

2023 Construction CPM Conference

***WHAT ARBITRATORS LOOK
FOR IN SCHEDULING
EXPERTS***

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OVERVIEW

- **Contract Claims/Disputes Provisions**
- **Stage of the Process**
- **What is the Forum**
- **Who are the Decision Makers**
- **Your Expert Report**
- **Tips and Techniques**

CONTRACT PROVISIONS

- **Scheduling Specifications**
- **Changes and Claims**
- **Dispute Resolution Process**
 - **Negotiations**
 - **Mediation**
 - **Arbitration or Litigation**
- **Damages Provisions**

FORUM - NEGOTIATIONS

- **How the Process Works**
- **What Information is Available**
- **How Much Time is Available**
- **The Expert's Role in the Negotiations**
- **Preparing for the Next Step**

FORUM - MEDIATION

- **How the Process Works**
- **Role of the Mediator**
- **Authority of the Mediator**
- **Preparing for Mediation**
- **Role of the Expert(s)**
- **Confidentiality**
- **Who is your Audience**

FORUM - ARBITRATION

- **How the Process Works**
- **Limited Discovery**
- **Less Formal Procedures**
- **Flexibility in Manner of Presentations**
- **Relaxed Rules of Evidence**
- **“Experienced” Decision Maker(s)**
- **Fair and Equitable Award**

FORUM - LITIGATION

- **How the Process Works**
- **Strict Rules for:**
 - **Discovery**
 - **Evidence**
 - **Depositions**
 - **Witness Presentations**
- **Experience of Decision Maker(s)**
- **Decisions Based on Law**

WHAT IS YOUR ROLE

- **Project Participant – Fact Witness**
- **Project Scheduling Consultant**
- **Independent Advisory Expert**
- **Independent Testifying Expert**
 - **Opinion Testimony Permitted**
- **Fact and Expert Witness**

WHAT IS YOUR ROLE – cont'd

- **With your Client/Counsel**
 - **Advising on Merits**
 - **Assisting in “Discovery”**
 - **Advising on Whether to Proceed**
 - **Advising on Settlement Opportunities**
- **With the Neutral**
 - **Who is Your Audience**
 - **What are the Expectations**

ENGAGEMENT AS THE INDEPENDENT EXPERT

- **When Were You Engaged**
 - **During the Project**
 - **Before Formal Dispute Process**
 - **During the Dispute Process**
- **Scope of Your Work**
- **Time and Budget Limitations**
- **Expected Work Product**

PERFORMING THE WORK

- **Affirmative Report**
 - Gathering Documentation
 - Developing Methodology
 - Performing Analysis
 - Preparing Report
- **Rebuttal Report**
 - Critiquing Methodology
 - Defending Your Opinions

YOUR EXPERT REPORT

- **Format**
 - **Executive Summary**
 - **Introduction/Objective/Scope**
 - **Project History**
 - **Documents Reviewed/Relied On**
 - **Methodology of Analysis**
 - **Standards – ASCE, AACE, Other**
 - **Factual Discussion/Interpretation**
 - **Opinions**

YOUR EXPERT REPORT – cont'd

- **Concise**
- **Precise**
- **Logical**
- **Well Organized**
- **Well Documented**

THE NEUTRAL'S EXPECTATIONS

- **Competence**
- **Thoroughness**
- **Independence**
- **Clarity, Clarity, Clarity**
- **Sound Basis for Opinions**
- **Professionalism**

TIPS AND TECHNIQUES

- **Standards for Expert Testimony**
- **Beware of Net Opinions**
- **Know the Facts**
- **Know the Documents you Reviewed**
- **Know Your Work Product Intimately**
- **Know Your CV**
- **Know Your Fees and Compensation**

MORE - TIPS AND TECHNIQUES

- **Display Confidence**
- **Be Able to Defend Your Opinions**
- **Help Counsel Prepare You**
- **Practice, Rehearse**
- **Don't Overreach**
- **Don't be Argumentative**
- **Don't be Defensive**

Questions