Guidelines for the Conduct of an Arbitration Proceeding

1. Setting an Arbitration Proceeding.
   a. Request for Arbitration by Party or Counsel. A request for arbitration may be initiated by either party (through their counsel, if they are represented by an attorney) by email or in writing to our office, with a copy of the document sent to the opposing side (through their counsel, if they are represented). A blank form is provided on this website; however, the use of that specific form is not required for the request and a letter or email will suffice if it includes contact information for both parties and their counsel, and answers the other questions set forth on the form.

   b. Arbitrator’s Response to Request. Our office will respond by confirming that the Notice & Request for Arbitration has been sent to each side (to the attorney for each side that is represented). Each side will need to promptly complete or respond to the Notice. We do not set a hearing date until the response period has ended, as we will need to know the kind of hearing to schedule at that time (by agreement or default): In-Person, Telephone or Document-Only.

   c. Action Upon Response to Notice. If the moving party (person requesting the arbitration) does not complete the Notice or provide the requested information by the time stated in the Notice, the matter will be dismissed. If the other party fails to respond and there is proof of delivery of the request and Notice, the matter may be treated as a default, in that the other side will be deemed to acquiesce in and not object to the relief sought and an appropriate order (Award of Arbitrator) will be completed either by the Arbitrator or proposed by the moving party. If the matter is contested, proposed dates and financial deposit information appropriate for the type of hearing will be provided to each side.

2. Type of Hearing.
   a. Types of Proceeding by Hearing. There are three types of arbitration proceeding and hearing: In-Person, Telephone, or Review on Documents Only. An In-Person hearing is required when testimony and exhibits will be offered, when the matter is complex or in the absence of an agreement of all parties and the Arbitrator to hold either a Telephone or Document-Only hearing. A Telephone hearing will suffice when there is a limited number of well-defined issues and/or a limited array of outcomes. Each of the parties and their attorneys may participate by telephone and give statements, in addition to written materials previously provided. A Documents-Only arbitration is used when a limited issue was inadvertently omitted from a settlement agreement, when both sides agree that limited or distinct issue(s) can be decided without further evidence or oral argument, or when both sides cannot agree on which language most accurately memorializes or gives effect to the attained agreement of the parties in the final papers.
b. **Discovery Process.** For In-Person and Telephone arbitration proceedings, each side should have completed their discovery such as to be ready to present the issue fully at the time the hearing date is set. If this has not occurred, the Arbitrator may establish a case schedule upon request of either side. In Documents-Only arbitration proceedings, drafts of the proposed documents and proposed language for the outcome on contested issues shall be presented by each side to the other prior to the arbitration hearing.

c. **Motions Practice.** If there is a disagreement as to any aspect of the arbitration proceeding prior to the hearing date, that issue shall be presented to the Arbitrator in the form of a written motion. The state and local Civil Rules of Procedure of the Superior Court in which the legal action is pending will be applied to such motions, except as modified by these Guidelines or as modified by written agreement of both sides. Notwithstanding, the Arbitrator will follow the doctrine of “notice pleadings” such that informality is permitted and procedural considerations shall minimized to have the least possible effect on the substantive outcomes of the issues being resolved.

d. **“Ex Parte” Communication.** In an arbitration proceeding, unlike Mediation or a Settlement Conference, it is of utmost importance to the fairness of the proceeding that each party receives a copy of each document and each communication with the neutral Arbitrator. Each e-mail and document should show on its face that the document has been provided to the other side. However, both sides are encouraged to communicate directly between themselves without copying the Arbitrator, in order to negotiate outcomes in advance, to narrow the issues or agree upon procedures for the hearing in advance of the hearing date. Such direct communications should be between the parties (to and from their attorneys, if they are represented) ONLY, as the Arbitrator should be unaware of the content of any settlement negotiations, proposals or offers.

