

# AMERICAN ARBITRATION ASSOCIATION

*In the matter of the Arbitration of:*

*Claimant,*

v.

**Jerome F. Rock**  
**Arbitrator**

*Respondent.*

---

## ***Introduction to Narrative Witness Statement Protocol***

Presenting Direct Testimony of Fact Witnesses in Arbitration Hearings using Narrative Witness Statements provides benefit to all parties. This Protocol is intended to provide Counsel with the procedural ground rules that implement this practice.

From the Tribunal's Perspective: When prepared early, and exchanged early, Narrative or Written Witness Statements should lessen the need for depositions since the cross-examining party has detailed advanced notice of the witness' direct testimony and can be prepare for effective cross examination. The Tribunal has a better perspective of the dispute having the benefit of prospective witness testimony, thereby improving guidance on pre-hearing matters and is prepared to focus on the major issues at the formal Hearing. The Narrative Witness Statements reduce the need for the Tribunal to take notes during the Hearing, and reduces the distraction associated with extensive note taking. Formal transcripts of the Hearing are often not necessary.

From the Claimant's Perspective: The Narrative Witness Statement can become the work product of your pre-Hearing preparation of your Witness's testimony. Counsel is confident all the material elements of the Witness's testimony will be presented, while reducing the stress on the witness during direct examination at the Hearing. At your option, you will be permitted to present the Witness for Direct Examination at the Hearing following the sequential numbering of the Narrative Witness Statement.

From the Respondent's Perspective: Since the Narrative Witness Statements are exchanged in advance of the Hearing, the Respondent's cross-examination can be prepared in advance,

saving time, and perhaps improving the quality of cross-examination. Respondent is also prepared in advance to present rebuttal witness testimony, as necessary.

This suggested Protocol will be distributed to all parties in advance of the Preliminary Hearing. Counsel are encouraged to review this Protocol and express their opinions and suggestions to adopt or modify the Narrative Witness Protocol to adjust to the special needs of the case.

### **Narrative Witness Statement Protocol**

*The Tribunal requests that all Direct Witness Testimony under the control of a party be presented at the Arbitration Hearing with Narrative Witness Statements, prepared by the Witness with the permissible assistance of Counsel, submitted under Oath or affirmation, and exchanged in advance of the Hearing in accordance with the schedule set forth in the Tribunal's Preliminary Hearing Order. Unless otherwise provided, all Witnesses must appear at the Hearing and available for cross examination.*

*The following outlines the Tribunal's Protocol for the Narrative Witness Statements:*

- 1. The Narrative Witness Statement should be equivalent in content to Direct Examination of the Witness, using the conventional direct examination format; first question, then witness answer. Avoid privilege, establish the foundation, avoid speculation and hearsay, be cautious about straying into unsupported opinion and argument. In general, Counsel should prepare their direct examination as if they expect objections and rigorous cross examination from their adversary. The Attorney questions can be printed as Q: with the Witness response labeled A: At Counsel's option, the Q: can be silent and implied, and omitted from the final Narrative Witness Statement.*

*By way of illustration, but not limitation, Counsel should consider the following topics as part of the Direct Examination by Narrative Witness Statement:*

- a. The full name and address of the Witness;*
- b. Their present or past association with the parties;*
- c. A description of the Witness' background, qualifications, training and experience as relevant to the dispute, or to the content of the Witness' statement;*

- d. *Full detailed description of the facts and the source of the Witness' information as to those facts;*
  - e. *All documents on which the Witness relies upon should be provided and submitted with the Narrative Witness Statement if the documents are not otherwise submitted as proposed exhibits to the Hearing;*
  - f. *An affirmation of the truth of the Narrative Witness Statement, signed by the Witness.*
- 2. *Narrative Witness Statements are not appropriate for the following Witnesses:*
  - a. *Any person whose attendance is compelled by Subpoena;*
  - b. *Rebuttal Witnesses.*
- 3. *Number each statement separately to make it convenient for future reference. Questions presented at Cross Examination should reference the numbering system used in the Narrative Witness Statement.*
- 4. *Hearsay testimony is problematic in all Arbitration Hearings. Counsel should assist the Witness to avoid Hearsay testimony not supported by an exception. When exceptions to Hearsay exclusions apply, Counsel should footnote that part of the Narrative Witness Statement accordingly. During Cross examination, the Tribunal will consider objections to unsupported Hearsay statements contained in the Narrative Witness Statement. Admissibility, relevance, materiality, and weight of the evidence will be determined by the Tribunal.*
- 5. *The Narrative Witness Statements will be submitted to the Tribunal and Opposing Counsel in advance of the Hearing, the time schedule generally covered in Preliminary Hearing Scheduling Orders. The schedule for exchange of the Narrative Witness Statement of the adverse party will generally be set by the Tribunal after the exchange of the Narrative Witness Statements of those Witnesses under the direct control of the Claimant. When prepared early, and exchanged early, Narrative or Written Witness Statements should*

lessen the need for depositions since the cross-examining party has detailed advanced notice of the witness' direct testimony and can be prepare for effective cross examination.

6. *At the Hearing, each Witness will be Sworn under Oath, and attest to the accuracy and completeness of the Narrative Witnesses Statement. Counsel may submit the Narrative Witness Statement as direct evidence, and directly submit the Witness to cross examination. At Counsel's option, they may proceed with what would be considered a standard direct examination with question and answer format, but will be expected to follow the general sequence of the submitted Narrative Witness Statement. Because one of the major advantages of Narrative Witness Statements derives from the efficiency of saving time at the formal Hearing, Counsel may abbreviate the question and answer format once the Witness is comfortable testifying, without the need to complete the full scope of testimony contained in the Narrative Witness Statement.*
7. *When directing a witness to describe or discuss a document referenced in the Narrative Witness Statement, Counsel should follow the Exhibit Reference numbering system used for the Arbitration Hearing, set in the Preliminary Hearing Orders.*
8. *If there is need to supplement or otherwise amend a Narrative Witness Statement after it has been exchanged with opposing Counsel, Counsel shall confer as soon as possible prior to the Hearing, and if necessary, request a conference with the Tribunal on the matter.*
9. *Opposing Counsel may cross exam the Witness at the Hearing. The Tribunal requests that cross-examination refer to specific numbered statements of the Narrative Witness Statement to the extent practical.*
10. *Counsel may agree to waive cross examination of a Witness, in which case the Narrative Witness Statement will stand as direct evidence without the need for the Witness to be present at the Hearing. This might occur in the case of secondary Witnesses whose*

*testimony is straight forward and non controversial. The Narrative Witness Statement can thus reduce the cost of pre-hearing discovery when used as a fact-finding tool.*

- 11. Redirect examination of a Witness after Cross Examination is permitted but limited to new topics raised on cross examination.*
- 12. If Counsel anticipates Rebuttal Witnesses, they are encouraged to make arrangements for presenting the Rebuttal Witness without unnecessary delay to the Hearing.*
- 13. Expert testimony will follow the Narrative Witness Protocol, and the Tribunal may customize the Protocol to suit the needs of the case.*
- 14. By stipulation of counsel, or as determined by the Tribunal, a Witness who has submitted and exchanged a Narrative Witness Statement need not be present at the Hearing if they are able to participate in the Hearing by video conference, subject to opportunity for cross examination.*

---

**Jerome F. Rock**  
**Arbitrator**