

The below represents the current version of my standard initial preliminary hearing conference agenda for AAA arbitrations in which I am sole arbitrator. I send out a similar agenda to counsel in *ad hoc* (unadministered) arbitrations and, with the concurrence of my fellow panel members, in three-arbitrator cases in which I am the Chair. It is a work-in-progress and I revise it periodically.

Revised May 2016

xxxx / yyyy Arbitration

Agenda for Initial Preliminary Hearing Conference

□ **Administrative Matters**

- Arbitration agreement – is the agreement filed complete? Would any modification of the agreement make case management of more value to your client?
- Contract – if a contract is at issue, has the full contract been filed? If not, when will it be filed?
- Operative pleadings – demand for arbitration, answering statement; have all been filed?
- Amendment of claims/defenses – what is an appropriate deadline for requesting arbitrator approval of amendments?
- Procedural issues – arbitrability, jurisdiction, satisfaction of conditions precedent, necessary parties joined – any issues? Action necessary to resolve: who? when?
- Conflicts checklists – have all parties submitted them? If not, when will any missing checklists be filed?
- Governing Rules – What are they? Is another set/edition of Rules more appropriate for this case?
- Governing law – What law (state and/or federal) governs interpretation of the contract and/or issues raised by the pleadings?
- Protective order – Is one needed? Submit one within 30 days after the initial preliminary hearing conference?
- Resolution of discovery disputes – in a 3-arbitrator panel case, may such disputes be resolved by the Chair unless Chair in his discretion feels involvement of the full panel is desirable?
- Direct communication with arbitrator/panel – by email, simultaneously served on all parties and filed with AAA; attachments in PDF; paper copy to arbitrator/panel by expedited delivery; no *ex parte* oral communication.
- Document preservation – have clients been advised to preserve relevant documents?
- Cooperation of parties/counsel – required; arbitrators have power to award sanctions for abuse/violation of Orders.

- Reminders – if given, only as a courtesy; responsibility of parties/counsel to calendar case events and manage workload to ensure timely compliance with deadlines.
 - Continuances/postponement of hearings – good cause required; may require a short conference call, perhaps with client representatives.
 - Arbitrator cancellation fee – if applicable, disclosed on AAA profile.
- What is the case about?** Give arbitrator(s) a 2-3 minute “elevator speech” summarizing the case (brief background, claims/defenses, the relief you seek).
- Fleshing out the pleadings** – Are the pleadings adequate to permit formulation of a plan for information gathering/preparation for the Hearing? Would a “plain English” statement of claims and defenses assist arbitrator(s) and your opposing party to understand the case and contribute to your ability to fashion an appropriate information-gathering plan and/or properly prepare for the evidentiary hearing? If ordered, is 30 days from the date of the initial pre-hearing conference an appropriate timeline?
- Basic information exchange** – Identification of key fact witnesses and exchange of reliance documents: Is 45 days from the date of the initial pre-hearing conference an appropriate timeline? Is supplementation 30 days later appropriate?
- Discovery other fact information** – what types/vehicles of “discovery” are needed/appropriate beyond the exchange of reliance documents and identification of key fact witnesses? Is a 30 day period for responding to requests for information appropriate? Are depositions needed? Of whom? How many depositions? Time limits on individual depositions? Is information needed from 3rd parties? Protocol for submitting requests for subpoenas? Electronically stored information: issues? Timeline for submission of proposed plan for information gathering – is 30 days from date of initial pre-hearing conference an appropriate deadline?
- Experts** – do you presently expect to present expert testimony at the evidentiary hearing? When should experts be disclosed – simultaneously? staged? Content of disclosures? Are depositions of experts needed? Time limits?
- “Discovery” cut-off** – all “discovery” completed 45 days prior to evidentiary hearing?
- Hearing dates** – number of days required for the evidentiary hearing and when case will be ready for Hearing.

- Hearing location** – where should the Hearing be held: arbitrator(s) office? Another suitable location/facility?
- Mid-case status conference** – date?
- Hearing management procedures** – will use of such procedures (e.g., chess clock? Written witness statements with short introductory direct examination followed by normal cross-examination?) contribute to a more efficient Hearing?
- Motions for interim relief or summary disposition** – what motions are anticipated? When will they be filed? How will a dispositive motion contribute to an efficient and less costly process?
- Mediation/settlement** – arbitrator(s) will not be involved but are there ways arbitrator(s) can assist you in resolving the case? Case manager can assist in mediator selection and scheduling.
- Exchange of preliminary witness and exhibit lists** – 3 weeks prior to Hearing?
- Joint statement of the evidence (final witness and exhibit lists)** – 10 days prior to Hearing?
- Pre-hearing briefs** – 1 week prior to Hearing; 30 page limit; attach copies of key authorities (not counted against page limit).
- Final pre-hearing conference** – date?
- Order of Witnesses** – two business days prior to the Hearing, claimant required to identify witnesses who will testify on the first day of hearing, and the order in which they will testify; at the end of each hearing day, parties will be required to identify witnesses and order on the next hearing day
- Statement of relief requested** – deliver/serve on 1st day of Hearing
- Arbitrator exhibit books** – deliver on 1st day of Hearing
- Form of award** – what form of award would be most valuable to your client: bare award? reasoned decision? bare award with explanatory letter? formal findings/conclusions? If reasoned decision, how detailed? If formal findings/conclusions desired, parties must submit proposed findings and conclusions prior to the Hearing. If confirmation/*vacatur* proceeding initiated, award becomes public. Each form of award has an impact on your clients' overall costs.

- ❑ **Protocol for handling requests for attorneys' fees and costs** – what would be most appropriate: Summary (“bare bones”) proceeding after prevailing party determined (identification of lawyer/paralegal, number of hours, hourly rate, book value of time – no detail), with decision wrapped into Final Award?? Entry of partial final award (on the merits only) followed by fee/cost application (detailed application (timesheets/client bills) and response), decision and final award?
- ❑ **Other matters** – please let the arbitrator(s) know what else you would like to discuss. Call or email the Case Manager with suggestions.