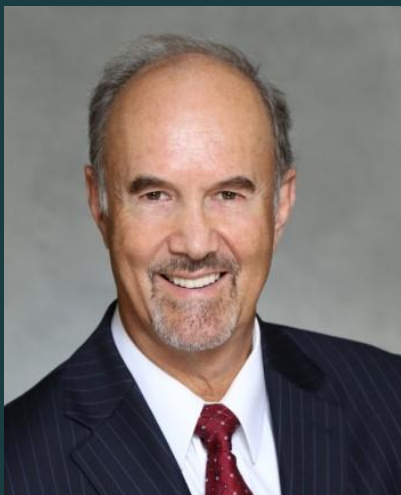
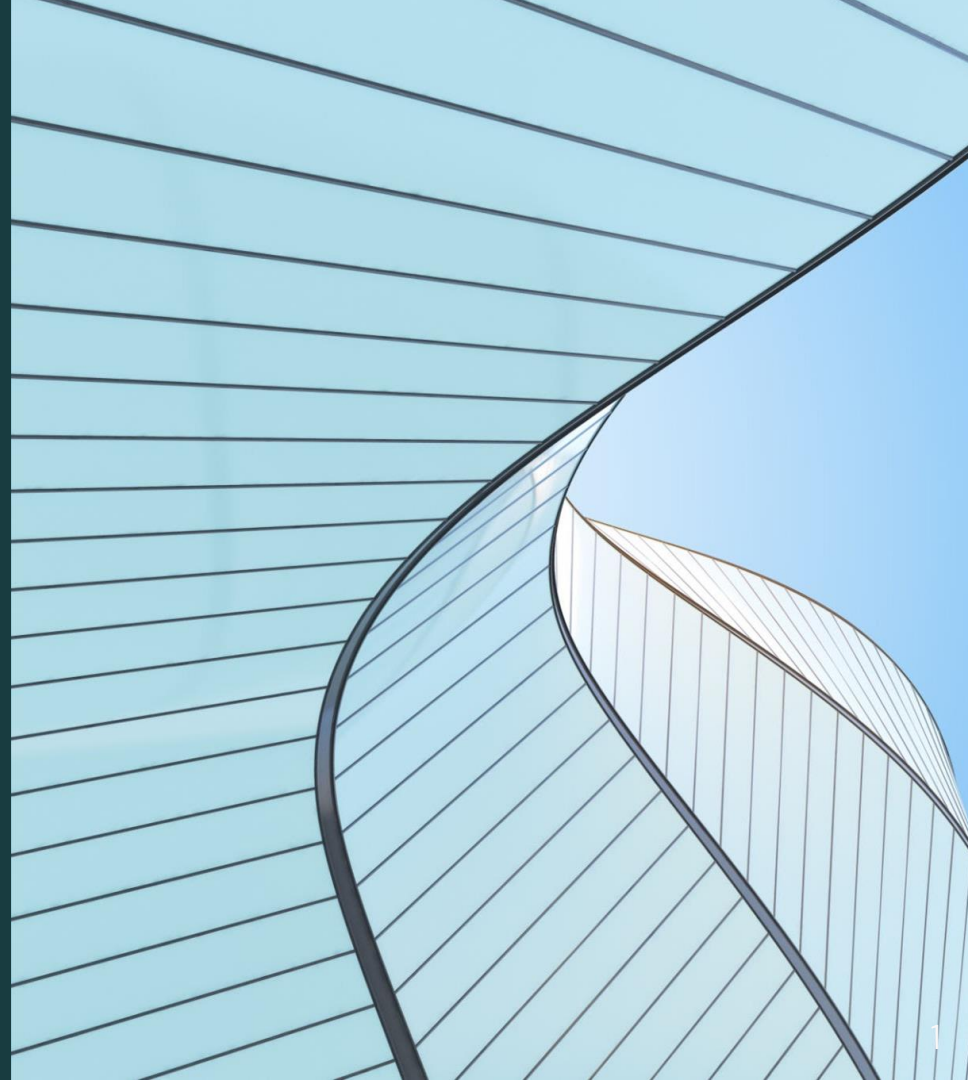




