VOLUNTARY BINDING ARBITRATION (VBA)

At its June 20, 1995 Administrative Conference, the Supreme Court approved implementation of voluntary binding arbitration (VBA) programs to handle verbal threshold cases in any vicinage that chooses to establish such a program. At its June 7, 2005 Administrative Conference, the Court approved use of VBA in lemon law cases. Guidelines for the program which permit counties to use voluntary binding arbitration for other case types with advance notice to the AOC and sample forms appear in the Civil CDR Program Resource Book appendix.

The substance of the program's operation is as follows. The parties file a written consent form, signed by all attorneys and the parties themselves, submitting the case to binding arbitration. The parties must also submit a consent order of dismissal with prejudice. The case is then presented, in abbreviated form, to a panel of two arbitrators whom the parties have selected. A sitting Superior Court judge, also selected by the parties, is present but becomes involved in the process only if (and to the extent that) the arbitrators do not agree. The proceedings are held in the courtroom, and the judge explains to the parties at the outset and on the record that the determination of the panel will be final and not appealable. All parties must then agree, on the record, that they understand the final and binding nature of the program. The hearing, however, proceeds off the record. Frequently, the parties use a high/low agreement which normally is not revealed to the arbitrators. The high/low provision seems to be an incentive for some attorneys trying to avoid the uncertainty of a trial. For the plaintiffs, that's a guarantee that at least they get something. The incentive for the defense is that it can set a cap and limit its exposure. The high/low provision helps to insulate and protect the client -- whether the client is the plaintiff or the defendant.

This program requires little court involvement other than making a courtroom and the selected judge available. Court staff should not be involved in the scheduling or compensation of the attorney arbitrators used in this program. It is the responsibility of the attorneys using voluntary binding arbitration to privately coordinate the arbitrators, provide for their compensation and ensure attendance when the selected judge is available.