3. **Pre-Arbitration Statements and Materials Offered (Evidence).**

   a. **Documents Provided.** If the initial written request for arbitration includes the information required by the form Notice & Request for Arbitration, it may suffice as a Pre-Arbitration Statement for the side requesting the proceeding. Otherwise, each side shall provide a written Pre-Arbitration Statement to the Arbitrator and the other side which outlines each of the issues, details the specific relief requested and attaches a copy of the supporting documents upon which the party will rely. If the supporting documents (exhibits and addenda) are numerous or lengthy (greater than 25 pages total), they shall be numbered or indexed or a Table of Contents provided as a cover sheet. Hard copies of the supporting documents should be sent to the arbitrator by mail, messenger, UPS or FedEx.

   b. **Time for Delivery of Documents.** Pre-Arbitration statements shall be provided to the Arbitrator and opposing side not later than one week prior to the arbitration date, unless another date (not later than two business days prior to the hearing) has been agreed upon by all sides or has been authorized by the Arbitrator. Responsive and Reply documents are neither required nor solicited, but if offered, should be exchanged not later than four days
prior to the hearing date, or later if agreed upon by all sides -- but not later than two business days prior to the hearing.

c. **Unified Document Packets.** The Pre-Arbitration Statement and supporting documents and the Response and supporting documents shall each be packaged into unified, free-standing packets. The Arbitrator shall not be required to download and compile documents individually from a series of individual files or emails sent to the office over a period of time.

d. **Additional Documentary Evidence.** At In-Person and Document-Only hearings, additional documentary evidence offered maybe objected to if the materials were previously available and were not provided, if they constitute a “surprise” to the other side, if the presentation is precluded by the Civil Rules or if their consideration would be prejudicial to the other side.

4. The Arbitration Hearing.

   a. **Document-Only Arbitration Procedure.** In a Document-Only arbitration, each side shall submit its proposed pleadings, documents, or language together with a cover Pre-Arbitration Statement describing the issues, the requested outcome and the reasons therefore. A briefing schedule and hearing date may be established, usually on an expedited timeframe. The Arbitrator reserves the right to request a telephone conference if anything is unclear, ambiguous, redundant, or inaccurate; or a verbal presentation would lead to a more complete, final or just result.

   b. **Arbitration Review of Final Papers to Effect a Civil Rule 2A Stipulation.** In a number of cases the parties reach an agreement on the issues, which terms are memorialized in the Civil Rule 2A Stipulation. However, once settled, those terms need to be transferred into the final documents that the court requires to be filed in order to close the case – Judgment or Decree, Findings of Fact and/or perhaps a Separation Agreement, Parenting Plan, Child Support Order or Qualified Domestic Relations Order.

   A “Review of Final Papers” arbitration may occur by documents-only, telephone conference or in-person. However, in procedure it differs from the other types of arbitration hearings in that no evidence is offered or taken, rather each side needs to draft (and circulate in advance) proposed documents as they would have them signed and entered, or provide alternative language that can be substituted for that offered by the other side and objected to. Each side may then argue why their draft(s) are more accurate or compliant with the CR2A Stipulation. The role of the arbitrator is simply to compare the documents or language offered to determine which most accurately mirrors the joint intentions and agreements of the parties. Approval of the documents by the Arbitrator may be evidenced by an independent, written Award of Arbitrator or by a certificate to be attached to each document attesting to its accuracy and approval by the Arbitrator.

   c. **Telephone Arbitration Procedure.**

      1. **Responsibility for Call.** Unless arranged otherwise, the side requesting the arbitration shall initiate the conference call on the date and at the time specified. The Arbitrator and other side shall provide their preferred telephone numbers in advance.
2. **Attendance at a Telephone Arbitration Hearing.** The parties are encouraged to participate in the arbitration proceeding, whether or not they are represented, as it is their case being resolved. If they are represented by counsel, it is usually best and most convenient that they meet in their own attorney’s office, which allows them to communicate privately with their counsel during the course of the hearing, as well as to hear everything that is stated to the Arbitrator. Persons other than the parties and counsel may listen in or participate in the hearing by advance notice and consent.

3. **The Telephone Arbitration Hearing.** For parties who are represented, the attorneys will have the primary speaking roles in the conference call. The parties may communicate with their counsel during the call by passing notes or by requesting a pause in the presentation to "sidebar" their attorney to insure that a point is properly or accurately made or supported. The Arbitrator may seek a clarification of a point by asking questions of counsel or a party to which the other side may then be permitted to respond of seek further clarification.