Arbitral Subpoenas



Presented by Robert Amador, Esq.
Arbitrator/Mediator



Content Overview

01

**Subpoenas are a
discovery device**

CCP CCP § 2020.220

FRCP Rule 45

02

**Third-party
Subpoenas**

Subpoena Duces
Tecum

Deposition Subpoena
To Attend Arbitration

03

**Compare pre-
hearing exchange of
documents and
discovery among
parties**

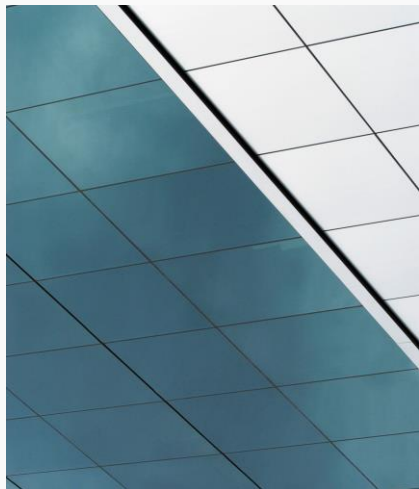
04

**Topics to be
discussed:**

Arbitral power and
authority to issue
subpoenas to third
parties

Court enforcement of
arbitral subpoenas

Best practices for
counsel and arbitrators



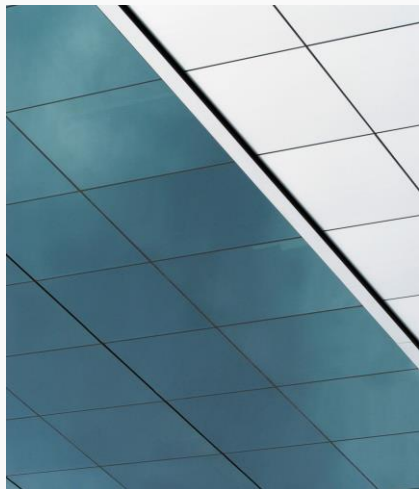
California

California Arbitration Act (CCP
§§1280-1294.4)

Historically power limited to
wrongful death and PI cases only
CCP § 1283.1

California

- January 1, 2025 SB 940 amended CCP § 1283.05 (Appendix 1)
- Now arbitrators in California have same powers as judges, regardless of the type of claim
 - Excepts limited civil cases



CA Code of Civil Procedure

CCP § 1283.05

Full Discovery Rights (Post-Arbitrator Appointment): Parties may conduct depositions and discovery as in civil litigation (broad CCP discovery rules apply)

Arbitrator Authority: Arbitrators can enforce discovery, issue orders, and impose sanctions similar to a court (except arrest/imprisonment)

Binding Orders: Discovery rulings and sanctions are final and enforceable like arbitration awards

Affiliate Inclusion: Discovery obligations extend to a party's affiliates (including personnel and records under their control)

(Appendix 1)

Federal Law

Federal Arbitration Act:

- 9 U.S. Code § 7 - Witnesses before arbitrators; fees; compelling attendance
- Grants arbitrators the power to summon in writing any person to attend before them to compel attendance of witnesses, and courts where the arbitrators are sitting can compel the attendance (Appendix 2).

9 U.S. Code § 7

Arbitration Rules

- Subpoena Power: Arbitrators may summon witnesses and require production of relevant documents
- Court Enforcement: U.S. district courts can compel compliance or punish noncompliance (contempt)
- Witness Fees: Same as federal court witness fees

Arbitrator Oversight & Procedure

- Ongoing Disclosures: Arbitrators must disclose conflicts; failure to object = waiver
- No Ex Parte Contact: Parties cannot communicate privately with the arbitrator
- Representation: Parties may have counsel; must notify all parties.

