

Consolidation Techniques for Efficient Arbitration Hearings

By Gilda R. Turitz

Time is at a premium in arbitration hearings. If the parties cannot conclude their case within the scheduled hearing time, adjournments will delay and increase cost to ultimate resolution. Streamlining some of the more mundane aspects of evidentiary presentation and witness examinations will help avoid that result, by cutting down on the physical handling of voluminous exhibits, repetitive documents, uncontroversial foundational matters, and some testimonial matters. Arbitrators and counsel can help make the hearings run more efficiently by considering these consolidation techniques:

1. Joint Exhibit Requirements: In most arbitrations the parties are relying on a core group of contracts, correspondence and related documents that will be used with multiple witnesses. Requiring that the parties meet and confer and produce a set of joint exhibits of such documents for the hearing, to the extent feasible, will expedite witness examinations. Best practices include the following: using fully executed documents rather than multiple copies of partially executed ones; using the most comprehensive chain of emails rather than marking individual emails and each subsequent response as separate exhibits; and where emails or other documents have attachments or exhibits, including them for completeness with their referring document in the joint exhibits. Arbitrators should ask for stipulations on foundational matters related to documents so the questioning can get promptly to the heart of the factual issues. Of course, joint exhibits will not preclude any party from introducing its own separate exhibits during the hearing, but encouraging counsel to stipulate to foundation as to separate exhibits will also expedite witness examinations.

2. Witness Books: In a document-intensive arbitration, the hearing will flow faster and more smoothly by cutting down on the substantial time the participants spend physically locating various exhibits about which the witness will testify. Time-saving and efficiency can be achieved by the arbitrators requesting, if not requiring, that the examining counsel prepare a separate binder for use with each individual witness, extracting from the complete set of exhibits those relevant to such witness, and distributed to the arbitrators and opposing counsel, from which to conduct such witness' examination.

3. Testimony By Deposition: In some instances, the parties use witnesses' pre-hearing depositions rather than the witness appearing to testify. Whether or not the deposition was videotaped, the efficient practice is to require counsel to meet and confer to designate jointly the sections that they want the arbitrators to consider and create a shorter, consolidated videotape to be shown with the written transcript edited accordingly. If there is no videotape, counsel can produce an edited transcript of the selected portions of the deposition, or a testimony table that repeats the designated question, answer and transcript citation reference for the arbitrators' review. This consolidated effort is more efficient, less time-consuming, and generally more coherent than having the proponent of the witness offer its designated sections, followed by the cross-examining party submitting its counter-designations.

Arbitrators, counsel and the parties all appreciate the streamlined results of pre-hearing efforts to consolidate evidentiary matters such as exhibits, witness books, and testimony offered by deposition. Consolidation provides an opportunity for efficiency and cost-saving to have the arbitrators more quickly able to consider the core issues in dispute and should be implemented whenever feasible for a particular case.

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