Labor Arbitration:
Nuts & Bolts Introduction

Handout

NY CLE Program

October 25, 2022
7:00-8:00 p.m.

Speakers:
Tiffany Ma, Esq.
Chris M. Kwok, Esq.

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Biography

Tiffany Ma has over 12 years of labor and employment experience, and over 1500 employment case experiences in New York across litigation, pre-litigation settlements, arbitration, contracts, handbook drafting, investigations, and advice and counseling. She has experience across both the defense and plaintiff's practice. Ms. Ma is the co-founder of Young & Ma LLP, an employment exclusive law firm, focusing primarily on servicing employees in large financial institutions and companies and small businesses in or working with those in the New York metropolitan area.

Ms. Ma appears regularly to litigate, arbitrate, or otherwise prosecute and defend in the United States Equal Employment Opportunity Commission; the United States District Court, Southern and Eastern Districts of New York; New York Supreme Court; American Arbitration Association; the Financial Industry Regulatory Authority; New York State Department of Human Rights; New York City Commission of Human Rights; New York State Department of Labor; and New York City Department of Consumer Affairs.

Chris M. Kwok is a well-known and highly sought after mediator of complex labor and employment disputes at JAMS Mediation, Arbitration and ADR Services. Mr. Kwok's stellar reputation stems from a 15-year career at the New York District Office of the U.S. Equal Employment Opportunity Commission (EEOC), where he mediated hundreds of employment disputes. During his tenure at the EEOC, Mr. Kwok also served for four years as supervisory ADR coordinator, where in addition to his own mediation work, he oversaw employment law mediations across all EEOC offices within the New York District Office region. Mr. Kwok is known for his ability to formulate creative and unique solutions to seemingly intractable employment disputes.

Labor Arbitration: Nuts & Bolts Introduction

Timed Agenda

Time:	Description:
7:00	Introductions / CLE non-traditional format requirements explained.
7:05	Why arbitrate? Contract v. elective arbitration
7:10	Initiating/Responding to an Arbitration
7:20	Labor and Employment Arbitration Rules – JAMS and AAA Preliminary Hearing and Case Management Plan
7:30	Case procedure – comparatives to SDNY/EDNY and New York State Supreme Court
7:40	Discovery Disputes
7:45	Elective Mediation within the Arbitral Process
	Evidentiary Hearing
7:50	Q&A

The Employment Arbitration Policy

Statement of Intent

values each of its employees and fosters good relations with, and among, all of its employees. recognizes, however, that disagreements occasionally occur between an individual employee and or between employees in a context that involves [1]

believes that the resolution of such disagreements is best accomplished by internal dispute resolution (with respect to eligible matters as described in the Handbook) and by external arbitration (with respect to all matters within the scope of this Policy). For these reasons, has adopted this Employment Arbitration Policy ("Policy"), which is applicable to all employment-related disputes, whether initiated by you or by as further described below. Arbitration shall be conducted either under the auspices of the Financial Industry Regulatory Authority, Inc. ("FINRA") or the American Arbitration Association ("AAA") as follows:

- Before the arbitration facilities of FINRA if you are, or were, a person associated with i.e., a member of FINRA ("Associated Person"), and your dispute, or any portion of it, arises out of or relates to your association with You're an Associated Person if you're FINRA registered, or applied for registration; you're an officer, director or branch manager of or you're engaged in investment banking or securities business. Keep in mind that you may be a Dual Employee, meaning you're employed by both and another affiliate (e.g., N.A.). If you're a Dual Employee and any aspect of your dispute arises out of or relates to your association with your entire dispute must be submitted to FINRA, including any dispute with your other, non- employer.
- Before the arbitration facilities of the AAA where you don't meet the criteria above for FINRA arbitration. This includes when you're a Dual Employee and no aspect of your dispute arises out of or relates to your association with Also, you must submit to AAA where you otherwise meet the criteria for FINRA arbitration under this Policy but FINRA declines the use of its facilities or the dispute is ineligible for arbitration before FINRA.

Employment with is a voluntary relationship for no definite period of time, and nothing in this Policy or any other document constitutes an express or implied contract of employment for any definite period of time.

This Policy doesn't constitute, nor should it be construed to constitute, a waiver by of its rights under the "employment-at-will" doctrine nor does it afford an employee or former employee any rights or remedies not otherwise available under applicable law.

Your eligibility and consideration for merit increases, incentive and retention awards, equity awards, or the payment of any other compensation to you, as well as your acceptance of employment with or your continued employment with shall constitute consideration for and assent to your obligations under this Policy.

Scope of Policy

This Policy applies to both you and to and makes arbitration the required and exclusive forum for the resolution of all employment-related disputes (other than disputes which by federal law are precluded from arbitration) between you and (including predecessors, successors and assigns, its current and former parents, subsidiaries and affiliates and its and their current and former officers, directors, employees and agents) which are based on legally protected rights (i.e., statutory, regulatory, contractual or common-law rights), including disputes based on legally protected rights that are submitted to but aren't resolved by the Dispute Resolution Procedure. Therefore, you are waiving your right to bring your disputes in court or to have your disputes heard by a jury. This Policy applies to both existing and future disputes, including any disputes based on conduct that occurred before this Policy. Subject to the remainder of this Section, these disputes include, without limitation, claims, demands or actions under Title VII of the Civil Rights Act of 1964 ("Title VII"), the Civil Rights Acts of 1866 and 1991, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act of 1990, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Worker Adjustment and Retraining Notification Act, and all amendments thereto, and any other federal, state or local statute, regulation or common-law doctrine

[1] refers to Inc., its subsidiaries and affiliates.

