

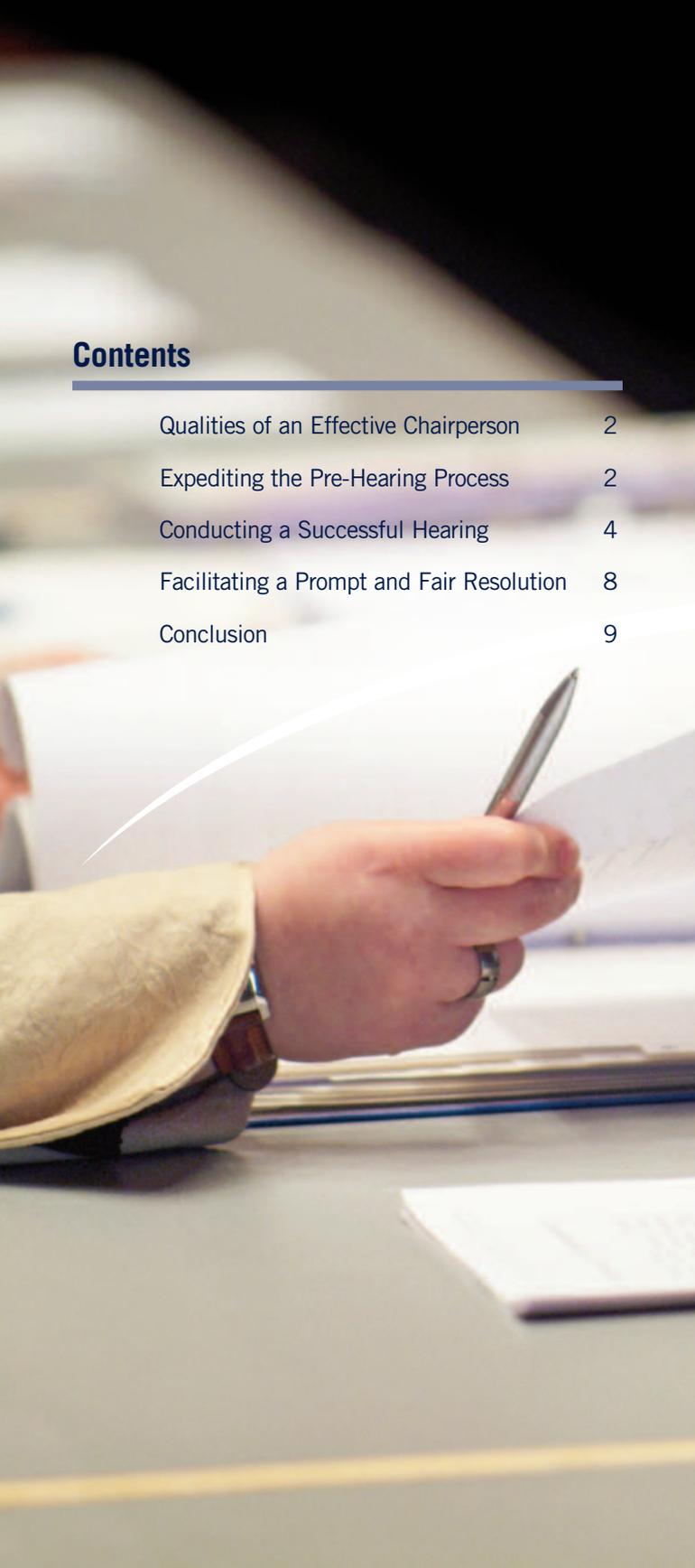


# NFA Arbitrators

## *Chairperson's Handbook*



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A close-up photograph of a person's hand holding a silver pen over a document. The person is wearing a light-colored suit jacket and a watch. The background is blurred, showing more of the document and the person's arm.

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*Serving as an NFA arbitrator can be a challenging and rewarding experience. And NFA is committed to providing you, our arbitrators, with as much information as you need to perform your duties effectively. From feedback we have received throughout the history of our program, we know that many of you find the information contained in our *Procedural Guide for NFA Arbitrators* to be very helpful. However, some arbitrators have indicated a need for a separate publication that addresses the additional duties and responsibilities of the panel chairperson.*

*In response to those requests, we have prepared this *Chairperson's Handbook* to help you understand the particular responsibilities you will assume when you chair an arbitration panel. The handbook focuses on specific issues and situations that you may face at various stages of the arbitration process.*

