

MASTERS



RIBAKOFF

mediation • arbitration

ARBITRATION PROTOCOL

Arbitration is commonly defined as the submission of a dispute to one or more impartial persons for determination. Whether the arbitration is binding or non-binding and what rules will be applicable is governed by the agreement between the parties. The parties may voluntarily agree to submit their dispute to arbitration in lieu of going to court or other times the parties are ordered by a court to submit their dispute to arbitration. In either event, in addition to the rules agreed upon by the parties, in most employment disputes, we will be guided by *The Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship* which was developed in 1995 by a special task force composed of individuals representing management, labor, employment, civil rights organizations, private administrative agencies, government, and the AAA.

DISCLOSURE

During the process of selection of an arbitrator, detailed disclosure of professional, financial, and social relationships among the parties, counsel and the arbitrator is required. We and our service provider will make such disclosures prior to confirmation. Throughout the arbitration, however, counsel and the parties are requested to bring forward any information they learn which might raise questions about the Arbitrator's neutrality.

PRELIMINARY CASE MANAGEMENT AND STATUS CONFERENCES

Shortly after the matter is submitted and the Arbitrator is confirmed, a conference will be held among counsel for the purpose of discussing the matters at issue, the applicable rules, the scope of discovery, identifying witnesses, the possibilities for settlement, and usually setting a hearing date. The parties will generally be required to make an early exchange of information (i.e. anticipated witnesses and documents) similar to the early meeting of counsel required by Federal Rules of Civil Procedure. Thereafter, regular status reports will be requested, and from time to time, telephonic status conferences will be held to insure that the matter is on track for hearing.

PRE-HEARING PREPARATION

Discovery will be allowed to the extent it is necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration. Counsel should be mindful of the many ways that arbitration differs from litigation and should conform their actions accordingly.

To expedite the evidentiary hearing, extensive pre-hearing preparation is generally required, including the preparation of Joint Witness and Exhibit Lists, pre-hearing briefs, and stipulated facts, if possible. At the hearing, the Arbitrator will be the judge of the relevance and materiality of the evidence offered; conformity to formal rules of evidence is not necessary. However, objections are welcome, as a means to an end. For example, a hearsay objection may be appropriate not because the rules of evidence say so, but because hearsay evidence is less probative than direct or other forms of evidence. Please remember you are not trying your case to a jury - theatrics, exaggerated hyperbole, and plodding direct examination or dehumanizing cross-examination are seldom worthwhile.

FEES

The Arbitrator's current hourly rate will be billed for all time spent, including reviewing briefs, exhibits and other materials, preparing for and conducting administrative conferences, preliminary hearings and evidentiary hearings, writing rulings and decisions, deliberations, research, and on post-hearing matters. Reasonable local travel expenses, such as parking charges incurred by the arbitrator, will be reimbursed. If out of town travel is required, coach class airfare, standard room rates at business class hotels, standard size rental car expenses and meals for one person will be charged. No charge will be made for the Arbitrator's travel time within the local area. The Arbitrator's time and expenses will be billed and payable on a monthly basis.

The parties shall bear the costs of such compensation as agreed and/or as mandated by law and shall advance such compensation as directed by the office of the Arbitrator, subject to final apportionment by the Arbitrator in the award.

Cancellation Policy: If notice of cancellation or continuance is given in writing more than 45 days before a scheduled date for motion or hearing date, no cancellation or continuance fees will be charged. However, if notice of cancellation or continuance is given within 45 days of a scheduled date, the hourly fees for the scheduled time will be deemed earned, and immediately payable, at our respective hourly rates. The cancellation fees will be waived if the Arbitrator is, with reasonable due diligence, able to rebook the unused time, or, in the Arbitrator's discretion, some exigent circumstance exists.

Effective September 2014