4. **Participation of the Parties.** In the interest of a fair and full hearing, whether or not the parties are represented, each party will have the opportunity to participate by making a narrative statement and/or answering specific questions. The other party (or counsel if they are represented) may then ask questions of clarification. The Rules of Evidence are usually not rigidly applied and there is the expectation of no “hard” cross-examination. The opportunity of a party to participate directly in the hearing is important, as it strengthens the process and the parties’ interests being heard.

d. **In-Person Arbitration Procedures.**
1. **Pre-Arbitration Statements.** Unless another schedule is agreed upon, Pre-Arbitration Statements shall be served upon each side and the Arbitrator no later than one week prior to the arbitration hearing date. Responses, if any (none are sought or required) shall be served not later than four days preceding the hearing date. Reply documents are not solicited or expected, but are permitted up to two business days prior to the date of the hearing. Late-served Responses or Replies may be excluded.

2. **Date and Time/Time Limits.** Each side shall communicate with one another to agree upon a hearing date and time limitations for the duration of the hearing. Ordinarily parties reserve time in ½ day or one day increments for the hearing. However, the Arbitrator charges only for actual time spent in preparation, attendance and the writing of the Award. There is no charge for administrative or travel time, unless the travel is outside the Pierce-King-Snohomish County areas.

3. **Location.** The hearing location shall be as agreed upon by both sides, or if they fail to agree, then by decision of the Arbitrator. The location is ordinarily the conference room of one of the lawyers, or as arranged by the Arbitrator if there are no attorneys in the case.

4. **Persons Who May Attend.** Only the Arbitrator, parties, counsel, witnesses, and court reporter or recorder (if requested and paid for by a party) may attend the hearing. Others
may attend as agreed upon or permitted by the Arbitrator in advance, after the request and response to the request by the other side has been received.

5. **Evidence Considered.** The Arbitrator will consider sworn statements and declarations, together with supporting documentation (accountings, appraisals, reports, and verifying documents). The parties may testify and respond to or clarify information, issues, their positions or the reasons therefore. Non-party witnesses shall be disclosed with a synopsis of their testimony at least two weeks in advance of the hearing. Subject to objection, the Arbitrator will listen to a brief, informal, narrative statement from each party during or at the conclusion of the hearing.

6. **Content of Prior Mediation Session.** The Arbitrator will consider prior communications and content of prior mediation sessions to the extent stipulated to by all sides.

7. **Offers of Proof/Stipulations.** Both sides are encouraged to communicate in advance of the hearing in order to stipulate to offers of proof, a consolidated Property Distribution Spreadsheet, agreed values, appraisals, actuarial calculations and the like. Such agreements usually eliminate the need for the personal attendance of some witnesses and may also substantially shorten the hearing time, as well.

8. **Special Needs or Arrangements.** Each side should notify our office as soon as reasonably possible of any special needs or arrangements (examples: need for an interpreter, physical disabilities, hearing impairment, existence of a current no-contact order, periodic need for nutrition, time limitations of a party or attorney on the scheduled date).

9. **Record of Proceeding.** Either side may, at their own expense, employ a person or means of audio or video recording of the proceeding or may employ a court reporter. The existence of such a record shall not imply that the decision is appealable other than as permitted by law. If such a record is made, the side requesting it shall be responsible for the cost as well as maintaining the original record. The other side shall be entitled to receive a verified copy at reasonable expense. In our experience, recording is seldom requested and rarely used.

10. **Preservation of Record.** Unless the both sides have waived their right of appeal, each side shall retain the originals or true copies of documents submitted to the Arbitrator for a period of one year following entry of the Judgment on Arbitrator’s Award or until the appeal process has been completed, whichever is later.

11. **Mediation Out-Takes.** Prior to or during the hearing, the Arbitrator and parties may agree to a brief mediation session or conversation in which to resolve certain of the issues or evidentiary questions. In such circumstances, any agreed outcomes will be reduced to writing and mediation rules of confidentiality shall apply. The agreement will be noted and included in the Arbitration Award or a Civil Rule 2A Stipulation, if appropriate.

12. **Format of Written Award(Decision).** The Arbitrator shall exercise judgment according to the complexity of the issues and the economy of the case as to whether to provide a written award in full, formal, legal pleading format or whether to provide an award in a
narrative, letter-style format, subject to later being expanded upon into pleading format at the request and expense of a party or attorney requesting. A duplicate, signed original of the written award will be provided to each party (or their attorney, if represented).

