

Professor Gary Spitko
Santa Clara University School of Law
gspitko@gmail.com

Description of Arbitration Exercises

In my arbitration seminar, we focus a great deal on how arbitration is practiced. Beginning in roughly the third week of the course, some of the reading focuses on arbitration practice. Also, at that time, we begin a series of six practical exercises that I created that all arise from a fact pattern that develops as the course progresses. The exercises are situated in an employment fact pattern and progress from the beginning of the employment relationship through a mock arbitration. We utilize in these exercises the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association.

The exercises include (in order) (1) drafting an arbitration agreement, (2) drafting a demand for arbitration and an answer/response to the demand, (3) selecting an arbitrator, (4) preparing for and participating in an arbitration management conference, (5) drafting and responding to motions on a discovery dispute, and finally (6) participating in a complete mock arbitration in which students prepare witnesses, depose an opposing witness, make opening statements, examine and cross-examine witnesses, and make closing statements.

In general, we work in teams on these exercises because I find that students benefit from having a partner to bounce ideas off of during an exercise. Typically, some of the reading for the Wednesday class relates to a practical exercise. Toward the end of that class, teams get together to begin work on the exercise. The exercise is due at the beginning of the next Monday's class and is turned in both to me and to opposing counsel. Both opposing counsel and I then review the submission before the following Wednesday's class. In that second Wednesday class, we discuss the exercise as a group and begin work on the next exercise. This pattern repeats roughly a half dozen times throughout the semester.

Professors who would like to use this series of exercises in class should feel free to email me. I would be happy to send them along and answer any questions that arise.