



Preparing for an Arbitration

Alternative Dispute Resolution

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Meet the Faculty

Panelists

[Leslie Berkoff](#) - Moritt Hock & Hamroff LLP

[Byeongsook Seo](#) - Snell & Wilmer

[Elizabeth Shampnoi](#) - Shampnoi Dispute Resolution & Management Services, Inc.

Moderator

[Jeffrey Zaino](#) - American Arbitration Association

About This Webinar

Preparing for an Arbitration

This webinar covers the arbitration process, beginning with how to prepare and file claims and exploring the factors you should consider in selecting an arbitrator (or arbitrators). From there we cover preparing for the preliminary conference with the arbitrator.

We address the order that will flow from the preliminary conference and knowing what to ask for. We review some thoughts on discovery requests and motion practice, types of awards, and numerous other matters that may be covered during the preliminary conference.

About This Series

Alternative Dispute Resolution 2025

This webinar is part of a series titled “Alternative Disputes Resolution 2025.”

Disputes arise in various business contexts. Examples include contracts, torts, and M&A. Disputes between business partners can lead to the need for a business ‘divorce.’

Not all business disputes, however, need to end in a courtroom. Many companies consider alternatives because they want to keep matters private and resolve disputes faster and cheaper.

This Series reviews both traditional forms of alternative dispute resolution (“ADR”)- Mediation and Arbitration. Among other things, participants will learn:

- The preliminary steps in preparing for a mediation, include mediator selection, preparing one’s case, pre-mediation submissions, and risk analysis.
- Presenting one’s case for mediation, understanding the process, how to work with the mediator, how to work through an impasse, and how to achieve a creative resolution.
- The arbitration process, beginning with how to prepare and file claims, picking an arbitrator (or arbitrators), preparing for the preliminary conference, and more.
- Presenting your case and claims to the arbitrator or panel.
- Early-stage discovery options, motions, pre-trial statements, the arbitration hearing itself, and post-arbitration submissions and awards.

Episodes In This Series

1. Preparing for Mediation: From Selection to Presentation of Claims

Premiere date: 4/22/25

2. Conducting the Mediation

Premiere date: 5/20/25

3. Preparing for an Arbitration

Premiere date: 6/24/25

4. Handling the Arbitration

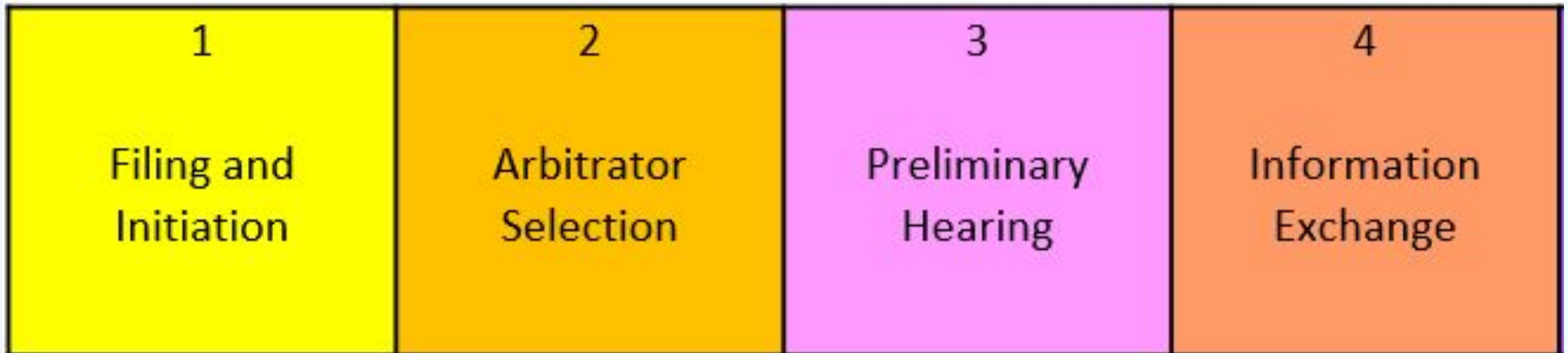
Premiere date: 7/22/25

Episode #3

Preparing for an Arbitration

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Timeline



Filing and Initiation of a Claim

- **Review the Agreement/Arbitration Clause**
 - Ad hoc v. Administered Arbitration
 - Pre-Dispute v. Post-Dispute Filing
- **Logistics of Filing**
 - A party submits a *Demand for Arbitration* to a tribunal along with a copy of the arbitration provision from the underlying agreement/document and the appropriate Filing Fee.
 - Consider what should be included – may have limited time to amend. Consider ability to seek fees and costs.
 - The tribunal (AAA/JAMS, etc.) will acknowledge receipt to all parties and set an initial time period for the respondent to file an answer and/or counterclaim, based on the applicable rules.