5. Order of Proceeding in an Arbitration Hearing.
   a. All persons politely introduce themselves by name, address and relation to the case;
   b. The Arbitrator ensures that all evidence and proposed pleadings offered have been shared in advance with all sides;
   c. The Arbitrator reviews the file to insure that there is a copy of the Order for Arbitration or a signed Stipulation for Arbitration and the signed Engagement Agreement;
   d. Pre-hearing motions are heard and ruled upon;
   e. The parties present are sworn to testify as witnesses;
   f. Each side provides an opening statement, summarizing the evidence and testimony upon which they will rely to support their positions, with the moving side going first;
   g. Starting with the moving side, each side calls witnesses, who are examined and then cross-examined by the other side;
   h. Rebuttal testimony and evidence is offered;
   i. Each side provides a brief closing argument which substantiates the requested outcomes by reference to the testimony given and the evidence offered and admitted;
   j. The Arbitrator may give an oral memorandum decision at the conclusion of the hearing, if possible; and
   k. The Arbitrator writes an Award (decision) of Arbitrator, to be circulated in most cases within 48 hours of the conclusion of the hearing. Signed, duplicate originals of the Award will be mailed to each side within 24-48 hours of issuance.

6. Time Required for Arbitrating Proceeding. Pre-hearing correspondence from and to the parties and counsel usually takes 30 minutes. It may take 30-60 minutes to review and analyze the Notices & Requests for Arbitration, Pre-arbitration statements and attached supporting documentation and any relevant prior mediation materials.

It may then take 30-60 minutes to conduct a Document-Only or Telephone arbitration hearing. In-Person hearings vary greatly in the amount of time they require, but are usually concluded in the range of 2-4 hours for the hearing itself.

It often takes 45-60 minutes for the Arbitrator to evaluate the testimony, evidence and documents and to write an informal letter Award (decision) of Arbitrator. However, if the issues are not singular or simple and for most In-Person hearings, it is usually necessary to have a formal written Arbitration Award in court pleading format, suitable for filing with the court or inclusion in a court order. Thus, in addition to the hearing time for an In-Person Arbitration hearing, writing a formal Award may take 1-2 hours to write and circulate, according to the complexity of the case and the number of issues decided.

7. Striking or Postponement of Hearing; Cancellation Fee of Arbitrator. The Arbitration hearing will not be postponed or continued except for good cause found by the Arbitrator. The Cancellation & Continuance Fee may be assessed against the party seeking or occasioning the cancellation or
postponement. In the event the hearing date is struck or continued at mutual request, both sides shall be equally responsible for the cancellation fee of the Arbitrator.

8. **Attorneys’ Fees, Arbitrator’s Fees and Costs of Arbitration Proceeding:** Attorneys’ fees and the cost of the arbitration shall be considered and awarded according to the requests of the parties, the merits of the claim, any agreement of the parties and the principles of law applicable to the type of proceeding. At the time of reserving the arbitration hearing date, each side shall remit a deposit toward the Arbitrator’s fees, which amount will be subject to refund if not fully used and/or awarded against a party in the Award.

9. **Motion for Reconsideration/Appeal or Modification of Award.** Each side retains the right to seek reconsideration of the Award. Information on the timelines and procedure to be followed is usually set forth in the Award. Unless the parties have agreed to waive the right to appeal or modify, either may do so according to the scope appropriate to the type of arbitration: Uniform Arbitration Act (Revised Code of Washington Chapter 7.04A), contract arbitration, or mandatory arbitration by court rule (state and local Mandatory Arbitration Rules – MARs and LMARS).

10. **Modification of Guidelines & Procedures.** These guidelines and procedures may be waived or modified upon agreement of all sides to the proceeding or by decision of the Arbitrator. Please advise our office in writing immediately (with a copy to the other side) if you have any questions whatsoever regarding these guidelines or if you seek a modification of any of the Guidelines for a particular case, stating what you would like changed and what provision you suggest in its stead.

These procedures have evolved from past experience in a vast multitude of cases. When taken together they lead to the best, most fair and economical process for all, with the best possible outcomes for all involved.

Sincerely,

Stephen M. Gaddis, Arbitrator