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## **THE ARBITRATION PROCESS**

### **An Advocate's Model for Arbitrating**

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#### **SUMMARY:**

I discuss how to prepare for an arbitration and how to present at an arbitration, so that you arbitrate the right cases at the right time in the right way.

#### **PREPARING:**

##### STEP 1

Make sure the case is right for an arbitration.

A case is suitable for arbitration if: 1. Trial exposes the parties to unacceptable risks; 2. A trial would be unreasonably expensive, complicated, and/or time-consuming; 3. The parties seek a final resolution, rather than a delayed, appealable decision; 4. The case involves confidential or embarrassing information; and/or 5. The case involves emotional issues appropriate for a setting more informal than a courtroom.

##### STEP 2

Make sure the case is ready for arbitration.

A case is ready for arbitration when the parties have the information necessary for them to establish the elements of the case. This includes the material facts, relevant law, and necessary expert opinions.

##### STEP 3

Get your client and opponent to agree to an arbitration. Mutually agree upon a great arbitrator.

A great arbitrator should have the following qualities 1. He is competent; 2. He is Objective; 3. He Listens; 4. He is Thorough; 5. He is Discreet; 6. He is Decisive.

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#### STEP 4

Contact the Arbitrator; agree upon the fee; select a date; and get, review, sign, and return the Arbitrator's Arbitration Agreement.

#### STEP 5

Draft, review, and sign a confidential Arbitration Agreement with your opponent. This should set forth the conditions of the arbitration, such as a confidential high/low agreement, stipulations, issues to be decided, and filing of a withdrawal (if the case is in suit) and a draft of the release to be signed after the decision is issued.

#### STEP 6

Find out the Arbitrator's approach. Where will the arbitration be conducted, should position statements be filed, will there be opening statements and closing arguments.

#### STEP 7

Outline your case. Identify: 1. The parties; 2. The claims; 3. The elements of each claim; 4. The material facts and the source of those facts; 5. The strengths and weaknesses of both sides.

#### STEP 8

Outline your opponent's case and your rebuttal to your opponent's case.

#### STEP 9

Do a critical evidence analysis. Make sure you have all of the essential evidence (sources of factual assertions and expert opinions and the law) to prove the elements of your case.

#### STEP 10

Consult with your opponent. Stipulate to admissible evidence, facts not in dispute, and issues not in dispute. This will allow a more persuasive and efficient presentation at the hearing.

#### STEP 11

Prepare your case. Although an arbitration is less formal than a trial, your client's case is being decided just the same. Approach the arbitration with the same seriousness as your approach to a trial.

Prepare your client for her direct testimony and for what to expect on cross-examination.

Prepare direct and cross-examinations of other expected witnesses.

Gather your exhibits, mark them for reference for the arbitrator, and put them in a presentable form. Have copies for your opponent.

Have a theme of your case, craft your presentation in the form of a story, draft your closing argument and a parallel opening statement.

#### STEP 12

Prepare a position statement, share it with your opponent, and get consent to submit it to the Arbitrator. The statement should be clear, concise, and outline the relevant information.

I recommend the following sections: 1. A statement of the case; 2. The claims and elements of the claims; 3. A list of the witnesses, documents, and damages (with an itemization); and 4. Stipulations. This allows the Arbitrator to focus on the issues in dispute.

#### STEP 13

Confirm two days before your arbitration the date, place, and time with the arbitrator, your client, and your opponent.

### **PRESENTING:**

#### STEP 14

Arrive at the Arbitrator's office ten minutes early. Have everything you need to make your case. Bring water, a snack, and power cords for your devices.

#### STEP 15

Have copies of your Position Statement and exhibits for your opponent and the Arbitrator. Give an opening statement that is clear, concise, and does not offend your opponent or the Arbitrator.

State what issues and facts are not in dispute so the Arbitrator can focus on the issues in dispute.

#### STEP 16

Present your case, with you as the storyteller, with your client and other witnesses giving testimony to the Arbitrator (not to you), and walk the Arbitrator through your exhibits with

references to the relevant information (do not make the Arbitrator do this himself after the hearing).

STEP 17

Be zealous, but courteous. You will not impress the Arbitrator with rudeness.

STEP 18

Give a closing argument (never waive it). Present in a tone and volume appropriate for the setting. Make sure your closing outlines the elements of the case, how the elements have been proven or not (depending on your side), and suggest a fair just, and reasonable value of the case.

STEP 19

Celebrate. You've saved your client the expense, stress, and unpredictability of a trial.



Attorney Kriesen is the Founder and Principal of The Kalon Law Firm, LLC. He is an Attorney Trial Referee, Fact Finder, and Arbitrator in Hartford Superior Court. He has been practicing law as a trial lawyer for over twenty-years and has tried cases in State and Federal Court and argued appeals before our Appellate and Supreme Courts. He holds a Juris Doctor from The University of Connecticut School of Law.