

# 10th Annual WCCAS Energy, Mining and Resources Arbitration Conference

## The Art of Award Writing

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Moderator

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# Who are awards written for?

- the parties
- counsel
- courts
- arbitral institutions

# External sources of formal requirements

- arbitration agreement
- laws of place of arbitration
- laws of place of enforcement
- local expectations

# Can the parties and counsel contribute to award writing?

- objective chronologies and statements of fact
- (common) statement of the issues to be decided
  - abandoned issues and arguments should be identified
- clear statement of awards sought
- USB drive with entire file, hyperlinked submissions
- key document book
- submissions in WORD

# How does a tribunal develop a consensus?

- timing of deliberations
- allocation of drafting responsibilities
- the roles of the Chair and the co-arbitrators in reaching consensus

# The key elements of an award

- executive summary?
- parties, counsel and tribunal
- arbitration agreement, place of arbitration, applicable laws, applicable rules, jurisdictional issues
- procedural history
- summary of contentions and claims
- issues to be decided

# The key elements of an award (cont'd #1)

- evidence and findings of fact
  - recite/summarize testimony?
  - conclusory statements of fact?
  - citations to the record?
- law/legal principles
  - how extensive and detailed should legal citations be?
  - authorities not cited by parties?
  - anticipating appeals on questions of law

# The key elements of an award (cont'd #2)

- analysis
  - analyze the issues as identified
  - state positions of parties
  - state findings and reasons
    - how detailed should the reasoning be?
- dealing with credibility issues
- addressing weak lawyering
- dealing with evidentiary deficiencies



# The key elements of an award (cont'd #3)

- the “*dispositif*”
- must the award match the relief sought?
  - variations of relief sought – e.g. declarations
  - granting relief not sought?
  - solving the business problem vs deciding legal rights
- disposition of claims that are not allowed
- disposition of claims originally made but not pursued in argument
- treatment of formally abandoned claims

# Key elements of an award (cont'd #4)

- costs
  - as part of the merits award or by a separate partial award?
    - settlement offers
  - the form and timing of costs submissions
  - contractual provisions for costs
  - rules and applicable law
  - relevance of the conduct of parties and counsel

# Thank You

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