

UNITED STATES DISTRICT COURT DISTRICT OF UTAH

PRIMER FOR PARTIES AND ATTORNEYS PARTICIPATING IN THE DISTRICT OF UTAH'S ARBITRATION PROGRAM

As a prerequisite to participating in an arbitration hearing, the Court requests that attorneys review this primer and discuss it with their clients. Attorneys should also review Section 5 of the ADR Plan which is located behind the appendices section of the Rules of Practice for the U.S. District Court for the District of Utah.

MECHANICS AND PROCEDURES

WHAT IS ARBITRATION? Arbitration is a private, less-formal, voluntary process conducted by an impartial third person appointed by the court, the arbitrator, who hears the case and determines what award, if any, should be made. An arbitration is similar to litigation with the standards regarding evidence, discovery and civil procedures relaxed to varying degrees determined by the arbitrator in consultation with the parties. The arbitrator's decision is not binding unless the parties agree, prior to the arbitration hearing, that the decision will be binding. Also, if all parties agree, they may request that a panel of three arbitrators hear their case. Further, all arbitration proceedings are confidential.

WHEN DO WE GO TO COURT? A prehearing conference is held within 30 days from the selection of the arbitrator. At the prehearing conference a date is set for the arbitration hearing. The arbitration hearing must be held within 120 days from the date of the prehearing conference.

PREHEARING CONFERENCE

Who Is Required to Attend and for How Long? Ideally, the arbitrator meets with a representative from each party and counsel for each party. If a party is unable to attend, the counsel for that party may serve as its representative. The pre-hearing conference is similar to a pretrial conference in litigation and generally lasts an hour. Usually, the conference is conducted at the Frank E. Moss United States Courthouse located at 350 South Main Street in Salt Lake City, Utah. The conference must take place within 30 days from the date the arbitrator is selected.

What is the Purpose of the Conference?

The purposes of the conference include:

- a) Defining and narrowing the factual issues to be arbitrated;
- b) Identifying facts and issues on which the parties will agree;
- c) Determining the necessity, scope, and timing of limited discovery;
- d) Identifying time-saving evidentiary procedures that will be used by the parties;
- e) Setting limits on live testimony and time for each party's presentation;
- f) Scheduling the arbitration hearing;
- g) Setting dates for designation of experts, exchange of exhibits and objections;
- h) Completing and executing a Final Arbitration Agreement.

What is a Final Arbitration Agreement and Who Prepares It? A summary of the issues to be decided and all arbitration deadlines should be included in the Final Arbitration Agreement which is prepared by the parties. The arbitrator will rule only on those issues that are listed in the Final Arbitration Agreement. A sample form of the Arbitration Agreement will be sent to the parties or they may download a WordPerfect version of the form from the court's website at www.utd.uscourts.gov . The Final Arbitration Agreement must be completed and executed at the prehearing conference or shortly thereafter. When completed, the original Final Arbitration Agreement is given to the ADR Administrator and a copy is sent to the Arbitrator. The agreement serves as a binding contract although it is not filed with the court.

PREPARATION FOR THE ARBITRATION HEARING

Issuance of Subpoenas. Pursuant to Federal Rule of Civil Procedure 45, the parties are responsible for issuing and serving any subpoenas needed to compel the appearance of witnesses at the arbitration hearing or for obtaining documentary evidence.

Exchange and Preparation of Exhibits. Copies of documentary evidence and written notice of a party's intent to offer them must be served on opposing parties at least 20 days prior to the arbitration hearing. Parties may object to any evidence but objections must be served on the other parties at least seven days prior to the hearing. Although neither the notices nor the objections need to be filed with the court, a copy with proof of service should be sent to the arbitrator. Also, each party must mark its own hearing exhibits and should prepare marked copies of the exhibits for the arbitrator and opposing parties. The offering party will retain the original exhibit.

ARBITRATION HEARING

Who should participate? All parties and their counsel should participate in the arbitration hearing. The arbitrator may proceed with the hearing in the absence of any party that received written notice of the hearing but does not appear.

Hearing Procedures. The arbitrator determines the mode and order of presentation of issues, arguments and evidence. The arbitrator will only decide those issues covered in the arbitration agreement absent a stipulation by the parties. The hearing is conducted in general conformity with the Federal Rules of Evidence. However, the arbitrator may receive evidence that is general inadmissible if the arbitrator finds the evidence is relevant and trustworthy and not unfairly prejudicial to any party against whom it is offered. The plaintiff presents its case first and, with the arbitrator's approval, may reserve a limited time for a reply after the defendant's presentation. The arbitrator will enforce previously established time limits for each side's presentation. Absent extenuating circumstances, the hearing should be completed in one day. At the conclusion of the hearing, the arbitrator may announce the award, after a brief deliberation period, or may subsequently file the award with the ADR Administrator to be distributed to the parties.

ARBITRATION AWARD

At the conclusion of the hearing, the arbitrator may choose to orally announce the award. However, the arbitrator is required to file a written arbitration award with the clerk of court within 20 days of the hearing. Copies of the award will be distributed to the parties by the clerk. The decision of whether to divulge the reasons for a monetary award lies within the discretion of the arbitrator. Where the arbitrator finds that equitable or other non-monetary relief is appropriate, the arbitrator may recommend that the court approve such relief.

What if the parties stipulate to binding arbitration? If the parties have stipulated to binding arbitration, the arbitration award is final and a judgment will be entered on the award. Recommendations for equitable relief are award if approved by the court.

What if the parties do not agree to binding arbitration? If the parties have not stipulated to binding arbitration, the clerk will seal the arbitration award. All parties will have 30 days to file a demand for trial de novo. If any party submits a trial de novo demand, the award is vacated and the case is returned to litigation. However, if the clerk does not receive a demand for trial de novo within the 30 day period, a judgment will be entered on the award.

COURT-APPOINTED ARBITRATORS

WHO ARE THE COURT-APPOINTED ARBITRATORS? All members of the Court's ADR Panel are highly experienced and qualified attorneys who have agreed to serve as arbitrators in the Court's program at a reduced cost or on a voluntary basis. Because the time they devote to serve as arbitrators is valuable, the Court asks that all parties and their attorneys make every effort to be cooperative throughout the arbitration process and to take the time to carefully prepare for all conferences and hearings.

WHO PAYS THE ARBITRATORS? The court authorizes arbitrators to collect fees for their services at an hourly rate set by the arbitrator. The parties should discuss payment arrangements with the arbitrator at the pre-hearing conference. Unless the parties agree otherwise, the compensation fee for the mediator is split evenly between the parties. Parties who are unable to pay their portion of the arbitrator's fee may motion the court to waive their portion of the fee.

QUESTIONS OR ADDITIONAL INFORMATION

If you have questions about the arbitration process or would like more information about it, please call Elizabeth Toscano at 801/524-6196.