The Employment Arbitration Policy

regarding employment, employment discrimination, the terms and conditions of employment, termination of employment, compensation, breach of contract, defamation, or retaliation, or any claims arising under or related to the Separation Pay Plan.

Claims for Workers' Compensation or unemployment compensation benefits aren't covered by this Policy. Notwithstanding the foregoing, this Policy does not require arbitration of claims arising under Title VII or any tort related to or arising out of sexual assault or harassment ("the Referenced Claims") for employees (1) hired after the date the final regulations to the Fair Pay and Safe Workplaces Executive Order, Executive Order 1367 ("EO"), become effective, and (2) where the entity employing such employee contracts with the federal government and such contract precludes pre-dispute agreements to arbitrate the Referenced Claims; except that if the EO is no longer effective for any reason (whether rescinded or superseded by further Executive action, or invalidated by a court, or no longer effective for any other reason), the Referenced Claims shall be subject to arbitration under this Policy.

This Policy doesn't exclude the jurisdiction of the National Labor Relations Board ("NLRB"), the Equal Employment Opportunity Commission ("EEOC") and/or state and local human rights agencies to investigate alleged violations of the laws enforced by the EEOC and/or these agencies. You aren't waiving any right to file a charge of discrimination or other proceeding with, or participating in an investigation or other proceeding conducted by, any government, regulatory or self-regulatory agency, including (without limitation) the EEOC and/or state or local human rights agency. You do not need the prior authorization of to provide evidence or other information to any government, regulatory or self-regulatory agency, and you are not required to notify that you have done so. However, except as otherwise provided by applicable laws or regulations, you shall not be entitled to seek or receive any monetary compensation from as a result of any proceeding arising from the filing of a charge, and/or participating in an investigation resulting from the filing of a charge, with the EEOC and/or state or local human rights agency.

Nothing contained in this Policy is intended to prohibit or restrict you or from providing evidence or other information to any government, regulatory, or self-regulatory agency such as (without limitation) the Securities and Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC"), The Department of Justice ("DOJ"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), or the New York Stock Exchange ("NYSE") from participating in any reward program offered by any government, regulatory, or self-regulatory agency. You may also disclose confidential information, including trade secrets, to (a) any government, regulatory, or self-regulatory agency, including under Section 21F of the Securities and Exchange Act of 1934, Section 23 of the Commodity Exchange Act of 1936, or Section 7 of the Defend Trade Secrets Act of 2016 ("Defend Trade Secrets Act"), and the rules thereunder or (b) an attorney in connection with the reporting or investigation of a suspected violation of law or to an attorney or in a court filing under seal in connection with a retaliation or other lawsuit or proceeding, as permitted under the Defend Trade Secrets Act. You do not need the prior authorization of to make these disclosures or provide evidence or other information to any government, regulatory, or self-regulatory agency, and you are not required to notify that you have done so.

Claims covered under this Policy must be brought and adjudicated on an individual basis. Neither you nor may submit or maintain a class, collective or representative action for resolution under this Policy or in any forum.

To the maximum extent permitted by law, and except where expressly prohibited by law, arbitration on an individual basis pursuant to this Policy is the exclusive remedy for any employment-related claims which might otherwise be brought on a class, collective or representative action basis. Accordingly, you may not participate as a class or collective action representative or as a member of any class, collective or representative action, and will not be entitled to any recovery from a class, collective or representative action in any forum. Any disputes concerning the validity of this class, collective and representative action waiver will be decided by a court of competent jurisdiction, not by the arbitrator.

To the extent any dispute between you and is not subject to arbitration for any reason, the class, collective and representative action waiver set forth in this Policy still applies.

In the event this class, collective or representative action waiver is found to be unenforceable with respect to any claim, then any such claim brought on a class, collective or representative action basis must be filed in a court of competent jurisdiction, and such court shall be the exclusive forum for all such claims.

Nothing in this Policy shall prevent you or from seeking from any court of competent jurisdiction injunctive relief in aid of arbitration or to maintain the status quo prior to arbitration.

This Policy doesn't require that institute arbitration, nor is required to follow the steps of the Dispute Resolution Procedure, before taking disciplinary action of any kind, including termination of employment. However, if you disagree with any such disciplinary action, believe that such action violated your legally protected rights, and wish to pursue the dispute, you must institute proceedings in accordance with the Policy. The results of the arbitration process are final and binding on you and

Nothing in this Policy is intended to preclude your right to challenge the validity of this Policy on such grounds as may exist in law or equity.

Retaliation against employees who file a claim under this Policy, including claims regarding the validity of this Policy or any provision thereof, is expressly prohibited.

