

In considering arbitrator candidates, there is often no substitute for engaging directly with someone who has had experience with an arbitrator candidate under consideration. Real-time discussion often provides insightful information about how and why the candidate is likely to be a suitable arbitrator for a particular upcoming arbitration.

This Due Diligence Evaluation Tool (DET) is a grouped listing of potential questions designed to facilitate a more informed evaluation of potential arbitrator candidates. The following list of potential questions is intended to assist CPR members in learning relevant information about arbitrators they are considering for a forthcoming arbitration. It is contemplated that these questions, or a subset of them, will be useful in interviewing parties who previously used the arbitrator candidate in an arbitration.

Members may want to use these questions alone or as an adjunct to the online arbitrator evaluations compiled by Positively Neutral, to amplify or clarify the information elicited in the evaluations.

## **POTENTIAL QUESTIONS**

### **1. Describe the Prior Arbitration(s) in Which You Observed the Arbitrator's Involvement. (Determine whether based upon the nature of the prior arbitration(s) the arbitrator candidate would be suitable for your arbitration.)**

- In what kind of arbitration(s) have you witnessed the arbitrator's capabilities (e.g., contract, intellectual property, labor/employment, oil/gas)?
- Describe the complexity of the arbitration (e.g., novel/complex issues, multiple claims/counterclaims, multiple parties, motions, damages/attorney fees)?
- Were there notable characteristics about the arbitration (e.g., international parties, gender/cultural/racial issues, language barriers)?

### **2. If the Arbitrator Served as a Wing-Person, How Did He/She Perform? (Determine whether an arbitrator's prior performance as a wing-person can be used to assess his/her performance in your case as a wing-person, chair or sole arbitrator.)**

- If the arbitrator actively participated on phone or at in-person conferences and hearings, what was his/her grasp of the issues?
- Did the arbitrator dissent with reasons from any of the rulings (e.g., orders, awards) of the panel?
- Even if you did not agree with the dissent or the reasons for it, do you believe the decision to dissent and any supporting reasons were legally supportable?
- What was the arbitrator's disposition (e.g., courteous, alert, fair, even-handed)?

### **3. If the Arbitrator Served as the Chair or the Sole Arbitrator, How Did He/She Perform? (Determine whether the arbitrator's prior performance as the chair or sole arbitrator can be used to assess how effective the arbitrator is likely to be in your arbitration.)**

- How well did the arbitrator manage the proceedings?
  - a. Was the arbitrator organized?
  - b. How did the arbitrator maintain order on calls and at the hearing(s)
  - c. Did the arbitrator hold conferences and hearings in a timely manner?
  - d. Did the arbitrator issue orders and awards promptly?
  - e. Did the arbitrator deal with discovery disputes in a timely and effective manner?
  - f. Was the arbitrator competent at handling procedural and evidentiary issues?

**g.** Did the arbitrator require the parties to perform any work or travel that the parties deemed to be unreasonable?

- Describe the Chair's/Sole Arbitrator's Disposition During the Proceedings.

**a.** Was the arbitrator courteous to the arbitrators on the panel and to the parties?

**b.** Did the arbitrator treat the parties/counsel in a fair and even-handed manner?

**c.** Did the arbitrator remain alert at conferences and hearings?

- Was the Written Product of the Chair/Sole Arbitrator the Quality Expected?

**a.** Were pre-hearing procedural orders (e.g., scheduling orders) written clearly, and were they easy to follow?

**b.** Were orders and awards clear (e.g., easy to follow) and well reasoned (i.e., depending upon the level of detail requested by the parties)?

- Was the Chairperson/Sole Arbitrator Adequately Prepared?

**a.** Did it appear that the arbitrator read the parties' submissions (e.g., pleadings before the preliminary hearing, motion papers before a hearing on the motion, hearing briefs before the evidentiary hearing)?

**b.** Did the arbitrator understand and apply the relevant rules and law governing the arbitration?

**c.** Describe the arbitrator's grasp of the issues?

**4. Were the Arbitrator's Facilities Adequate? (If the arbitrator used his/her facilities for the prior arbitration(s) would they be adequate for your case?)**

- Was the arbitrator's administrative support adequate?

- Were the arbitrator's facilities adequate, if they were used for any of the proceedings?

**5. If the opportunity presented itself, would you choose to use the arbitrator again?**