*Your main sources of information concerning the role of the arbitrator, however, should remain the *Procedural Guide for NFA Arbitrators* and the *Code of Arbitration* or the *Member Arbitration Rules*. You should familiarize yourself with these publications because a thorough knowledge of the program's rules will make your job easier. And remember, NFA arbitration staff is always available to answer questions and provide support. We encourage you to call anytime during NFA's regular business hours (8:30 a.m. – 5:00 p.m. CST) at 800-621-3570.*

## Qualities of an Effective Chairperson

You have been selected to serve as an NFA arbitration panel chairperson because you possess those qualities that we feel are essential to the success of our program: fairness, patience, impartiality and professionalism. You also understand the importance of keeping a hearing moving forward while giving everyone a chance to present their case. You will need all of these qualities in the weeks and months ahead, as you navigate through the sometimes smooth, sometimes choppy waters of the arbitration process.

## Expediting the Pre-Hearing Process

During the early stages of the arbitration process, you will receive requests for pre-hearing decisions on a variety of issues. The leadership you exhibit when addressing these requests will set the tone for the entire arbitration proceeding.

### Making decisions

With the consent of all the arbitrators, one or more arbitrators can act on behalf of the panel and rule on many types of pre-hearing motions. It is usually, but not always, the chairperson who acts on the panel's behalf in making these decisions. However, you cannot act without the consent of the other two arbitrators. Also, if you are a non-Member arbitrator, you may wish to confer with the Member arbitrator on the panel concerning issues where his/her expertise would be beneficial.

Certain pre-hearing motions must be considered by the full panel, including continuance requests, requests for sanctions and any request that would result in the dismissal of a claim or a party from a case. Consult the Procedural Guide for NFA Arbitrators for more information on specific pre-hearing motions.



### Ruling promptly

An efficient arbitration process requires you to rule on motions as promptly as possible. Depending on the complexity of the motion, some rulings can be completed in three to five business days. Other motions, however, might require several weeks for the arbitrators to study all of the information submitted, discuss the motion and render a ruling. NFA staff organizes the motions and any responses received from parties before they send them to you. If our staff can do anything else to make the ruling process easier, please contact them.

### Working with NFA staff

Throughout the arbitration process, NFA case administrators act as intermediaries, channeling information between the parties and the arbitrators. When dealing with pre-hearing motions, you should refrain from communicating with the parties directly. If you receive a pre-hearing motion from NFA and need more information from the parties before you can make a ruling, contact your case administrator. At all times, you and your fellow arbitrators should avoid the appearance of impropriety and refrain from ex-parte communications with the parties and their representatives.

Once a ruling has been made, an NFA case administrator can prepare the written decision for you and forward it to you for approval and signature before sending it to the parties. You also have the option of writing the decision yourself, but remember to send the completed document to your case administrator, who will forward it to the parties.

## Finalizing the hearing plan

If you have had prior experience as an NFA arbitrator, you know the importance of a comprehensive hearing plan. If this is your first experience with NFA, you'll soon discover that a good hearing plan provides a road map to help the hearing run smoothly and efficiently. However, there are cases where the parties fail to prepare a hearing plan or submit a hearing plan that is incomplete and therefore useless. As with all other aspects of the arbitration process, the arbitrators have the responsibility and authority to ensure that a useful hearing plan is prepared on time.

NFA rules require that parties submit a joint hearing plan, or separate plans if the parties cannot agree on a joint one, 30 days before the hearing begins. Your case administrator will keep you informed of the progress of the hearing plan preparation. If you feel that the parties are not meeting their hearing plan requirements, NFA staff can assist you in conducting a conference with the parties to modify or complete the plan.

## Conducting a Successful Hearing

Depending upon the size of the claim and the complexity of the issues, an NFA arbitration hearing can last less than a day or several days, sometimes spanning several months. NFA will provide you with a script for activities such as opening the hearing, swearing in parties and witnesses, and closing the hearing. You are not required to follow the script verbatim, but it can provide you with a general outline of the proceedings.

## Exerting control

One of the most difficult aspects of being a chairperson is striking the correct balance between fairness and control. In your efforts to give the parties every opportunity to present their cases, you may be asked to hear repetitive testimony or consider redundant evidence. Parties may try to call witnesses not listed on the hearing plan or submit documents that are not on the exhibit list.

It is under these circumstances that you must guide and control the hearing in a way that is fair to all parties yet clearly disallows improper behavior. The chairperson (or the panel acting as a whole) has wide discretion to grant or deny motions, approve or overrule objections to evidence and admit or refuse to admit exhibits and testimony.



