



Mock International Arbitration & Advocacy Workshop

NYSBA International Section Global Conference 2019

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DRAFTING TECHNIQUES

Drafting Techniques

- Overview of written submissions in an international commercial arbitration
- Focus on 3 key documents:
 1. Pleadings
 2. Memorials
 3. Written Witness Statements
- General drafting guidelines

(1) Pleadings

Pleadings

	Claimant	Respondent
UNCITRAL Rules	Notice of Arbitration Art. 3(3)	Response Art. 4(1)
ICC	Request for Arbitration Art.4(3)	Answer Art. 5(1)
ICDR	Notice of Arbitration Art. 2(3)	Answer Art. 3(3) and (4)
LCIA	Request for Arbitration Art. 1.1 *Standard electronic form available - Art. 1.3	Response Art. 2.1 * Standard electronic form available - Art. 2.3

In Focus:

Request and Answer

ICC Rule 4(3) and (5)(1)

- a. Contact** information of all parties
- b. Contact** information of parties' legal representatives
- c. Description of and response to the nature and circumstance of the dispute:** (i) specific claims, (ii) factual basis and (iii) legal basis of claim
- d. Statement of and response to relief sought:** monetary value; other remedies; costs
- e. Relevant agreements:** particularly the arbitration agreement
- f. Multiple arbitration clauses:** specify under which clause the claim is being brought
- g. Arbitrators:** comment on the number of arbitrators
- h. Venue, language, and applicable law:** comments, observations, proposals

Pleadings

■ Question:

- How much to include?
- Witness statements
- Documentary evidence

■ Answer:

- It depends – this is a strategic consideration to be made for each case.

(2) Memorials

Memorials

- Defined as a “mechanism through which a case is presented in writing.”
- Sometimes a Request and Answer are referred to as “memorials,” but they are more commonly referred to as “pleadings.”
- At a Young ICCA event in Geneva a few years ago, it was suggested that over 70% of advocacy in international arbitration is done in writing.
- The importance of having well-drafted memorials cannot be over-stated.

Memorials

Best Practice

- Cover page
- Table of Contents (all sections, headings and page numbers)
- Statement of Facts
- Summary of Arguments
- Arguments
- Conclusion
- Table of Abbreviations
- Index of Authorities
 - Court cases, arbitral awards, scholarly articles and other legal sources

Sample Cover Sheet

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**ARBITRATION UNDER THE RULES OF ARBITRATION OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW**

GUARACACHI AMERICA, INC.

&

RURELEC PLC

Claimants

v.

PLURINATIONAL STATE OF BOLIVIA

Respondent

CLAIMANTS' COUNTER-MEMORIAL ON JURISDICTION

26 OCTOBER 2012



Freshfields Bruckhaus Deringer

701 Pennsylvania Ave NW
Suite 600

Washington, DC 20004
United States of America

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Memorials

Best Practice

- Keep it simple
- Number each paragraph
- Line spacing – 1.5 or double space
- Room at margins for notes
- Footnotes and citations
- Clear and plain language
 - No slang or too many abbreviations

(3) Written Witness Statements

Written Witness Statements

- IBA Rule – Art. 4
 - Each witness statement should contain
 - the witness's name;
 - relationship to the party for whom the statement will be submitted;
 - the witness's background and qualifications;
 - the facts that support the witness's testimony;
 - an affirmation of truth of the statement; and
 - and the witness's signature

Written Witness Statements

- Must be written in witness's "voice"
- Ensure accuracy of facts recounted
- Stick to the facts
- Limit the comments and opinions
- Be careful about making legal arguments

General Drafting Guidelines

Best Practices

- Carefully plan before drafting
- Draft in a way that **tells a story**
- Apply the legal principles at every opportunity
- Write in plain English
- Educate the reader and hold their attention
- Continuous editing:
 - for a different purpose every time – sense, spelling, content, word length, etc.
- Editing resulting in a document 1/3 shorter than the original draft.

Best Practices?

- No*
 - sentence of more than 25 words.
 - more than one set of parenthesis in 1 sentence.
 - paragraphs of more than 6 lines.
 - more than one proposition in any paragraph.
 - long words.
- Unnecessary propositions should be eliminated – ask whether the reader really needs to know.

What are some of yours?

* Recommended by renowned international commercial arbitrator Martin Hunter



Thank You!



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