



Best Practices for American Arbitration Association® (AAA®) Employment Panelists

The AAA is consistently looking to improve the arbitration process. We receive feedback from parties that utilize the AAA's administrative services in the following areas:

- Initial Management Conference Call
- The Discovery Stage

Initial Management Conference Calls:

- Arbitrators need to be prepared for the Initial Management Conference call or calls. The Demand/Statement of Claim(s), Answering statement/counterclaim(s), contract, etc. should all be reviewed in advance of this call. Asking questions like, "What is the case about?" may give parties the perception that the arbitrator is unprepared and not engaged in the process. Parties have emphasized on surveys and in other forms of feedback to the AAA, that their time is valuable. Arbitrators should be respectful of the time the parties have spent in preparing the documentation for this management conference call and review *all* materials that have been submitted. It is a waste of time for the parties to spend time educating an arbitrator on information that was already prepared and provided to the arbitrator prior to the scheduled call. You should demonstrate to the parties that you have reviewed the file by asking pointed questions that will assist with driving their unique case to resolution. Instead of asking questions like, "What kind of case is this?" or "How long do we think it should take?", tell them, "I note this is an FLSA case, and also that you have proposed four days for an evidentiary hearing. I rarely see that much time is needed for an FLSA case: Why do you believe four days is necessary?"
- Find the right balance between muscular arbitration, and respecting that arbitration is a creature of contract which the parties can jointly customize by entering into certain agreements. Some parties are better at making process agreements than others, and part of an arbitrator's expertise lies in identifying whether a heavier, or more lenient approach is most appropriate for the circumstances of the case.
- *Dispositive Motions* – absent a requirement in the contract, be mindful that Rule 27 requires a party seek permission showing they will likely prevail before filing a dispositive motion.
- If you are presiding as Arbitrator over multiple individual cases ("Mass Arbitration"), encourage parties to submit joint proposed Scheduling Orders in lieu of holding individual management calls.
- A particular pain point consistently raised is when arbitrators require management conference calls when the parties have already agreed upon a joint scheduling order. Parties sometimes feel the decision to hold a management conference when the parties have explicitly requested not to do so is a sign of an arbitrator "padding their bill" or not respecting their time.
- Sometimes parties provide a joint order, but do not request to forego the management conference call. If you are unsure whether the parties are requesting to forego a management conference, follow up with your AAA Case Manager to ask the parties directly whether they are requesting to forego the management conference.



- If the parties ask to forego a management conference without your prompting, such an agreement should be respected and honored. Embrace and encourage the efficiency of customized arbitration.
- You can ask a question in an email: do not require the parties to join a call when neither party believes a call will be necessary or helpful.

Discovery:

- The Discovery in a case should be reflective of the claims asserted and amount in controversy.
- AAA has specific Discovery protocols for both FLSA and non-FLSA cases to help guide the arbitrators' and parties' expectations when agreements cannot be made. We have attached those protocols for your convenience.
- If it's an FLSA or misclassification case, then Discovery is generally straightforward. However, if the arbitration involves, for example, discrimination and/or Title VII claims, then the discovery can be expected to be a little more on the heavy side.
- The way the arbitrator handles Discovery may lead to either positive or negative perceptions of the arbitrator, the AAA, and arbitration in general:
 - Allowing too much Discovery increases costs, and can lead to the perception that the arbitrator is not in control of the proceedings.
 - Not allowing sufficient Discovery/exploration of issues can lead to a negative impression of arbitration, and could prevent the arbitrator from (or at least affect their) rendering the best decision for the case.
- One way Arbitrators can walk this line is by initially allowing parties minimal Discovery, and keeping the door open for them to request additional discovery if they show cause.
- Arbitration is a creature of contract: Feel free to get creative. Try to secure the parties' buy-in to processes that allow for a full exploration of issues while still keeping costs down. For example, if the number of depositions allowed is in dispute, with one side wanting 1 and one side wanting 5, consider limiting depositions by time instead of number (e.g. "8 hours", or "12 hours" "24 hours", etc. instead of "1 deposition" or "2...3...4 depositions").

Thank you for your continued service on the AAA Roster. If you have any questions, please do not hesitate to contact your Case Manager.



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