

ADR Surveys

# A Report on Corporate Counsel Arbitration Preferences

BY GARY L. BENTON, WILLIAM CROSBY, TODD C. TORAL, AND DANA WELCH

This report summarizes the results of a survey of corporate counsel from leading U.S. companies attending the 2026 CPR Annual Meeting in Coronado, Calif.

The survey was conducted in collaboration with the College of Commercial Arbitrators during the authors' interactive Feb. 13 program, "Corporate Counsel Vote!" The voting was conducted confidentially by electronic polling in a closed session of about 20 corporate counsel, all of whom are well informed and actively involved in arbitration dispute resolution at their companies. The voting was followed by moderated group discussion of the results.

The group discussion was led by the authors, all experienced ADR practitioners. The survey and associated discussion centered on practical user preferences in arbitration and mediation design, and the results prompted candid and thoughtful exchange among respondents about what strengthens—and what weakens—confidence in the process. Respondents represent a wide array of industries including manufacturing, energy, technology, life sciences, and healthcare.



While not intended as a statistically representative study, the survey reflects the perspectives of experienced corporate counsel actively managing arbitration portfolios and provides directional guidance on best practices in commercial arbitration practice—an educated and informed focus group approach to uncovering practice preferences.

This February 2026 CPR Annual Meeting survey of corporate counsel highlights consistent themes in modern commercial arbitration practice.

Respondents strongly favor party appointment of arbitrators and three-member tribunals in larger disputes, resist mandatory mediation and rigid procedural mandates, and support proportional discovery driven by party agreement.

Corporate counsel expect early procedural engagement, endorse use of artificial intelligence with appropriate safeguards, and strongly prefer in-person evidentiary hearings.

Overall, the results reflect a clear preference for expertise, party autonomy, and consent-driven

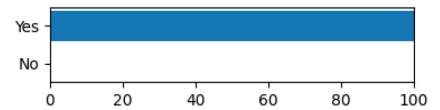
procedure over efficiency measures that diminish control or deliberative quality.

## Summary of Results

The following questions were posed to the survey respondents, with the results summarized below.

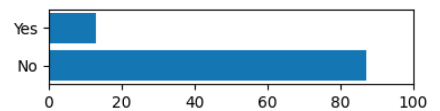
1. Should arbitrators be appointed by the parties rather than an institution?

Yes 100% / No 0%



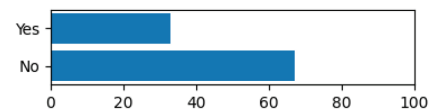
2. Should the default rule be one arbitrator (not three), even in large disputes?

Yes 13% / No 87%



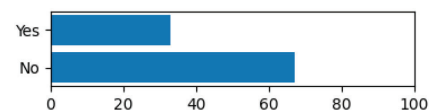
3. Should mediation of arbitration disputes be mandatory?

Yes 33% / No 67%



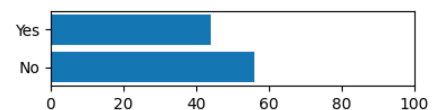
4. Would you use the same neutral in a med-arb or arb-med process?

Yes 33% / No 67%



5. Should arbitrators limit discovery, even when both parties request broader discovery?

Yes 44% / No 56%



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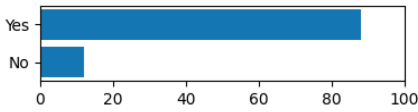
The College of Commercial Arbitrators, founded in 2001, is an invitation-only organization that promotes excellence in commercial arbitration, both in the U.S. and internationally. By fostering collaboration, innovation, and thought leadership, CCA makes unique and significant contributions to the field of commercial dispute resolution. See [www.ccarbitrators.org](http://www.ccarbitrators.org).

## ADR Surveys

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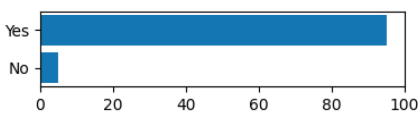
6. Should corporate counsel attend preliminary hearings?

Yes 88% / No 12%



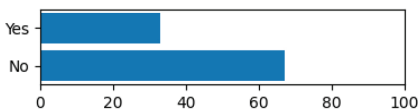
7. Should arbitrations allow counsel's use of artificial intelligence tools?

Yes 95% / No 5%



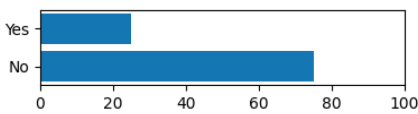
8. Should arbitrations adopt a protocol restricting arbitrators' use of AI (beyond decision-making tasks)?