(Appendix 2)

Federal Law

FAA (9 U.S.C. §§ 1-16)

- Applies to transactions involving transactions affecting interstate commerce
- Except out seamen, transportation and railroad employees
- Could apply even if intrastate transaction
- Could apply even if not mentioned in arbitration agreement

Federal Law

Split Among the Circuits:

- **Majority Rule:**
Hearing required before the arbitrators (Second, Third, Ninth, and Eleventh Circuits)
- **Rationale:**
Nonparties have not consented to the arbitrator's authority have not voluntarily given up judicial review of arbitrator orders encourages 'fishing expeditions' undermining arbitral efficiency

Federal Law

Split Among the Circuits:

- **Minority Rule:**
No hearing required (Fourth and Eighth Circuits).
- **Rationale:**
The power to enforce subpoenas against third parties prior to the arbitration hearing is implicit in the arbitrator's power to subpoena documents for production at the arbitration hearing pre-hearing discovery is consistent with goal of arbitral efficiency

Agreement to Arbitrate

- **Critical:**
 - Arbitrator power derived from and limited by agreement to arbitrate
 - Most contractual clauses silent or vague on discovery
- **Examples:**
 - Refers to arbitration rules
 - Provide broad discovery as if in court
 - Addresses subpoenas directly (rare)
- Cases refusing to enforce often refer to arbitration agreement language.



Rules of ADR Provider Organization

Arbitrator power is also derived from the rules of the ADR provider organization applicable to the dispute.

- Rules vary significantly
- Provide the structure for administration of the arbitration

Examples:

- ARC
- AAA Rules 24 (b) and 35(d)
- JAMS Rules 19 and 21

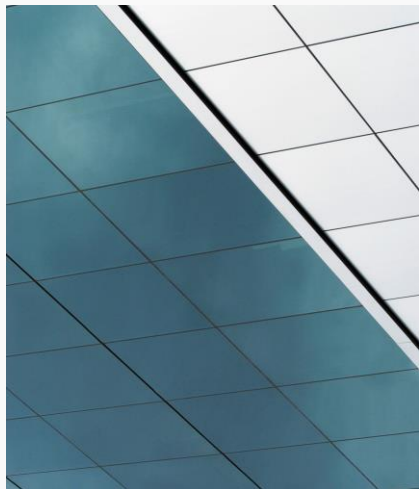
(Appendix 3)

AAA & JAMS Commercial Arbitration Rules

AAA Rules (R-24 & R-35)

- **Broad Enforcement Power:** Arbitrator can issue orders to ensure a fair, efficient, and cost-effective process
- **Discovery Control:** Can set confidentiality protections, limit e-discovery scope, and allocate production costs
- **Sanctions for Noncompliance:** Adverse inferences, exclusion of evidence, and cost shifting
- **Flexible Evidence Rules:** Not bound by formal rules of evidence; arbitrator decides relevance/admissibility
- **Subpoena Authority:** Arbitrator may compel witnesses/documents; privileges still apply

(Appendix 3)

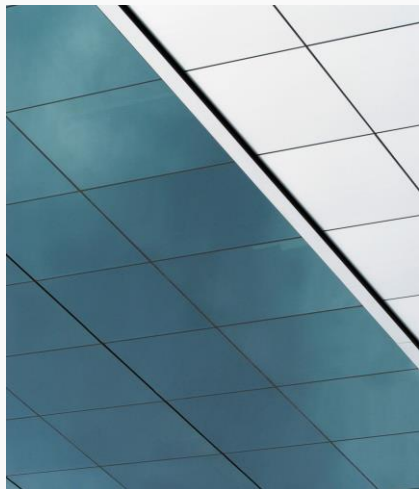


AAA & JAMS Commercial Arbitration Rules

JAMS Rules (19 & 21)

- **Scheduling Authority:** Arbitrator sets hearing logistics and can proceed if a party fails to participate (with notice)
- **Hearing Flexibility:** Location may vary for convenience or third-party witnesses
- **Witness/Document Production:** Parties must produce controlled witnesses; arbitrator can issue subpoenas
- **Objections Handled by Arbitrator:** Balances burden vs. need when disputes arise

