

# HOW TO ORGANIZE & PREPARE FOR ARBITRATION HEARINGS: SINGLE SHEET PERSUASION

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# INTRODUCTION OF ARBITRATOR

Diego J. Pena currently serves as a Labor Arbitrator on the FMCS and AAA panels. Between 1983 and 2019, Mr. Pena personally tried more than 85 labor arbitrations, 50 trials in state and federal trial courts and appeared in more than 20 appellate cases.

Mr. Pena is now a full time Arbitrator. He is on the FMCS and AAA Labor, Employment, Commercial and Consumer Panels. He also serves as an Independent Hearing Examiner for the Texas Education Agency.

Mr. Pena also mediates civil disputes, specializing in labor & employment cases.

# PREPARATION, ORGANIZATION & PROCESS


To succeed in Arbitration Advocacy, you must be  
PREPARED

FAILING TO PREPARE IS PREPARING TO FAIL

YOUR CASE MUST BE ORGANIZED

YOU NEED TO DEVELOP A CASE PREPARATION  
DISCIPLINE THAT IS UNIQUE TO YOU AND YOUR  
CLIENT.

Being prepared, organized and following a process  
will give you confidence.




# PERSUASIVE SWAG

The more prepared and organized your case, the more confident you can be.

Your confidence will translate into a demeanor and appearance that translates into what I call PERSUASIVE SWAG.

PERSUASIVE SWAG DOESN'T COME FROM “SIMPLY WINGING IT”

There is no difference between “simply winging it” and “failing to prepare.”




# WHAT IS SINGLE SHEET PERSUASION?

Single Sheet Persuasion is the process of condensing your entire Arbitration case to a Single Sheet that incorporates the theme and the major points of your case.

You present this Single Sheet to the Arbitrator during your Opening Statement as a demonstrative exhibit.

This Single Sheet provides the Arbitrator a roadmap to your client's evidence and arguments. It stays with the Arbitrator throughout the case and afterward. This is important for post-hearing purposes.

This Single Sheet also serves as the outline for your Opening Statement and for your Post-Hearing Brief.



# CREATING YOUR SINGLE SHEET

To create your single sheet, you will need to create a CASE ROAD MAP.

The CASE ROAD MAP is the document YOU, the advocate, use to organize the case.

To create the CASE ROAD MAP, the arbitration advocate must get the client's grievance file and/or grievance notes.



# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

## Contract or Discipline?

Issue: Did the Company have just cause to Dismiss Charlie Brown and if so, what should be the remedy?

## Arbitrability?

Issue: Did the Company violate Article III of the CBA, the Seniority Article, when it promoted Schroeder to Operations Clerk, bypassing Peppermint Patty and Pig-Pen?

### Witnesses

Employer

Union

_____	_____
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### Exhibits

Employer

Union

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### Theme

**Falsification of Company Records – Theft**

**Violence in the Workplace – Self Defense**

### Prior Arbitration Awards

1. Sally Brown Termination
2. Franklin Seniority Grievance
3. Peanuts Workcrew Grievance



# CREATING YOUR SINGLE SHEET

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Contract

Did the Comp. violate  
Art. XII (Security)  
Art. XVII (Force Adjustment)  
by having managers perform  
Bargaining Unit work

- \* Clerical titles
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Comp.	Union	CV	UX
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Parties have never agreed  
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# CREATING YOUR SINGLE SHEET

Burden of Proof/Persuasion— THIS MATTERS!

DISCIPLINE CASE – The Company goes first and has to prove it had just cause to discipline.

CONTRACT CASE – The Union goes first and has to prove that the Company violated the CBA, MOA or Past Practice

ARBITRABILITY – Which ever parties claims the grievance is not arbitrable goes first and has to prove the grievance cannot be arbitrated.



# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

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# CREATING YOUR SINGLE SHEET

## The ISSUE:

This is the issue that the Union placed in the original written grievance. Always draft this carefully and make sure it tracks the CBA/MOA language regarding grievance and arbitration.

The issue is the question that you are asking the Arbitrator to decide. Make sure the issue is framed correctly.

**ANSWERING THE ISSUE IS HOW YOU ARE GOING TO PREPARE AND CONSTRUCT YOUR CASE!**

# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

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### Exhibits

#### Employer

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# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

Witnesses can only testify to what they have personal knowledge of—what they saw, did, heard, said, touched, sensed.

Witnesses should testify to a necessary legal or unique factual element of your case.

How will the witness help your case?

How will the witness help you answer the issue favorable to your client?

Will the witness hurt my case?