Filing and Initiation of a Claim *(cont'd)*

- **Pleadings**
 - Demand v. Complaint
 - Answer/Counterclaims
- **Compelling Arbitration**

Arbitrator Selection

- Administrative Conference
- The tribunal often assists the parties in selecting an arbitrator.
- Best Practices in selecting an arbitrator – one size does not fit all.
 - One Arbitrator v. Three
 - Conducting Research/Gathering Intel
 - Arbitrator Qualifications/Case Management Experience

Arbitrator Selection *(cont'd)*

- Although the exact appointment process may vary depending on the nature of the case, the tribunal usually obtains the parties' input on the necessary qualifications and then provides a list of prospective arbitrators and their resumes for all parties to review.
- The parties are encouraged to agree upon an arbitrator, but if they are unable to do so the tribunal will usually establish a deadline for each party to independently state its preferences from those candidates on the list.
- Usually, the tribunal will then invite via email the most mutually agreeable arbitrator to serve on the case.

Preliminary Hearing



- Know your rules and your ADR clause and come prepared!
- Pre-planning by advocates is important.
- Any gate keeping motions? – arbitrability/statute of limitations?

- The Preliminary Hearing is a management meeting conducted by the arbitrator and facilitated by the tribunal.
- It is usually the first time the parties and the arbitrator discuss the case and is often conducted via conference call.
- Working with the arbitrator, the parties will identify the steps and actions needed to prepare for the evidentiary hearing or briefing schedule if the matter will be handled via documents submission.

Preliminary Hearing *(cont'd)*



Preliminary Hearing *(cont'd)*



- Limited discovery or a schedule for the exchange of information will also be created.
- The parties and the arbitrator will also establish dates for the submission of final witness lists, exhibits and possibly pre-hearing briefs, depending upon the complexity of the matter.
- Finally, dates for the evidentiary hearing will be set.

The Scheduling Order

- The result of Preliminary Conference is a Scheduling Order that will serve as the parties' framework for hearing preparations.
- Limited ability to make changes.
- The arbitrator prepares the Scheduling Order and makes it available to the tribunal and parties within a few days following the preliminary hearing.

The Scheduling Order *(cont'd)*

- Based on the information provided in the Scheduling Order, the tribunal will invoice the parties for anticipated arbitrator compensation, including the arbitrator's estimated fees and expenses for the scheduled hearings and anticipated study time.
- The due date for this deposit is usually prior to the first evidentiary hearing.
- Any unused deposits are promptly refunded at the conclusion of the case.

Additional Key Preliminary Hearing Issues To Be Covered At Conference

- Document Exchange – Remember Discovery maybe limited under the Rules.
- Pre-trial conference call to address ability to seek to determine matter on documents only and affidavits.

Additional Key Preliminary Hearing Issues To Be Covered At Conference

(cont'd)

- Managing other expectations or needs
 - Interrogatories, requests for admission, depositions or motion practice are often limited or omitted all together.
 - The arbitrator has discretion to deny these forms of discovery.
 - Order that 'Good Cause Be Shown' before allowing.
 - Are experts needed?

Key Preliminary Hearing Issues to be Covered

- **Additional Preliminary Matters**
 - Set a clear deadline for any amendments of the claim or counterclaim so no party is prejudiced during discovery or at the hearing.
 - Will motions be allowed?
 - Do you want ability to revisit motions post information exchange?
 - Direct exchange protocol or traditional communication method with Arbitrator.

Scheduling Order Should Also Cover

- **Specifics on any Pre-hearing Memorandum**
 - Simultaneous or responsive
 - Responsive prolongs process and adds cost
 - Page guidelines (Do exhibits count?)
 - Informality
 - Parties should provide copies of case law, statutes and other cited authorities

Scheduling Order Should Also Cover *(cont'd)*

- **Exhibits**
 - Arbitrator may consider allowing for direct testimony by affidavit
 - Encourage joint exhibit submissions, but often can be difficult to accomplish
 - Electronic vs. hard copy submissions
- **Type of Award that will be issued (what does agreement say and/or rules provide).**

Information Exchange and Preparation

- Working within the timeframes set forth at the Preliminary Hearing, and memorialized in the Scheduling Order, the parties exchange information and ready their presentations. (Limited ability to change)
- It is important to keep in mind that arbitration is not litigation and that discovery will/or should be limited by the rules and/or the arbitrator.
- The arbitrator addresses any impasses the parties may encounter regarding the exchange of information with a view toward achieving an efficient and economical resolution of the dispute.
- At the conclusion of this process, the parties should have completed preparations for presenting evidence and arguments on the dispute (or finalizing dispositive motions).
- Proposed exhibits and final witness lists are often submitted at the conclusion of this phase.

