

ORGANIZING DOCUMENTS FOR ARBITRATION

By: Leslie Trager

Generally we, as arbitrators, tend to rely on the parties to determine how to organize and present their documents. So we end up at the arbitration hearing where each side has ten boxes of documents nicely collected in 3 inch binders. We see that some of the documents are duplicative and many may never be referred to during the hearings. During the hearing, time is lost when arbitrators search for and retrieve the volume containing the exhibit under discussion. And finding a reference in a large document, such as a contract, by subparagraph number may take time.

Having seen these logistical problems as a practicing attorney, as well as an arbitrator, I think that they could be avoided or minimized if the arbitrator told the parties in advance how he/she wanted the documents organized. Here is my list.

1. **Avoid duplication of documents.** The parties should be directed to avoid duplication of exhibits. This can be facilitated by having the claimant directed to deliver to the other side, no later than 20 days prior to the hearing, a list of all exhibits which the claimant intends to introduce in evidence. (This date should be after the date, set at the preliminary conference, for the exchange of documents which the parties intend to use at the hearings. The five day exchange under AAA Commercial Rule 21(b) is, in my opinion, too close to the hearing date for document control.) This list should be by exhibit number with a meaningful description of each document and if, during production, the documents were numbered, these numbers should be part of the description. If the parties agree, the claimant should deliver the entire set of bound volumes which will constitute the documents claimant intends to offer. Such a delivery will make it clear which documents claimant is offering.

Within ten days following the delivery of claimant's documents, respondent should deliver a similar list of exhibits of documents which it intends to offer, and, if the parties have agreed, the exhibit binders containing these documents. Respondent's documents should not be duplicative of the ones listed and produced by the claimant. The respondent's numbers should start high enough so that claimant can add a few exhibits to its group if that becomes necessary during the course of the hearings, or, perhaps, in response to the respondent's list. For example, claimant's numbers could run from 1 to 100, if claimant only originally used up to 90, and respondent could start at 101.

Following this procedure will reduce the overall number of documents and thereby cut down the waste of time needed to find a particular document in a particular volume.

2. **Make a CD.** If the documents total more than 3 volumes, I request that the documents be copied on a CD. Today, this is no more expensive than making a paper copy. It allows me to have all the documents in a convenient format for review later on. Each document on the CD should be listed with the appropriate exhibit number. In this way, together with an exhibit list which reasonably describes the documents, all documents are easily accessible for review in coming to a determination. (It definitely beats looking through 20 boxes in the storeroom to find the volume where the particular exhibit of interest resides.)

3. **Number the pages.** Within each exhibit the pages should be numbered so that they can be readily found during the hearing. It doesn't matter what the number is on the first page, so long as all the other numbers follow in order within that exhibit. Most attorneys follow the commendable practice of numbering all documents at the time of production, which has the effect of making sure that the document has been exchanged and these numbers can later be used as page numbers within an exhibit.

4. **Cull the documents.** The parties should think about whether the documents are really necessary. Realistically, when each arbitrator receives 10 boxes of documents from each side, it is unlikely that many of those documents will be read. So if the documents are not referred to at the hearing, and the arbitrator doesn't read them, they haven't served much purpose. Sometimes a party may feel that out of caution some documents may be required and should at least be available. These questionable documents can be placed together in a separate volume, so that they are available, but do not interfere with access to the important documents. Of course, when they are on the CD, there is no problem. But the fewer volumes in active use at the hearing, the faster the hearing will go.

5. **Computer monitors.** This allows documents, or the portion of the document which the party is talking about at that time, to be displayed more quickly than finding the document in the volume. I find, however, that it is often frustrating to the arbitrator because the view of the document is limited to what is shown on the screen. If there is testimony to go along with the document, the arbitrators may want to look at other portions of the document during the testimony. The use of the computer monitor prevents that. As a result, the arbitrator may still want to take the time to find the document under discussion in the appropriate volume, so the computer monitor is not likely to save much time and probably is not worth the extra expense. Thus, I believe that the use of computer monitors should not be a substitute for paper copies of the documents at the hearings.

By giving the parties some guidance on how to organize their documents, the arbitrator can reduce the time required to present the facts in the case and make it easier to learn the facts.