Yes 33% / No 67%



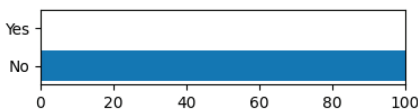
9. Do you prefer video over in-person evidentiary hearings?

Yes 25% / No 75%



10. Should an arbitrator be permitted to impose a video evidentiary hearing over party objection?

Yes 0% / No 100%



Taken together, the results reveal consistent patterns in how corporate counsel view legitimacy, control, efficiency, and modernization in arbitration.

## Key Themes

1. *Arbitrator Appointment:* Survey respondents unanimously favored party appointment of arbitrators (100% Yes), and 87% rejected a default to a sole arbitrator in large disputes.

These results reflect a strong and consistent preference among corporate counsel

to retain meaningful influence over tribunal formation. Corporate counsel emphasized that party appointment is not viewed as tactical maneuvering, but as an important safeguard.

The ability to select arbitrators with relevant industry experience, subject-matter expertise, and practical judgment is seen as enhancing legitimacy and predictability. There was a recognition that institutional selection may advance transparency and provide opportunities for new and diverse practitioners, but these goals can likewise be achieved through party appointment.

## What Do You Like?

**The report:** In-house counsel put their arbitration preferences to survey votes.

**Is there one key finding?** They savor party choice.

**What else?** There is a push in the survey numbers for a practical approach. But video over travel? Maybe not so much.

Particularly in complex and high-exposure disputes, corporate counsel prefer the deliberative depth and internal checks that a three-member tribunal provides despite the cost savings that could be achieved with a single arbitrator.

The overall theme was clear: while cost efficiency remains relevant, corporate counsel prioritize quality control, expertise, and confidence in the award over structural simplification.

2. *Use of Mediation in Arbitration:* Survey respondents were largely opposed to mandatory mediation (33% Yes/67% No), and two-thirds rejected the use of the same neutral in med-arb or arb-med models (33% Yes/67% No).

Corporate counsel expressed clear support for mediation as a strategic tool. They consistently emphasized, however, that timing is critical. Mandatory mediation at the outset of a case may occur before sufficient information exists to evaluate exposure and settlement posture. Corporate counsel prefer mediation when deployed at a moment that

aligns with business realities and informed decision-making.

There was agreement that a light-touch encouragement by arbitrators to consider settlement or mediation at the start, or even later in a case, could be useful. Although there was no strong objection to rules requiring the consideration of mediation, the respondents rejected rigid requirements that mandate mediation. Likewise, contracts with "step clauses," where negotiation and mediation are a condition precedent to arbitration, were disfavored—because they are viewed as the equivalent of mandatory mediation.

With respect to hybrid models, the survey respondents highlighted concerns regarding confidentiality, candor, and role integrity when an arbitrator takes on the role of a mediator, or a mediator is asked to resolve a dispute on the merits. While hybrid processes were not categorically rejected, corporate counsel favor clear structural boundaries and consent-driven implementation.

3. *Discovery in Arbitration:* Respondents slightly disfavored arbitrators limiting discovery when both parties jointly request broader discovery (44% Yes/56% No).

Corporate counsel articulated a balanced view. On the one hand, arbitration is generally valued for avoiding the cost and burden of expansive litigation-style discovery. On the other hand, meaningful information exchange is often necessary for accurate risk assessment, internal reporting, and resolution strategy. The results on this question reflect the importance of party autonomy in arbitration.

The discussion reflected an expectation of proportionality rather than rigid constraint. Corporate counsel expect arbitrators to exercise active case management, but disfavor arbitrators' overriding informed joint requests.

Respondents did not reject efficiency as a goal; rather, they expressed concern about efficiency measures that nullify informed party judgment or prevent the fair presentation of complex disputes.

Survey respondents also expressed caution about procedural frameworks that impose rigid page limits, compressed briefing schedules, or categorical discovery caps in the name of efficiency. While such measures may be useful in appropriate cases, corporate counsel emphasized that inflexible procedural limits should not override the parties' considered

judgment about what is necessary to present a complex dispute fairly and completely.

Respondents distinguished between arbitrator-imposed limits, institution-imposed structural caps, and party-agreed limitations, indicating that constraints are most acceptable when they arise from party agreement rather than being imposed without party consent.

It was acknowledged that the parties do not always select arbitration for purposes of cost efficiency—specialized expertise, privacy, and award enforcement also play a role.

**4. Role of Corporate Counsel in Arbitration:** An overwhelming majority of the survey respondents (88%) agreed that corporate counsel should attend preliminary hearings.

