Attorneys Without Borders, Arbitration in California: A Proposal

By Nicholas P. Connon & Robert A. de By[1]

California law prohibits foreign attorneys from representing clients in international arbitrations held within the State. An attorney participating in arbitration in California is practicing law[2], and "[n]o person shall practice law in California unless the person is an active member of the State Bar." (Bus. & Prof. Code, § 6125).

Due to the restriction in California, foreign parties and their legal advisors may choose other venues for their arbitration that allow foreign attorneys to arbitrate—venues such as New York, London, or Paris. As a result, California's failure to accommodate foreign attorneys seeking to arbitrate international matters within the State deters international arbitrations from taking place in California.

A provision allowing foreign attorneys to represent their clients in California would make the state an attractive center for international arbitration. This would give rise to increased international arbitration activity in California, and concomitant legal work and business activity for its legal community. Both would benefit greatly from the increased presence of international arbitration in the State. Such arbitrations bring a demand for arbitrators, local counsel, court reporters, interpreters, conference space, hotel rooms, and other facilities. In short, allowing foreign attorneys to represent their clients in California international arbitrations will create jobs and be economically beneficial to the legal industry as well as the public.

Other states and nations actively work to attract international arbitrations. For example, New York, England, France, and Singapore all allow foreign attorneys to represent their clients in international arbitrations—making these locations preferred choices as seats for international arbitral matters. California should do the same.

By providing a neutral forum, international arbitration works to cure entanglements created by parties from different legal cultures being in a cross-border legal dispute. A crucial part of doing so is accommodating the expectations of persons from often very different backgrounds. Needless to say, allowing such parties access to trusted counsel, familiar with their business, legal culture, and the parties' expectations is crucial to the confidence international arbitration requires to be an effective dispute resolution mechanism. Excluding such experienced counsel from California arbitrations serves no legitimate purpose and undermines California's position when it comes to attracting international arbitration. Doing so is inconsistent with principles of diversity and tolerance of other cultures, qualities that California is famous for the world over. California is the gateway to Asia, as well as to much of Latin America. A parochial approach to international arbitrations robs the State and its legal professionals of significant revenue and reputational potential.

Finally, there is the issue of reciprocity. California should allow foreign attorneys to participate in international arbitrations where California attorneys are permitted to practice in the country where the foreign attorney comes from. This open door policy would provide a boost to California attorneys both in California and abroad. Any boost to the California legal industry should be welcome.

It is for these reasons that the California legislature should amend Section 1282.4 to permit foreign attorneys to act as counsel and arbitrators in international arbitrations in California.

Endnotes

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2 *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 133-134 [70 Cal.Rptr.2d 304].