

## Court Ordered Arbitration

Court ordered arbitration in North Carolina is a procedure used to find resolutions to smaller (less than \$15,000) disputes. It is not voluntary and your personal attendance is required. Arbitrators are typically local lawyers or retired judges. The proceeding, which is very informal, lasts a maximum of 1 hour. After the presentations, the arbitrator makes a decision. The decision is usually made on the spot but can be mailed within 3 days. The parties are required to split the \$100 cost of arbitration before leaving the courthouse (some courts do not accept personal check). Your payment is due at the time of the arbitration. If the parties do not appeal the decision in 30 days, it becomes final.

With that foundation, here are some basic rules which every person who is going to testify in an arbitration should follow:

1. Tell the truth. Remember that you are under oath just as if you were testifying at trial. While you are encouraged to make a thoughtful answer, do not stop (ie. long delay) to figure out whether your answers will help or hurt either side. Just answer the questions to the best of your memory.
2. Listen to the entire question. Questions with traps often include half-truths, assumptions, or facts which you do not know to be true or facts you are unsure of. Do not let the examiner (typically the lawyer for the opposing side) put you in the position of adopting half-truths or unknown facts.
3. Answer the question you are asked (and none other). The examiner is entitled to an answer to the question he asks, but only to that question. Do not provide the examiner with extra information, just the information he/she requests. Do not attempt or expect your answer to persuade the examiner with your answer. Remember that your lawyer will also be asking you questions; that is the time to bring out facts that support your case. Don't be evasive. Try to answer the question directly and then provide any qualifying or explaining information.
4. Do not answer a question you do not understand. It is up to the examiner to ask good questions; if he/she cannot, do not help by saying "do you mean X or do you mean Y." (If you do, expect to be asked both of these questions.) If you are confused by a question, simply ask the examiner to rephrase the question.
5. Think before you speak. Give yourself a few seconds before answering each question. This allows your lawyer to make an objection, if necessary, and allows you to think through your answer.
6. Speak in your own words. Do not try to memorize what you are going to say. Doing so will make your testimony sound "rehearsed" and unconvincing. Instead, prior to the arbitration, get by yourself and go over in your mind those matters which you will be questioned.
7. Answer in complete sentences. Answers like "yeah" and "uh huh" may be misunderstood. Give positive, definite answers when at all possible. Speak in terms of facts. Avoid saying, "I think," "I believe," or "In my opinion" unless you are asked your opinion.
8. Do not speculate or guess. You only know what you have seen or heard. Do not speak for other people. Do not be tricked into answering a question to which you do not know the answer. If you do not know or cannot recall something, say so in spite of the examiner's attempts to make you look stupid for not knowing something. Answer as specific or as vague as your memory allows. Likewise, avoid conclusions. Let the facts as you remember them speak for

themselves.

9. When testifying about conversations, make it clear whether you are paraphrasing or quoting directly. If you feel you need to relay someone else's words, know that hearsay, or reporting what someone else said, is generally not admissible. You might get an objection but don't be put off by this. Also, don't ask invite an objection by saying "Now I know this is hearsay but..." A big exception to hearsay are the words of the opposing party.

10. Do not characterize your own testimony. Saying "and this is the honest truth" is an indicator that you may be lying- even if you are not. If you are not lying, it comes across self-serving. There is no need to bolster your own testimony. You are already under oath.

11. Do not paint yourself into a corner. Avoid superlatives like "Never" and "Always." Unless you are certain, do not say "That was all that was said." Instead say, "That's all I recall." It may be that after more thought or another question, you will remember something else.

12. Do not testify as to your "state of mind" unless you are specifically asked about it. For instance, if the question is: "Did you read that document?", the answer is: "Yes." Do not respond "Yes, and I believe every word in it."

13. Look it up. If information is in a document that is available, ask to see the document unless you are very certain of your answer. If information is in a document which is not available, answer the question only if you can recall the answer. Feel free to refer to the document. For example, "I recall the closing was January 1 but the settlement statement would have the correct date."

14. Do not let the examiner put words in your mouth. Do not accept his/her characterization of time, distances, personalities, or events. Rephrase the question into a sentence of your own, using your own words. Take your time when dealing with these kinds of details. Likewise, do not adopt the examiner's summary of your prior testimony.

15. Do not answer a "compound question" unless you are certain that you have all the parts of it in your mind. A compound question would be: "Did you run the red light and were you looking straight ahead?" Your best bet for a compound question is to request that the question to be rephrased.

16. Take a break. If you need a rest or a drink of water, ask. (This may be difficult in court ordered arbitration due to the limited nature of the hearing.)

17. If you are caught in an inconsistency, do not collapse. State your present answer to the question. Give your reason for the inconsistency only if you are asked.

18. If you have finished your answer, remain quiet. Do not expand upon it. Do not add to your answer because the examiner looks at you expectantly. If the examiner asks you if that is all you recollect, say yes, if that is the case. Lawyers use uncomfortable moments of silence to see if you will volunteer something.

19. If your lawyer objects to the question, listen to the objection very carefully. You may learn how you should answer the

question if the arbitrator makes you answer it.

20. Remain clam. Never express anger or argue with the examiner. Always be courteous, even if the examiner appears discourteous. However, do not be a push over. If you are interrupted, let the examiner finish his interruption and then firmly but courteously state that you had not finished your answer to the previous question; then, answer that question.

21. Do not trust or attempt to become the friend of the examiner. If he/she is being nice, remind yourself who is paying him/her.

22. Do not be surprised if the examiner gets "good" information from your testimony. If the examiner is asking questions which call for answers that do not help your case, accept the fact that every lawsuit has two sides. If your story did not have problems, the dispute would have probably settled long ago.

23. Avoid jokes. Especially avoid sarcasm and even the mildest obscenity. Avoid absolutely any ethnic slurs or references which could be considered derogatory. Do not cuss.

24. If the examiner appears totally confused about your business and its technical aspects, do not attempt to educate him/her. Just enjoy the moment. On the other hand, if the arbitrator looks confused, stop and re-explain yourself.

25. Every witness makes mistakes and says things in ways that are later regretted. Do not become upset if you do this. If you realize you made a mistake, notify your lawyer. Otherwise, let him/her decide if it's better to correct it or just let it go.

26. Dress to impress. This is your only opportunity to be seen and heard by the arbitrator. You will be judged by them as to such things as your honesty, frankness, and overall "appeal." Therefore, you should appear on time, dressed as you would expect to dress if you were actually going to Court to appear before the a judge or jury. Remember that making a good impression is your goal and that you only get one chance to make a first impression.

27. If the examiner asks if you talked with anyone about the case, know that it is perfectly proper for you to have talked with your lawyer or family members before you testify. Knowing this, respond truthfully to this question as you would any other.

28. Review. In anticipation of the arbitration, review the document you filed in the case

(complaint if plaintiff or answer if defendant) as well as your discovery responses. Go over the critical events in your mind. Talk to your lawyer and make sure you understand what are the critical issues and upon what facts those issues turn. Have at least some understanding of your claim or defenses. If you are asked a question about your case that you cannot answer, it is fine to say you are not sure and that is why you hired a lawyer.

Note that the arbitrator may also ask you questions. Treat a question from the arbitrator as an opportunity to "sell" your position to the arbitrator. It goes without saying that any hint of frustration or tone of anger should evaporate from your voice and demeanor when answering an arbitrator's question.

This article is meant as general knowledge and not meant to substitute for legal advice on specific issues. If you have a question, please call Doug McClanahan at 861-0693.