

How to Be a Better Arbitrator Jeffrey B. Tener

Listed below are three categories of things that an arbitrator can do to remain a good arbitrator or to become a better arbitrator.

Some of the easiest things, and things over which the arbitrator largely has unilateral control, are the following:

1. Have accurate and complete information in your resume or agency forms.
2. Disclose any conflicts or appearances of conflicts or relationships as soon as possible.
3. State charges clearly to avoid surprises or disputes.
4. Charge reasonably, especially for travel and study time. Do not nickel-dime the parties (but no problem with a high per diem).
5. Contact parties promptly after appointment to set a hearing date.
6. Arrive at hearing on time but not too early to avoid *ex parte* communication to extent possible.
7. Be civil to everyone and take care to treat everyone equally. Do not use first names for some people and not for others.
8. Get or attempt to get mutual agreement on the statement of the issue before you.
9. Issue timely decisions.
10. Get as much mutual agreement as possible: dates and places of hearing, ending time if a second day is necessary, briefs,

The next group are not items over which the arbitrator does not have complete control but which are largely within the arbitrator's control:

1. Conduct a "good" hearing. This is one which appears to both sides to be fair so the parties have an opportunity to put on their cases. Try to avoid too much cumulative evidence. Talk privately with counsel or representatives if there are issues such as leading witnesses. You do not want to embarrass representatives in front of their clients.
2. Give definitive rulings on motions as opposed to "accepting it for what it is worth."
3. Be and appear to be neutral so that neither party leaves with the impression that you favored one or the other or that you had made up your mind before hearing the whole case and carefully considering all arguments.
4. Write clearly so that your decision can be understood by all who are likely to read it.

The final group is the most difficult and probably the most important.

1. Do not say more than is necessary in your decision. Do not go beyond the stipulated issue or offer gratuitous advice.
2. Do not decide the case on the basis of an argument not advanced by one of the parties.
3. Decide the case and do not try to make both parties happy.
4. Try to explain to the losing party why it did not prevail.

5. Try to write the decision so that, by the time a reader gets to the end of the decision, the outcome seems inevitable or at least compelling.
6. Reach the right result.

Integrity may be the most important thing. Good advocates and savvy representatives will recognize and respect integrity. It also will make you feel good about yourself. Decide case on its individual merits, even if that means – in a situation in which you work with the parties regularly - one party loses multiple cases in a row. It is better to lose a client than your integrity.