

NYSBA/Fordham Law School
Arbitration 2019: Commercial Arbitration at Its Best
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The 10 Most Important Things for Arbitrators
Charles J. Moxley, Jr.

1. Diligent and full disclosure through a well-thought out and reliable conflicts system
2. Overriding mental orientation: humility and sense of the honor of the role
3. Diligence--being fully familiar with the procedural and ethical rules and working as hard as the attorneys from the outset of the case in addressing the substantive issues raised and managing the process, including through
 - a. Being up-to-speed on all phases of the case at each conference in the case
 - b. Being available to counsel on short notice
 - c. Papering every decision, providing reasons, albeit in short form, for all decisions that could be the basis of a vacatur application
4. Communicating and implementing the arbitration difference—the distinctive differences between arbitration and court-based litigation, including as to such matters as the following, usually addressed in the first instance through one’s “Arbitration Speech” and “Discovery Speech”):
 - a. Time factors—including the general expectation that the hearing will be scheduled 6-9 months from the preliminary hearing
 - b. The “architectural” preliminary hearing, establishing the design of the case, including an overall schedule for all matters likely to come up (*See e.g.* the AAA’s Checklist at P-2 of the Revised Commercial Arbitration Rules)
 - c. The active management of discovery
 - d. Limits on substantive motion practice
 - e. Status conferences, to keep the case on track
 - f. The conducting of the hearing
 - g. Advising the parties as to what, if anything, to include in any post-hearing briefs or oral argument
 - h. Eliciting the parties’ agreement at the end of the hearing that they have had full and fair opportunity to present their case
 - i. The form and extent of the award, addressing all issues raised in the case

5. Protecting the award from the beginning of the process—one area where the parties do *not* “own the process”
6. Proactively, creatively, and collaboratively designing the process most appropriate for the individual case, delivering on the flexibility that is intended to be a hallmark of arbitration
7. The Managerial Arbitrator---being proactive throughout the case, albeit essentially within the framework of letting the parties present the case they want to present for hearing
8. Proactively managing discovery/disclosure, including particularly ESI
9. Heuristics—developing awareness and proactively managing potential unconscious influences on one’s perception and evaluation of the case in all its phases
10. Open, candid, and continuous communications among panel members as to all aspects of the case