

Creative Approaches to Conducting the Hearing (and more!)

Could these approaches help in your next arbitration?

Your Panel



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1. Prehearing Syllabus

- Present appropriate techniques to counsel prior to the conference to allow them to consider using them



2. Motion Limits

- Establish limits on motions from discovery to summary judgment. Require permission, simply disallow certain types, etc.



3. Documents only Winnowing

- Agree to present and decide some issues based only on documents



4. Arbitrator homework

- Circulate questions, especially legal ones, that you want addressed. Before hearing or before briefing or argument at the end.

Timeline infographic



5. Stipulated Chronologies

- Agreed time line of events. Easier than full stipulations.

6. Separate Common Grounds

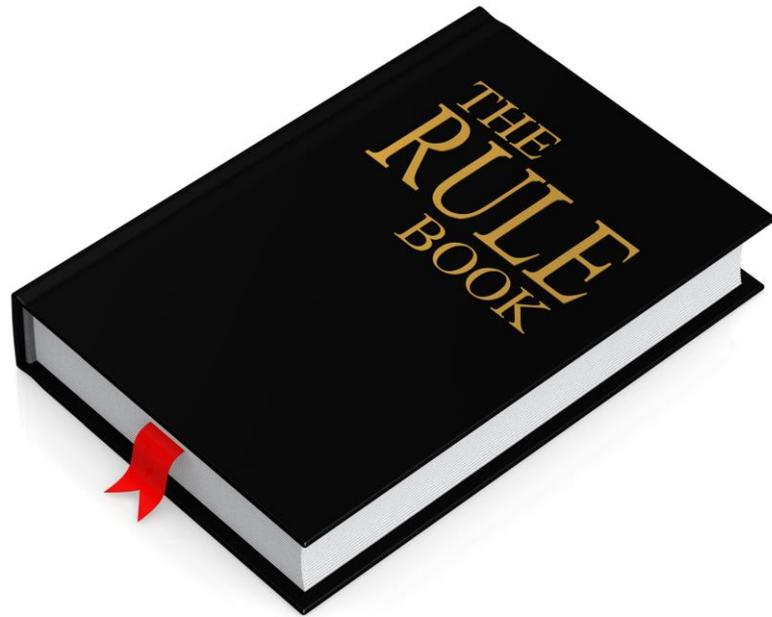
- Each party submits a list of their perceived common grounds. Easier than stipulation. Helpful if they overlap.





7. Core Bundle

- Agree what the key documents are.



8. Self-executing Concessions

- Rules that are self executing, e.g.: documents deemed authentic and admissible unless objected to by x-date or within x time.
Correspondence deemed received unless question timely raised.

9. “Scott” Schedule

- Named for Arbitrator Scott
- Table of contentions and responses

Claimant Contends	Respondent Answers	The Truth
Respondent is wrong about the contract	No it's not	???
Respondent is a crook	No we aren't	???
Respondent breached fiduciary duties	Uh Uh	???
Respondent owes \$8 million	No sir. They owe us.	???
Etc.		

10. Apply protocols of the forum and proportionality in discovery

“... proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”

Fed. R. Civ. P. 26





11. Discovery cost shifting

- You want it? You pay the cost of searching for it.



12. Depositions Allowed for Time

- Each party allowed to take X hours of deposition. Limited only by time --not number, etc.

13. Redfern Schedules

- In honor of arbitrator Redfern
- Complex discovery: table to track discovery disputes:

Requests	Support for request	Objection	Arbitrator's ruling
1. Respondent's tax returns	Need to figure out damages	Are you kidding? Fishing. Violating privacy. Harassing	Only relevant portions, as defined in Order
2. Claimant's tax returns	Need to compare to show damages overstated	Are you kidding? Fishing. Violating privacy. Harassing	Denied
3. Respondents' president's personal diary	Need to discover information	Are you kidding? Fishing. Violating privacy. Harassing	Ruling pending



14. Use the phone:
Easy and quick access
to arbitrator to resolve
discovery disputes

Often by phone. Possibly letter protocol.



