.
 - 4. Court-Ordered Mediation.
 - (a) [§489] Scope of Pilot Project.
 - (b) [§490] Time for Mediation.
 - (c) [§491] Procedure.
- D. [§492] Settlement Conference.
- E. [§493] Neutral Fact-Finding or Evaluation.
- F. [§494] Mini-Trial.
- G. Private Judging.

1. [§495] In General.
2. [§496] Voluntary Reference.
3. [§497] Temporary Judge.
4. [§498] Procedure.

H. Contractual Arbitration.

1. In General.
 - (a) [§499] Definition and Nature.
 - (b) [§500] Public Policy Considerations.
 - (c) [§501] Commentary and Practice Works.
2. California Legislation.
 - (a) [§502] General Statute.
 - (b) Special Statutes.
 - (1) [§503] In General.
 - (2) [§504] Medical Malpractice and Health Care Plans.
 - (3) [§505] Real Estate Contracts.
3. Federal Arbitration Act.
 - (a) In General.
 - (1) [§506] Nature and Scope.
 - (2) [§507] Commentary and Practice Works.
 - (b) Conflicting State Law Is Preempted.
 - (1) [§508] General Policy.
 - (2) [§509] Distinctions.
 - (3) [§510] Illustrations.
 - (c) [§511] Effect of Choice-of-Law Provision.
4. Agreement To Arbitrate.
 - (a) [§512] Agreement Is Enforceable.
 - (b) Form and Construction of Agreement.
 - (1) [§513] In General.
 - (2) [§514] Oral Agreement.
 - (3) [§515] Illustrations.
 - (c) [§516] Appraisal or Valuation Agreement.
 - (d) Employment or Labor Agreement.
 - (1) [§517] In General.
 - (2) Particular Claims.
 - (aa) [§518] Discrimination Claims.
 - (bb) [§519] Other Statutory Claims.
 - (cc) [§520] Harassment Claims.
 - (dd) [§521] Nonstatutory Public Policy Claims.
 - (3) [§522] Employer as Third-Party Beneficiary of Arbitration Agreement.
5. Enforcement Procedure.
 - (a) [§523] Self-Executing Agreement.
 - (b) Petition To Compel Arbitration.
 - (1) [§524] In General.
 - (2) [§525] Hearing.
 - (2a) [§525A] (New) Statement of Decision.

- (3) [§526] Appeal and Review.
- (c) [§527] Consolidation With Pending Litigation.
- (d) [§528] Stay of Pending Litigation.
- (e) Provisional Remedies Pending Arbitration.
 - (1) [§529] In General.
 - (2) [§530] Injunctive Relief.

6. Defenses to Enforcement.

- (a) [§531] In General.
- (b) [§532] Controversy Is Not Within Scope of Arbitration Agreement.
- (c) Petitioner or Respondent Is Not Party to Arbitration Agreement.
 - (1) [§533] In General.
 - (2) [§534] Joinder of Nonobjecting Third Party.
 - (3) [§535] Equitable Estoppel.
- (d) [§536] Pending Litigation.
- (e) Adhesion and Unconscionability.
 - (1) [§537] Contract of Adhesion.
 - (2) [§538] Unconscionable Contract or Term.
 - (3) [§539] Cases Deciding Issue of Unconscionability.
- (e-1) [§539A] (New) Agreement To Arbitrate Is Illusory.
- (f) [§540] Unjust or Unreasonable Provision.
- (g) Fraud.
 - (1) [§541] When Issue Is Determined by Arbitrator.
 - (2) When Issue Is Determined by Court.
 - (aa) [§542] Fraud Directed to Arbitration Provision.
 - (bb) [§543] Fraud in Inception of Contract.
- (h) [§544] Illegality.
- (i) Waiver.
 - (1) [§545] Nature of Defense.
 - (2) [§546] Delay in Demanding Arbitration.
 - (3) Commencement of Litigation.
 - (aa) [§547] No Waiver by Mere Filing or Limited Participation.
 - (bb) [§548] Filing Action Solely for Discovery.
 - (cc) [§549] Defendant's Use of Discovery and Delay in Seeking Arbitration.
 - (dd) [§550] Deceptive Tactics in Settlement Process.
 - (4) Waiver or Forfeiture by Insurer.
 - (aa) [§551] Failure To Inform Insured of Remedy.
 - (bb) [§552] Requirement of Bad Faith Conduct.

