Part VI

Mediation in the Context of Arbitration
Reflections on Culture in Med-Arb

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INTRODUCTION

This article challenges preconceptions about the role that culture may play in the success or failure of med-arb in international commercial arbitration and examines briefly how arbitration laws might be adjusted to better accommodate med-arb.

Med-arb is widely defined in alternative dispute resolution (ADR) literature.1 However, as there are many permutations, which are continuing to develop and evolve, this article begins by designating as med-arb any dispute that may potentially be arbitrated but that may also be subject to mediation before, during, or after the arbitration. Kathleen Scanlon has explained med-arb in greater detail:

[Mediation] can be used either in parallel to the arbitration, where you have a different person as the mediator and it doesn’t affect the pace of the arbitration. You can have it where the arb-med is where one of the arbitrators, if you have a three-person panel, actually serves as the mediator and the arbitration gets suspended; and if it is not successful, then that mediator steps back into his role as an arbitrator. You can have that same role if you have a sole arbitrator and have that arb-med

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