Even if the party has identified the witness or exchanged the document on time, you do not automatically have to allow the witness to testify or to admit the document into evidence. You can always refuse to let a witness testify or refuse to accept a document if the testimony or document is repetitive or irrelevant. You can also refuse to allow parties to ask particular questions of a witness if those questions are repetitive or irrelevant.

Furthermore, you may be asked to accept post-hearing submissions. You should do so only if you believe additional information is needed in order to make a just decision or if you would like clarification on legal or technical matters. You should set a deadline for the parties' submissions and you may limit the length of those submissions.

And in some cases you may have to remind attorneys that, as chairperson, you—not the parties or their representatives—have the ultimate authority over the proceedings. In some instances, you may have to resort to stronger action, warning them of possible penalties the panel will impose if their inappropriate behavior continues.

### **Working with the other arbitrators**

You are the chairperson and it is your responsibility to keep the hearing moving. However, you should also remember that you are only one member of the arbitration panel and have an equal vote with the other arbitrators. You may rule on evidentiary matters and other minor procedural issues that come up during the hearing without consulting the other members of the panel. But you should caucus with the other members of the panel whenever a significant issue comes up unless the members of the panel have previously agreed to have you deal with those issues. Your case administrator will schedule a meeting with all the arbitrators shortly before the hearing to answer any questions and to review any last minute procedural issues. You should take this opportunity to reach an accord with your fellow arbitrators on which procedural issues the panel members all want input on and how the panelists will communicate with each other during the hearing.



Another issue you should discuss with the other arbitrators prior to the hearing is impartiality. Of course, you and your fellow arbitrators must be neutral decisionmakers. You must not have your mind made up before the hearing starts but must listen to all the evidence with an open mind. You also need to be careful how you ask questions or make comments, or the parties may feel you have already decided against them. When you ask a question, you should make it a simple request for information. Do not use an argumentative tone. Do not try to educate the witness or the attorneys or explain why you are asking the question. You can, of course, clarify or rephrase the question if the witness does not understand it.

Although informality is a key element of arbitration, communication with the parties, especially before the hearing begins and during breaks in the hearing, should be carefully monitored. You and your fellow arbitrators must avoid making comments that could be misconstrued by one party or the other.

### **Working with NFA staff**

The NFA case administrator can be a valuable resource to you during the hearing. Not only does the case administrator tape record the proceedings but he/she also can offer guidance and advice to members of the arbitration panel on procedural issues. If an issue arises during the hearing that you feel needs clarification, you can either “go off the record” to ask the case administrator your question or briefly adjourn the hearing and confer with the case administrator outside the hearing room. Sometimes the case administrator will initiate a conference with the arbitrators if he/she feels it is necessary.

## Facilitating a Prompt and Fair Resolution

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Members of the arbitration panel generally meet directly following the hearing to discuss the case and the evidence presented. It is your responsibility as chairperson to facilitate the decision-making process. Make sure the other arbitrators are given the opportunity to voice their opinions. All views should be considered. However, decisions do not have to be unanimous—the majority rules. Keep in mind that the panel must render its Award in writing within 30 days after the record is closed.

Once a decision has been reached, you should communicate it to NFA. Your case administrator will prepare the Award form and send it to you for review. When you receive the draft Award, review it carefully. Pay particular attention to the following:

- 1) Make sure the summary of issues accurately reflects the issues presented to and decided upon by the arbitrators.
- 2) Make sure the Award accurately reflects the arbitrators' decision regarding who won and how much money, if any, is to be awarded.
- 3) Make sure all claims and parties are accounted for in the Award.

After reviewing the Award, indicate changes that need to be made and return it to NFA. When the Award is finalized, the case administrator will send it to you and the other panelists for signatures before forwarding it to the parties.



## Participating in post-arbitration litigation

It is not uncommon for one of the parties in an arbitration proceeding to seek court review of the arbitrators' award. However, arbitrators are generally immune from liability for their actions.

If you should be named in a legal action, notify your NFA case administrator immediately. NFA will provide legal representation or pay for your legal expenses. If a party contacts you for help in a legal action, please remember it is not proper for you to participate, unless required by law. Again, the best course of action is to notify NFA as soon as possible.

## Conclusion

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Chairing an arbitration proceeding is not an exact science. The very nature of arbitration prohibits rigid procedures and behavior. Some people have even compared it to walking a tightrope. You must find the perfect balance between providing a fair and impartial hearing of the case and fulfilling your obligation to keep the process free of distraction and firmly on track. Be compassionate, yet decisive. Be flexible, yet disciplined. The road may be difficult to travel at times. But many have found the journey rewarding.



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