7. Arbitration Proceeding.

- (a) [§553] Commencement and Consolidation.
- (b) Arbitrator.
 - (1) [§554] Selection and Appointment.
 - (2) [§555] Arbitral Immunity.
 - (3) Disclosures and Disqualification.
 - (aa) [§556] Judicial Requirements.

(bb) [§557] Statutory Requirements.

(cc) [§558] Ethics Standards for Neutral Arbitrators.

(4) [§559] Powers.

(c) [§560] Discovery and Subpenas.

(d) [§561] Hearing.

8. Arbitration Award.

(a) [§562] In General.

(b) [§563] Remedies.

(c) Costs and Attorneys' Fees.

(1) [§564] In General.

(2) [§565] Proceeding To Confirm Award.

(d) [§566] Confirmation of Award.

(e) [§567] Correction of Award.

(f) [§568] Amendment of Award.

(g) Vacation of Award.

(1) [§569] In General.

(2) [§570] Corruption, Fraud, or Undue Means.

(3) [§571] Arbitrator Exceeded Powers.

(4) [§572] Arbitrator's Failure To Disclose.

(h) [§573] Procedure To Correct or Vacate Award.

(i) Scope of Judicial Review.

(1) [§574] General Rule of Finality.

(2) [§575] Illustrations of Finality Rule.

(3) [§576] Effect of Agreement Extending Scope of Review.

(4) [§577] Review of Remedies Granted by Arbitrator.

(5) [§578] Exceptions to Finality Rule.

I. Judicial Arbitration.

1. Nature of System.

(a) [§579] In General.

(b) [§580] Contractual Arbitration Distinguished.

(c) [§581] Administration.

2. [§582] Cases That Must Be Arbitrated.

3. [§583] Cases Excluded From Arbitration.

4. Submission to Arbitration.

(a) [§584] On Stipulation.

(b) [§585] On Plaintiff's Election To Limit Award.

(c) [§586] On Order of Court.

(d) [§587] Effect of Submission.

5. Arbitrator.

(a) Selection.

(1) [§588] In General.

(2) [§589] Arbitration Panels.

(3) [§590] Manner of Selection.

(b) [§591] Disqualification.

(c) Fees.

(1) [§592] In General.

- (2) [§593] Source of Payment.
- 6. [§594] Discovery.
- 7. Arbitration Hearing.
 - (a) [§595] In General.
 - (b) [§596] Subpenas.
 - (c) [§597] Time and Place of Hearing.
 - (d) [§598] Notice of Hearing.
 - (e) [§599] Persons Present.
 - (f) Evidence.
 - (1) [§600] In General.
 - (2) [§601] Reports and Records.
 - (3) [§602] Written Statements.
 - (4) [§603] Depositions.
 - (g) [§604] Sanctions for Failure To Participate.
- 8. Arbitration Award.
 - (a) Form and Content.
 - (1) [§605] In General.
 - (2) [§606] Amount of Damages.
 - (3) [§607] Award of Costs.
 - (b) [§608] Filing.
 - (c) [§609] Service.
 - (d) [§610] Effect.
 - (e) [§611] Appealability.
 - (f) [§612] Vacation.
 - (g) [§613] Res Judicata and Collateral Estoppel.
- 9. Trial De Novo After Arbitration.
 - (a) Right to Trial.
 - (1) [§614] In General.
 - (2) [§615] Waiver by Plaintiff Electing Arbitration and Receiving Maximum Award.
 - (b) Request for Trial.
 - (1) [§616] Time for Request.
 - (2) [§617] Form of Request.
 - (3) [§618] Filing and Service.
 - (4) [§619] Request by One of Several Coparties.
 - (5) [§620] Subsequent Voluntary Dismissal.
 - (6) [§621] Subsequent Withdrawal of Request.
 - (c) Conduct of Trial.
 - (1) [§622] Calendaring.
 - (2) [§623] Discovery.
 - (3) [§624] No Reference to Arbitration.
 - (4) [§625] Adoption of Arbitrator's Findings Is Improper.
 - (d) Costs and Fees.
 - (1) [§626] In General.
 - (2) [§627] Improper Assignment of Case to Arbitration.
 - (3) [§628] Effect of Rejection of Statutory Offer To Compromise.

(4) [§629] Items Awarded.