Motion Practice

- It is possible during the process the parties may look to submit motions to dispose of either all or some of the claims. Scheduling Order should cover this.
- Usually the rules allow the arbitrator to decide whether motions can be filed and the process for the same. The Scheduling Order will also cover some guidelines and procedures.
- Again arbitration is not litigation and so a clear purpose to streamline or determine the dispute should underpin a decision.
- Rules may provide timeline to issue a ruling.
- Do you want a pre-trial conference call to consider or reconsider if matter can be decided based on documents and/or affidavits?

Key Takeaways



Don't underestimate the importance of each step of the arbitration process to make it a cost-effective tool.

Careful planning and focus on claims preparation, arbitrator selection and the process leads to the best results.

Key Takeaways

(cont'd)



Arbitration is not litigation –
don't confuse the two!

Key Takeaways (cont'd)



Key Takeaways

(cont'd)



Always review rules, your ADR clause and recent trends in the law.

Questions or Comments?

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Meet The Faculty

Leslie A. Berkoff - lberkoff@moritthock.com



Leslie A. Berkoff is a Partner with DR Practice Group, where she serves as Chair of the firm's Dispute Resolution Practice Group and is the former Co-Chair of the firm's Creditors' Rights and Restructuring Department. Ms. Berkoff splits her practice between these two Practice Groups. In the restructuring space, she concentrates her practice in chapter 11 cases, bankruptcy litigation and corporate workouts, where she represents a variety of corporate debtors, trustees, creditors and creditor committees both nationally and locally. Ms. Berkoff is an experienced commercial litigator. Ms. Berkoff's Dispute Resolution practice has her frequently serving as an ad hoc and panel mediator; she is on the Mediation Panel for the Eastern and Southern Districts of the United States Bankruptcy Courts in New York, the United States Bankruptcy Courts in Delaware and the Eastern District of Pennsylvania, as well as the Commercial Mediation Panel for Nassau County. [Read More](#)

Byeongsook Seo - bseo@swlaw.com



Byeongsook Seo is an attorney in Snell & Wilmer's Commercial Litigation practice group. He represents clients in complex business disputes. He has represented high-tech clients in disputes that ranged from patent and trade secret enforcement actions to disputes over the sale of high-tech products. Byeongsook's clients have sought his guidance in disputes related to failed business ventures and disputes among business partners, shareholders and directors. He has defended many officers and directors from lawsuits arising out of their business dealings. He also represents investors in disputes arising out of their private investments.

Many of his cases have involved hearings regarding extraordinary remedies such as injunctions and receiverships. Byeongsook is experienced in all aspects of litigation, including trials and appeals, injunction hearings, receivership hearings and arbitrations.

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Elizabeth Shampnoi - elizabeth@shampnoiadr.com



Elizabeth J. Shampnoi is an attorney, consulting expert, independent mediator, arbitrator and trainer based in New York City with 20 years of experience in the field of alternative dispute resolution.

Ms. Shampnoi's focus on alternative dispute resolution began early in her career when she served as the District Vice President of the New York region of the American Arbitration Association. In that role, Ms. Shampnoi was responsible for overseeing case management; mediator and arbitrator recruitment, training and development; and working with in-counsel counsel and law firms to develop and implement dispute avoidance and dispute resolution programs, including internal employment dispute resolution plans.

Following her tenure at the American Arbitration Association, Ms. Shampnoi joined a litigation boutique where she represented a diverse range of organizations and individuals before state and federal courts, administrative agencies, and arbitration forums. [Read More](#)

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Jeffrey T. Zaino, Esq. is the Vice President of the Commercial Division of the American Arbitration Association in New York. He oversees administration of the large, complex commercial caseload, user outreach, and panel of commercial neutrals in New York. He joined the Association in 1990. Mr. Zaino is dedicated to promoting ADR methods and services. His professional affiliations include the American Bar Association (Executive Committee Member of the Dispute Resolution Section, Marketing Committee and Chair of the Arbitration Committee of the Business Law Section), Connecticut Bar Association, District of Columbia Bar Association, New York State Bar Association (Dispute Resolution Section - Executive Committee Member and Chair of the Public Relations Committee and Blog Administrator for the Section and Commercial & Federal Litigation Section - Chair of the ADR Committee), New York City Bar Association (Member of the Arbitration Committee and Affiliate Member of the ADR Committee), [Read More](#)

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