



Facilitator

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Here to help with technical issues, Q&A

Arbitration: The End of the Line





Presenter

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Why are we here?



Issues
arbitration



Grievance
arbitration

Framework for arbitration

- ❑ Creature of contract (or statute)
- ❑ Procedures: AAA / FMCS / state agency



Arbitration v. Litigation



Formality
Expertise
Politics
Time and Cost

Formality

Expertise

Politics

Time and Cost



Arbitration time and costs

Money

- Arbitrators' per diem rate: \$1,023.62
- Arbitrators' total bill: \$4,911.86

Time

- From invocation to issuance of award: 333.12 days


Source: Federal Mediation and Conciliation Services, fiscal year 2013 averages

Who decides whether to arbitrate?

- ❑ Who “owns” the grievance?
- ❑ What do the governing chapter documents say?



Criteria for invoking

- 
- Merits; is this the right case?
 - Cost (money, time and resources)
 - Precedential effect?
 - How many affected?
 - Severity of problem
 - Alternative relief available? Effect on negotiations?
 - Organizing potential?

Duty of fair representation



No legal requirement to arbitrate

Union membership, union politics

“Mere” negligence

“Perfunctory” handling

“Arbitrary or capricious”

But...perceptions count

Process for invoking arbitration



The collective bargaining agreement dictates:

- Timelines
- Mechanics of invoking
- Who serves as arbitrator(s)



Who's the “best” arbitrator?

- ❑ Starting point: halves of babies?
- ❑ Research background, past awards
- ❑ Do you want a...ugh...lawyer?
- ❑ Importance of higher ed experience?

- ❑ **Remember: you want “the best” arbitrator for *this* case**

Mediation? Settlement?



The diagram consists of two identical light blue triangles pointing upwards, positioned side-by-side. Each triangle contains three white rounded rectangular boxes stacked vertically. The left triangle is associated with the heading 'Mediation' and the right with 'Settlement'. The boxes within each triangle contain specific details about the respective process.

Mediation

Possible (but not
all that likely)

Can be before or
at hearing

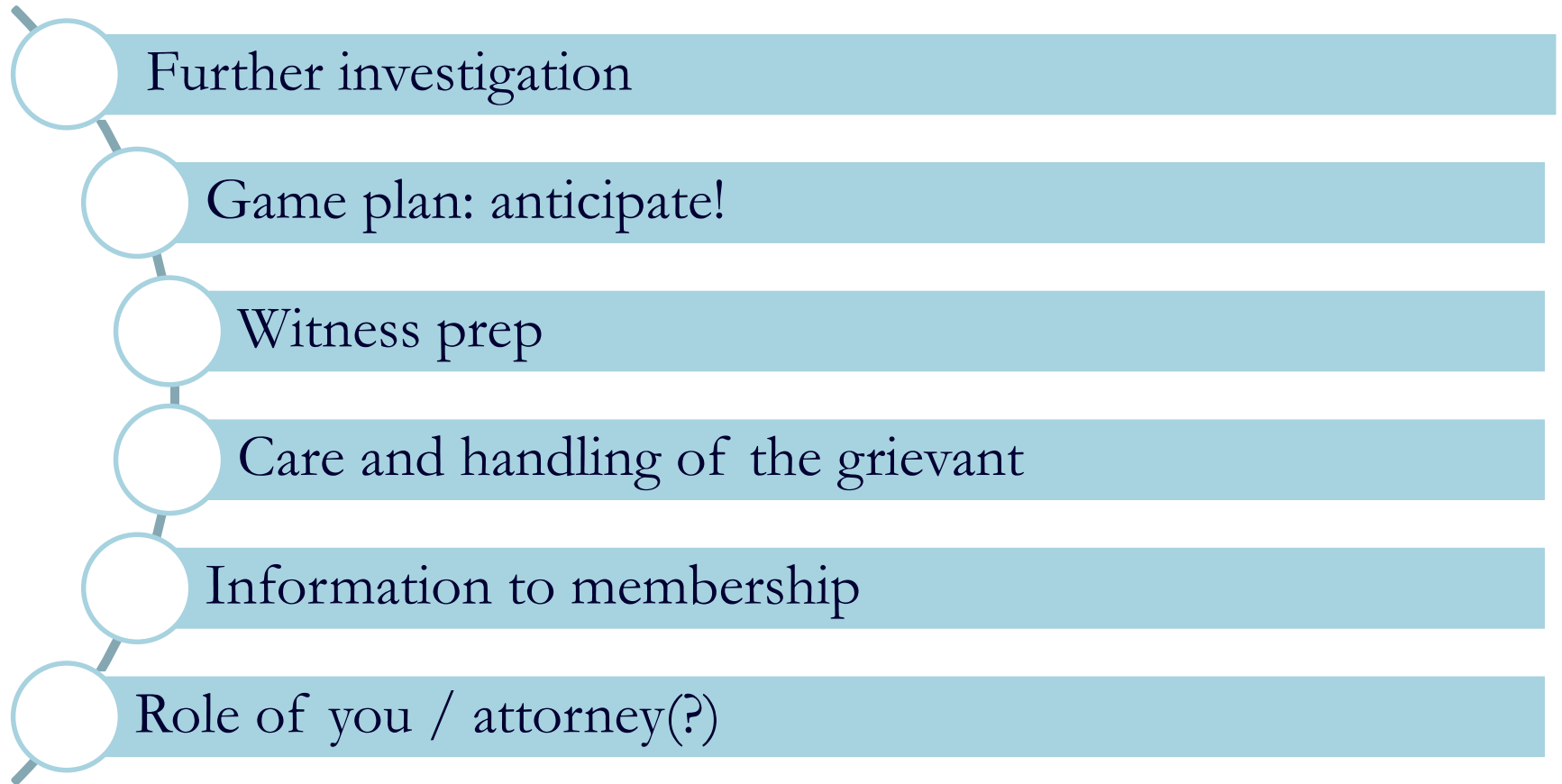
Settlement

Initiated by one party, or
the arbitrator

Danger of filing to prod
settlement



Preparing for hearing (your work)



Preparing for hearing (the other side)



Stipulations?

Joint exhibits?

Pre-hearing motions?

Pre-hearing briefs?



Overview of hearing

Location

Formality

Governing rules

Your role / role of attorney(?)

Transcripts

Costs

Beware: *ex parte* communications



Conduct of Hearing: framework

Authority of arbitrator

Rules of evidence / objections

Burden of proof, order of proceeding

Quantum of proof

Off the record

Conduct of hearing: witnesses

- ❑ Sequestration
- ❑ Sequence of hearing
- ❑ Direct and cross examination (+ redirect / recross, (+ redirect / recross, + redirect / recross, + redirect / recross, + redirect / recross, ...))
- ❑ Rebuttal



Then what?

Closing arguments

When is record closed?

Post-hearing briefs; rebuttal briefs?

Timelines

Issuance of award; failure to comply?



Finality of award

Narrow Legal Grounds for Overturning

- ❑ “Abuse of discretion”
- ❑ Corruption, fraud, undue means
- ❑ Partiality or corruption
- ❑ Misconduct resulting in prejudice
- ❑ Arbitrator exceeded authority



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