Mock Exercises for Commercial Arbitrations

By Shira A. Scheindlin

I have previously written about the value of mock exercises for lawyers preparing for trials or appellate arguments (*see* "What Mock Exercises Reveal that Briefs Cannot" New York Law Journal April 2, 2026*). The point I made is that mock exercises are invaluable because they provide the lawyers with the opportunity to test their arguments before an experienced former judge or experienced litigator. The mock judge asks tough questions and forces the attorneys to focus on the strengths and weaknesses of their case. Often the mock argument is followed by a debriefing asking the mock judges to provide feedback on how the judge reacted to the arguments and answers provided by the lawyers.

The same benefits exist for lawyers preparing to participate in a high-value and complex commercial arbitration. In that context, the lawyers should select experienced arbitrators as mock arbitrators who have similar backgrounds and expertise as the panel members who will hear their case. The feedback they will receive from an experienced arbitrator will help to shape their presentation to the Tribunal or will cause them to find a way to settle the case rather than risk a less than favorable award.

On several occasions I have served as a mock arbitrator, together with two other experienced arbitrators. We heard a condensed version of the case, including "Clopenings" (a combination of openings and closings), portions of video depositions (particularly of key witnesses and experts), and the presentation of selected documents. In each case we deliberated and determined how we would decide the case. The law firm that held the mock presented both sides of the case, using their own lawyers to present the case for the adversary. After the decision, the lawyers met with each mock arbitrator and asked each separately what evidence they found most (and least) persuasive.

There are many types of arbitrations. Consumer and employment arbitrations generally have small values and may not warrant the cost of a mock exercise. But in complex commercial cases, where the outcome may be in the millions, if not billions of dollars, the cost of a mock exercise is a small price to pay for the invaluable insights the lawyers gain through the process. This is so for two reasons. First, I have found that the lawyers prepare for the mock as they would for the actual arbitration. Forcing themselves to prepare the case for both their own side as well as for the opponent in advance of the arbitration hearing is a great way to be well-prepared for prime time! Second, if the lawyers have not yet selected their arbitrators, this may give them a good sense of who they may wish to choose. If the Tribunal has already been selected, the mock arbitrators can be chosen to closely resemble those arbitrators. The mock exercise then gives the lawyers real insights as to how the selected or potential Tribunal members might respond to the presentation of their case.

Lawyers devote enormous time and care to crafting briefs. They refine arguments, polish language, and anticipate counterpoints. Yet even the most carefully written submission cannot fully answer a critical question: how will these arguments be received by the person who must decide the case?

Mock exercises offer a way to answer that question before it is too late. The lawyers will benefit from unfiltered, candid feedback at a time when they can absorb the feedback and adjust their presentation.

The structure of a mock exercise for an upcoming arbitration would begin with providing the mock arbitrator(s) with a substantial set of materials: pleadings, dispositive motions and supporting briefs, deposition transcripts, and expert reports. The mock arbitrators will have read these materials prior to the exercise, as would the Tribunal.

After hearing argument and reviewing evidence from both sides, the members of the mock panel are often asked to complete a written questionnaire reflecting their reactions to the key issues. As noted earlier, this is often followed by individual interviews of each arbitrator by the lawyers in the presence of their clients. The interviews are then followed by a group discussion with all of the participants – arbitrators, lawyers, and client. The feedback from the arbitrators is usually very candid, helping counsel to determine the next best steps in preparing for the hearing.

The feedback from the mock arbitrators often identifies issues that have little to do with legal doctrine and much to do with persuasion. Whether a theory is too complicated, whether a factual narrative is unclear, or whether a particular argument, while technically correct, is unlikely to carry weight with the Tribunal. These observations can be difficult to hear. They are also precisely the reason the exercise is worthwhile.

Of the greatest importance in selecting a mock arbitrator, is their commitment to serious preparation, reviewing all the materials submitted by the client, and rendering an assessment that reflects how the actual Tribunal might react to the presentation. Active arbitrators – if they are willing – are a great place to start. Fellows of the College of Commercial Arbitrators, of which I am proud to be one, provides a great list of highly experienced arbitrators that would be a perfect choice for a mock arbitration exercise. Of course, I also believe that former judges who have handled complex civil litigation, who are practiced at questioning counsel and identifying weaknesses in both legal and factual presentations, are also particularly well-suited to the role. The value of the exercise depends directly on the realism of the simulation.

Mock exercises require time, preparation, and expense. They are not necessary in every matter. But when the case is complex, the potential award or exposure is substantial, and the arbitration is at a critical juncture, the cost of a mock exercise is generally modest relative to the exposure at issue. The question worth asking is not whether the exercise is expensive, but what it costs to proceed without it.

The legal profession has developed sophisticated tools for evaluating risk. Mock proceedings belong in that toolkit, and perhaps near the top of it. A mock arbitration tests the legal arguments before a panel of experienced arbitrators who have read the briefs and are prepared to challenge counsel throughout the exercise. The feedback is not impressionistic; it is grounded in the same that a sophisticated arbitral Tribunal will apply.

A mock exercise provides the opportunity to test, to listen, and, if necessary, to reconsider the strategy that best suits the needs of the client. Given those benefits, I am somewhat puzzled as to why they are not used more frequently when preparing for a high-stakes commercial arbitration. My strong suspicion is that lawyers who have never participated in one simply do not know what they are missing.

Shira A. Scheindlin served as a United States District Judge for the Southern District of New York from 1994 to 2016. She is currently an arbitrator and mediator, listed with the AAA and FedArb, where she routinely handles complex commercial arbitrations and participates in mock exercises.