

Conducting an Arbitration Hearing: Plaintiff's Case-in-Chief (Direct Examination)

I. Overview

The plaintiff's case-in-chief is the phase of an arbitration hearing where the claimant presents evidence to meet the burden of proof. This stage primarily consists of direct examination of witnesses, introduction of exhibits, and laying the factual and legal foundation for the claim.

Arbitration hearings are generally less formal than court trials, but they still require careful preparation, adherence to procedural fairness, and strategic presentation.

II. Objectives of the Plaintiff's Case-in-Chief

During this phase, the plaintiff aims to:

- Establish all required elements of each claim
 - Present a clear and persuasive narrative
 - Introduce admissible and credible evidence
 - Build witness credibility
 - Preemptively address weaknesses where appropriate
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III. Preparation Before the Hearing

A. Case Theory and Theme

Develop a concise theory of the case and a compelling theme that will guide all examinations and arguments.

B. Witness Preparation

- Identify key witnesses (fact and expert)
- Prepare outlines for direct examination
- Ensure witnesses understand the process and expected questions
- Avoid coaching; focus on clarity and truthfulness

C. Exhibit Preparation

- Organize exhibits logically (chronological or by issue)
- Pre-mark exhibits if required by arbitration rules
- Prepare exhibit lists and copies for arbitrator(s) and opposing counsel

D. Procedural Considerations

- Review applicable arbitration rules
 - Address stipulations with opposing counsel
 - Resolve evidentiary issues in advance where possible
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IV. Structure of Direct Examination

Direct examination should be structured, clear, and non-leading (with limited exceptions).

A. Witness Introduction

- Name, occupation, and background
- Relationship to the parties
- Purpose of testimony

B. Foundation

Establish the witness's personal knowledge and ability to testify on the subject matter.

C. Substantive Testimony

Organize testimony into logical sections:

- Background facts
- Key events
- Supporting details

Use open-ended questions such as:

- “What happened next?”
- “Can you describe...?”
- “How did you respond?”

D. Use of Exhibits

- Authenticate exhibits through the witness
- Establish relevance and reliability
- Walk the witness through key documents clearly

E. Closing the Examination

- Summarize key points if appropriate
 - End on a strong, memorable note
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V. Techniques for Effective Direct Examination

A. Use Clear and Simple Questions

Avoid compound or confusing questions. Keep language straightforward.

B. Maintain Logical Flow

Guide the arbitrator through a coherent narrative.

C. Avoid Leading Questions

Except for preliminary matters, do not suggest answers to the witness.

D. Control the Pace

Allow the witness time to answer fully while maintaining momentum.

E. Emphasize Key Evidence

Highlight critical facts and documents without appearing repetitive.

VI. Evidentiary Considerations in Arbitration

Arbitrators typically have more flexibility than courts regarding evidence. However:

- Ensure relevance and reliability
- Avoid unnecessary or cumulative evidence
- Be prepared to address objections

Common evidentiary issues include:

- Hearsay (often allowed but weighed accordingly)

- Authentication of documents
 - Expert testimony standards
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VII. Handling Witness Issues

A. Nervous Witnesses

- Ask simple, clear questions
- Provide reassurance through tone and pacing

B. Adverse or Hostile Witnesses

- Request permission to use leading questions if necessary
- Maintain professionalism and control

C. Inconsistent Testimony

- Clarify rather than confront during direct
 - Reserve impeachment for cross if appropriate
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VIII. Role of the Arbitrator

Arbitrators may:

- Ask questions during or after testimony
- Guide the process more actively than judges

Be prepared to:

- Respond respectfully to arbitrator inquiries
 - Adjust your examination strategy in real time
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IX. Common Mistakes to Avoid

- Overloading the record with unnecessary evidence
- Leading the witness excessively
- Failing to connect evidence to legal elements

- Poor organization of testimony and exhibits
 - Ignoring weaknesses in the case
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X. Sample Direct Examination Outline

1. Introduction of Witness
 2. Background and Qualifications
 3. Relationship to the Case
 4. Chronology of Events
 5. Key Documents and Exhibits
 6. Damages or Impact
 7. Conclusion and Key Takeaways
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XI. Conclusion

The plaintiff's case-in-chief in arbitration is an opportunity to present a persuasive, well-organized narrative supported by credible evidence and testimony. Effective direct examination requires preparation, clarity, and strategic focus on the elements of the claim. By maintaining a logical structure and emphasizing key facts, counsel can significantly enhance the likelihood of a favorable outcome.