- The fewer witnesses the better
- WOW & SET-UP witnesses.
- If you have the burden of proof, one of your first witnesses must be a WOW witness.
- Avoid having witnesses testify to the same facts—unless there is a credibility issue (he said/she said)
- **DECISION MAKER – MUST TESTIFY! MUST BE X-EXAMINED!**

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# ADVOCATE'S CASE ROAD MAP

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# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

How will the Exhibit help you answer the issue favorable to your case?

- Separation Document
- Bargaining History
- Audio and Video Recordings
- Photographs
- E-mails
- Letters
- Company records
- Witness Statements/Affidavits

## Demonstrative Exhibits

- Charts
- Chronology
- White Boards (TAKE PICTURE DURING HEARING!)

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# ADVOCATE'S CASE ROAD MAP

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# ADVOCATE'S CASE ROAD MAP

## DIFFERENCE BETWEEN THE ISSUE & THE THEME

The ISSUE is the question that the parties have agreed that the Arbitrator will decide.

The THEME is your client's answer to the ISSUE.

UNION – ISSUE: Did the Company violate Article XII Seniority?

“Yes, The Company violated the Grievants' seniority when Supervisor Elmer Fudd allowed the more junior Daffy Duck, his son-in-law, to choose his vacation schedule regularly for 4 months.”

# CREATING YOUR SINGLE SHEET

# ADVOCATE'S CASE ROAD MAP

How do you create a theme?

You should be able to explain why the Union/the Company wins  
IN A SINGLE SENTENCE. That is your theme!

ISSUE: Did the Company have just cause to terminate Roy Hobbs,  
and if so, what should be the remedy?

COMPANY

“**Yes**, After patiently progressing Roy Hobbs through the three contractual steps of progressive discipline within a 3-month period, the Company had just cause to **dismiss** the Grievant for unsatisfactory attendance.”

UNION

“**No**, The Company had no just cause to **terminate** long term employee Roy Hobbs because the Company failed to approve his medically substantiated absences and unjustly denied him FMLA leave.”

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# ADVOCATE'S CASE ROAD MAP

<p>Dismissal Misconduct "7 deadly sins" Accessed Confidential Customer Record</p>		<p>Did Comp. have <u>just cause</u> to terminate?</p> <p>Yes - Improperly accessed accounts w/out bus. authorization</p>	
<p><u>Comp</u></p> <p>Eric Silverman - OP (Decision Maker)</p> <p>Carmie Fernandez - Act 1 (Supervisor)</p> <p>Helga Trapp - Compliance</p>	<p><u>Union</u></p> <p>Greerant</p> <p>Greerant's Physician</p>	<p><u>Comp Exhibits</u></p> <ol style="list-style-type: none"> <li>1. CBC</li> <li>2. Separation Proposal</li> <li>3. Fernandez Memo</li> <li>4. Compliance Coverage</li> <li>5. Sister-in-Law Depo</li> </ol>	<p><u>Union</u></p> <p>Medical Records</p>
<p>Greerant violated me of Comp. 7 Deadly Sins. * Comp. Cont Trust Greerant</p> <p>* Accessed Family-In-Law's account 300 times between 4/15 - 8/28</p>		<p>Barbara Sweet Dismissal - <u>ON POINT</u></p>	



# WHAT YOUR SINGLE SHEET LOOKS LIKE

## JOHN DOE ARBITRATION CHRONOLOGICAL OUTLINE

- 10/17/09      Hired as a Delivery Driver with Hoptite Delivery Service.
- 03/25/13      Covered on Driving Policy
- 02/04/14      Covered on Driving Policy
- 07/17/14      Arrested and charged with DWI; failed breathalyzer.
- 07/19/14      Reported to work. Doe removed from the driving job.  
Unsatisfactory under Hoptite's Driving Record Review Policy because he (1) failed  
breathalyzer (2) charged with DWI and (3) charged with having an open container of alcohol  
in vehicle.
- 10/15/14      Plea Bargained to Open Container paid fine of \$500. DWI charge dismissed.
- 10/17/14      90 days to find non-driving job expires.
- 10/18/14      Management extends Doe's deadline to find a non-driving job until November 1, 2014.
- 11/01/04      Dismissed for failure to find a non-driving job.



# SINGLE SHEET PERSUASION

EXAMPLES

# HEARING NOTEBOOK

## Hearing Notebook

- Issue
- Opening Statement with Single Sheet
- Witness List (contact information)
- List of Exhibits (Admission Checklist)
- Grievance File
- Witness Outlines (Yours & Theirs)
- Arbitration Awards

Organize Exhibits by Witness (Pre-Mark if possible)

QUESTIONS?