(Appendix 3)



CA Enforcement Issues

- **Right to full judicial review**
 - Berglund v. Arthroscopic & Laser Surgery Center of San Diego, L.P. (2008) 44 Cal.4th 628 (nonparties have right to full judicial review of deposition subpoena)
- **Deficient Arbitration Agreement**
 - Aixtron, Inc. v. Veeco Instruments, Inc. (2020) 52 Cal. App. 5th 360 (arbitral subpoena to third party not authorized by CAA because parties did not include for full discovery rights in the arbitration agreement under CCP § 1283.1)



Federal Enforcement Issues

- Split Among the Circuits
- Applicability of FAA
- Federal Jurisdiction-diversity and amount in controversy
- Improper Venue
 - *Black v. Emerson* (U.S. Dist. Ct. Col. 2025) (dismissing motion to compel arbitral subpoena for improper venue)
- Rule 45(c)-compliance within 100 miles of residence
 - *International Seaway Trading Corp. v. Target Corp.* (U.S.D.C. Minn. 2021)(enforcing arbitral subpoena over objections that it did not comply with Rule 45(d))
- Trend

Takeaways

Power and authority to issue subpoenas is from:

CA Law

Federal Law

Agreement to Arbitrate

ADR Provider Organization Rules

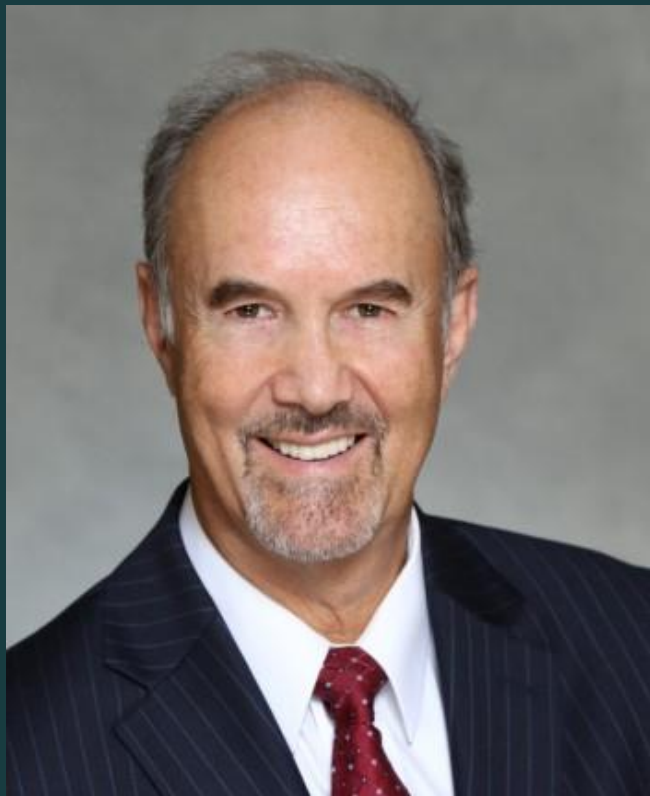
Stipulations and Orders in Case

Commercial Arbitration Rules

BEST PRACTICES

- Review applicable law
- Review language in arbitration agreement re discovery
- Review rules of ADR provider organization
- Always ask to review approve and sign all subpoenas
- Address discovery and subpoenas at preliminary hearing
- Before signing inquire if there are objections and if so on what basis
- Require briefing and hearing if a party objects to subpoena
- Consider if subpoena is overbroad, burdensome or otherwise+ improper
- Under FAA in 9th Circuit consider setting discovery hearing
- Require subpoenas for attendance be served at least 45 days of hearing
- If third party does not comply issue order compelling after hearing
- Consider sanctions against non-complying third party





Stay in Touch!

Robert Amador, Esq.

Arbitrator/Mediator

Los Angeles, CA

robert@amadoradr.com

<http://www.arc4adr.com>