Corporate counsel recognize that early procedural conferences provide consequential moments in the dispute resolution process. Scheduling, scope of discovery, motion practice, and hearing format are frequently set at this stage. Participation allows corporate counsel oversight and coordination with their outside counsel at a critical time, allowing corporate counsel to align procedural decisions with business priorities, risk tolerance, and budget constraints.

Corporate counsel's ability to be involved in the process takes priority over any concern that outside counsel may grandstand when their client is present. At the same time, survey respondents noted that corporate counsel attendance should remain flexible rather than mandatory. The key principle is opportunity and engagement—not compulsion.

**5. Use of AI in Arbitration:** Survey respondents overwhelmingly supported arbitration counsel's use of artificial intelligence tools without formal restrictions (95% Yes).

Corporate counsel recognize that AI is already embedded in modern legal practice and use by companies and their outside counsel should not ordinarily be subject to scrutiny by opposing parties or arbitration tribunals.

Similarly, only one-third of the survey respondents favored formal restrictions on arbitrators' AI use beyond decision-making tasks (33% Yes/67% No). When AI intersects with adjudicative functions, survey respondents expressed greater sensitivity.

Transparency, confidentiality, and accountability were recurring themes. Overall, survey respondents' views align with the broader movement toward governance, such as provided by the

[Silicon Valley Arbitration & Mediation Center \(SVAMC\) AI Guidelines](#), over strict prohibition.

**6. Video Conferencing vs. In-Person Hearings:** Seventy-five percent of the survey respondents prefer in-person evidentiary hearings over videoconference evidentiary hearings. In addition, 100% rejected permitting arbitrators to impose video hearings over party objection absent exigent circumstances.

With use of video at least for preliminary proceedings pervasive, despite the efficiency and economy of electronic proceedings, the strong preference for in-person merits hearings was perhaps the most surprising in-house counsel survey result.

Videoconference hearings are viewed as appropriate for procedural matters and limited testimony. For merits hearings, however—where credibility assessments and advocacy dynamics are central—survey respondents strongly favor in-person proceedings.

In-person hearings also offer the opportunity for superior dynamics for three-member panels, particularly in terms of real-time reactions and deliberations. Corporate counsel see real value in in-person interactions for both outside counsel and in-house counsel.

The discussion included consideration of the normalization of virtual hearings in recent years and the continued use of hybrid models. Survey preferences reflect a post-pandemic recalibration rather than a resistance to technology.

While in-house (and, by all appearances, outside) counsel prefer in-person hearings, arbitrators generally appear to believe that holding a hearing by video has little to no effect on their decision-making.

Party autonomy is a consistent theme. Survey respondents expect hearing format decisions to be driven by party agreement, with limited exceptions for emergency or health-related circumstances.

## Key Conclusions

**1. Arbitrator Appointment:** Corporate counsel prefer party appointment of arbitrators over institutional appointment. They prioritize party-selection of tribunals and deliberative quality, including the use of three-arbitrator panels in larger disputes.

**2. Mediation:** Corporate counsel support mediation as a strategic tool but resist rigid mandates and blended neutral roles.

**3. Discovery:** Corporate counsel want the joint view of the parties to take priority over institutional and arbitrator efforts to limit discovery. The majority prefer that the parties, not the arbitrators, decide what discovery is appropriate. Arbitrator decisions should come into play only where the parties disagree. Informed autonomy and reasonable proportionality best reflect corporate counsel expectations.

**4. Role of Corporate Counsel:** Early procedural engagement is viewed as central to effective arbitration management. Corporate counsel want to be able to attend preliminary hearings but not be mandated to do so.

**5. Artificial Intelligence:** Corporate counsel favor flexible and responsible use of AI by arbitration counsel so long as submissions meet ethical standards. Corporate counsel also favor AI use by arbitrators so long as decision-making is not delegated and confidentiality is maintained.

**6. Hearing Format:** In-person evidentiary hearings remain strongly preferred, and party consent, not arbitrator preference, should govern format decisions. Corporate counsel are of the view that, where the parties opt for an in-person hearing, an arbitrator should impose a videoconference hearing only under exigent circumstances.

## Concluding Observations

The survey results offer practical guidance on key issues in arbitration from leading corporate counsel and contribute to the continuing dialogue between CPR and CCA about best practices in dispute resolution.

For arbitral institutions, outside counsel, and arbitrators, these results provide practical guidance. Institutions should calibrate efficiency initiatives so that they preserve party autonomy and deliberative quality.

Outside counsel should recognize the importance corporate counsel place on early procedural engagement, informed discovery decisions, and ethical AI integration.

Arbitrators should proactively manage cases while remaining attentive to party preferences and proportionality.

The consistent message: arbitration functions best when it remains grounded in party choice, supported by experienced decision-makers and responsive to the practical needs of the dispute. 