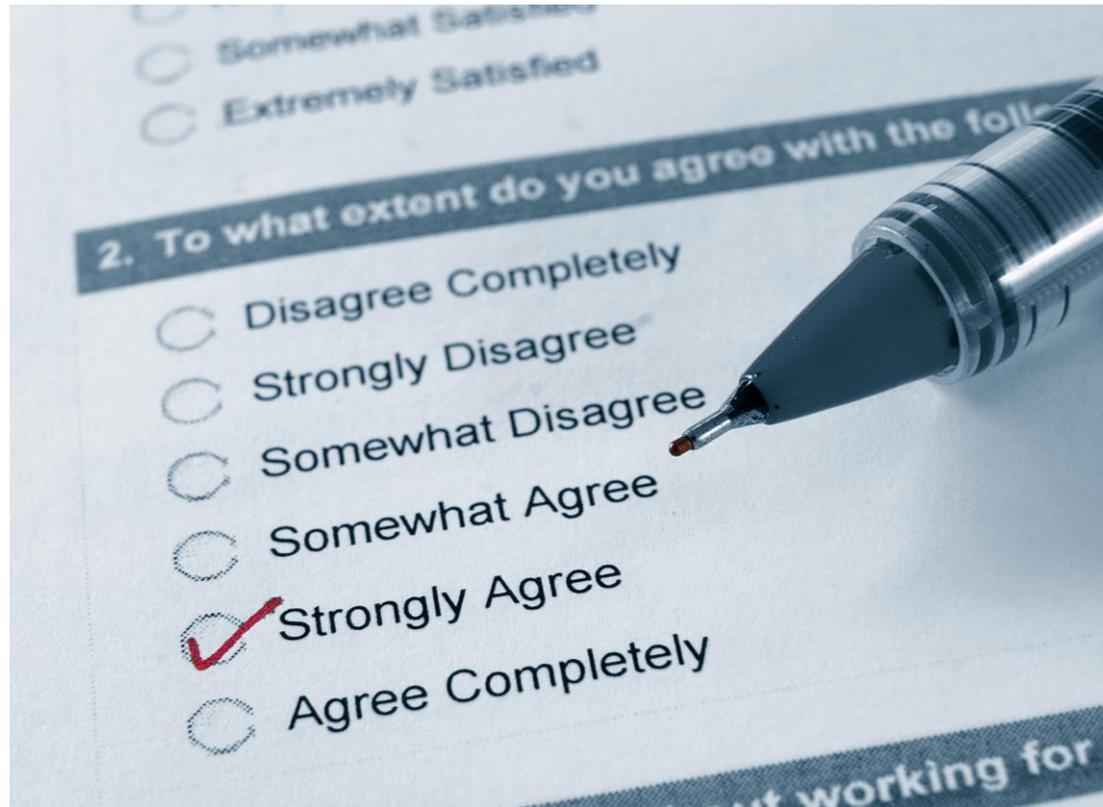
15. Experts: Concurrent Evidence (a/k/a hot-tubbing)

- All experts on an issue appear at once and can question each other

16. Expert Direct Through Written Reports

- The report serves as the direct testimony, subject to cross-examination





17. Agree/Disagree Lists

- Experts to prepare list of issues and/or facts on which they agree and disagree.



18. Experts Confer in Advance

- Experts confer to narrow areas of disagreement. May exchange draft reports.



19. Witness Conferencing

- Like expert hot-tubbing, but for key witnesses



20. Allow Narrative Testimony

- Witness allowed to present testimony in narrative rather than in response to lawyer's questions



21. Rolling Arguments

- Advocates make arguments about significance of testimony/evidence at end of each witness's testimony



22. Rolling Summaries

- Arbitrator tells the parties what she thinks the testimony was intended to address and whether she still has questions. Parties can recall witnesses to fill in. No need to “read the tea leaves.”



23. Reed Retreat

- Named for Arbitrator Reed
- Panel meets to identify issues to be addressed. Usually a few weeks before the hearing.



24. Technology!

- Skype, PowerPoint, Trial Director, on site visits by video. E-briefs with hot links to authorities cited.
- Robots?

25. Chess clock



- Each party has X hours to present its case. Clock runs while party is talking, including cross, etc.



The End

Thank you!

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