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**PREPARING FOR AND ATTENDING THE PRELIMINARY HEARING**



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Speaker



**Jeffrey J. Davis**  
Charlotte, North Carolina

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The need for greater efficiency efforts in arbitration has been a discussion topic for years.

The preliminary hearing is designed to support the efficient handling of your case.



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1) Consider consulting with opposing counsel regarding the timetable for preparation for, and conduct of the hearing.



**Pros and cons?**

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**2) Discovery:**

- Discuss agreements regarding discovery.
- Limits on permitted paper discovery.
- No depositions/limited number of depositions.
- E-Discovery options:
  - None: Require each party to voluntarily produce documents on which it intends to rely, but parties will not be compelled to search files to respond to other parties' requests.
  - Narrow focus: Limit number of custodians whose files will be searched; limit number of search terms and verbiage.
- Right to request additional permitted discovery upon showing of good cause.



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**3) Motion Practice:**

Dispositive motions. Remember AAA Commercial Rule R-33. Discuss with opposing counsel.



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**Techniques During  
the Preliminary Hearing**



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**The matters that will be considered during the preliminary hearing will include, but not necessarily be limited to the following:**

AAA Commercial Rule P-2



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Timing for disclosure to arbitrator and other side the names of all people who have any information about the case.



**Why will the arbitrator require this?**

AAA Commercial Rule P-2 (xii)(a)



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Timetable for document requests and responses to the requests.

AAA Commercial Rule P-2 (vii)



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Disposition of the question whether depositions will be allowed, and if so, how many and by when.



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### Expert reports:

- Exchanged by when?
- Depositions of experts - whether and when?



AAA Commercial Rule P-2 (xi)



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Schedule of any additional preliminary hearings.



**Best practice?**



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## HANDLING OF EXHIBITS

A common practice, and one generally recommended by the AAA is handled thusly:

- There will be one unified set of exhibits. Each party shall bring its own complete exhibit book to the hearing, plus two extras, so that there is one set for each arbitrator, and one set for the witnesses. Claimant shall provide Respondent a list of all exhibits by \_\_\_\_\_, as well as a final list of witnesses.
- Respondent shall provide Claimant with a list of exhibits to add to the notebooks by \_\_\_\_\_.



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## Briefs - whether and when?



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## Hearing schedule and location.

AAA Commercial Rules R-24 and P-2 (xiii)



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## Court reporter?



AAA Commercial Rules R-28 and P-2 (xiv)(b)



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## Form of award.



AAA Commercial Rules R-46 and P-2 (xviii)



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- **Communication with Arbitrator**
  - Directly, so long as copy opposing counsel and the AAA in the same fashion as with Arbitrator.



AAA Commercial Rule R-19



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## Questions



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## Concluding Remarks



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