Arbitration rules and procedures

Arbitration under this Policy shall be conducted pursuant to the Employment Arbitration Rules and Mediation Procedures of the AAA or the rules for FINRA arbitration, in either case, "rules." has modified and expanded these rules and procedures in certain respects. In particular, provisions covering fees and costs have been modified so that many of the costs typically shared by the parties will be borne by

To the extent any of the rules or procedures set forth in this Policy are in conflict with the rules or procedures of FINRA or the AAA at the time of the filing of an arbitration claim, the rules and procedures of FINRA or the AAA shall govern.

1. Initiation of arbitration proceeding

All disputes, whether initiated by you or by must be timely filed in accordance with the applicable statute of limitations for the claim(s) alleged. To initiate arbitration you must send a written demand for arbitration to the Director of Employee Relations for the demand will be considered timely if filed or received by within the time period provided by the statute of limitations applicable to the claim(s) set forth in the demand. All demands, whether filed by you or by shall set forth a statement of the nature of the dispute, including the alleged act or omission at issue; the names of all persons involved in the dispute; the amount in controversy, if any; and the remedy sought. If you are an Associated Person or a Dual Employee, you also will be required to specify whether your dispute, or any remedy sought in the dispute, is related in any way to your association with Within 30 calendar days of receiving a demand, or as soon as possible thereafter, shall file the demand with the appropriate office of the AAA or FINRA. You and will also complete any other required forms for submission of the claim for arbitration, such as the Uniform Submission Agreement, when filing a claim with FINRA. For disputes subject to FINRA arbitration, you may initiate a claim with Human Resources as outlined herein or pursuant to FINRA's Code of Arbitration procedure, which can be found at **www.finra.org/ArbitrationMediation/Rules/CodeofArbitrationProcedure/index.htm**. The AAA's Employment Arbitration Rules and Mediation Procedures can be found at **www.adr.org/employment**.

2. Appointment of neutral arbitrator(s)

Neutral arbitrator(s) shall be appointed in the manner provided by AAA or FINRA rules, as applicable. However, it's intent that arbitrators be diverse, experienced and knowledgeable about employment-related claims.

3. Qualifications of neutral arbitrator(s)

No person shall serve as a neutral arbitrator in any matter in which that person has any financial, personal or other interest in the result of the proceeding, or in which that person has a relation to the underlying dispute, including any relation to the parties. Prior to accepting appointment, the prospective arbitrator(s) shall disclose any circumstance likely to prevent a prompt hearing or to raise an issue as to the arbitrator's bias, impartiality or independence. Upon receipt of such information, the AAA or FINRA, as applicable, either will replace that person or communicate the information to the parties for comment. Thereafter, the AAA or FINRA, as applicable, may disqualify that person, and its decision shall be conclusive. Vacancies shall be filled in accordance with the AAA or FINRA rules, as applicable.

4. Vacancies

The AAA or FINRA, as applicable, is authorized to substitute another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly.

5. Proceedings

The hearing shall be conducted by the arbitrator(s) in whatever manner will most expeditiously permit full presentation of evidence and arguments of the parties. The arbitrator(s) shall set the date, time and place of the hearing, notice of which must be given to the parties by the AAA or FINRA, as applicable, at least 30 calendar days

in advance unless the parties agree otherwise. Arbitration hearings shall be held in the closest available venue to your current work location (or for former employees, their last work location). Throughout this Policy there will be references to AAA or FINRA, but only one set of these rules applies to any particular proceeding. In the event the hearing can't reasonably be completed in one day, the arbitrator(s) will schedule the hearing to be continued on a mutually convenient date.

6. Representation

Any party may be represented by an attorney or other representative (excluding any supervisory employee) or by himself or herself. For an employee or former employee without representation, the AAA or FINRA, as applicable, may, upon request, provide reference to institutions that might offer assistance.

7. Confidentiality of and attendance at hearing

The arbitrator(s) shall maintain the confidentiality of the hearings unless the law provides to the contrary. The arbitrator(s) shall have the authority to exclude witnesses, other than a party and the party's representative(s), from the hearing during the testimony of any other witness. The arbitrator(s) also shall have the authority to decide whether any person who isn't a witness may attend the hearing.

8. Postponement

The arbitrator(s) for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative and shall grant such postponement when all of the parties agree thereto.

9. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator(s) may require a witness to testify under oath administered by any duly qualified person and, if it's required by law or requested by any party, shall do so.

10. Stenographic record

In the event a party requests a stenographic record, that party shall bear the cost of such record. If both parties request a stenographic record, the cost shall be borne equally by the parties. In the event the claimant requests a stenographic record, shall bear the cost of obtaining a copy of the record for itself. In the event requests a stenographic record, also shall bear the cost of providing a copy to the claimant.

11. Arbitration in the absence of a party

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator(s) shall require the party who's present to submit such evidence as the arbitrator(s) may require for the making of the award.

12. Discovery

Discovery requests shall be made pursuant to the rules of the AAA or FINRA, as applicable. Upon request of a party, the arbitrator(s) may order further discovery consistent with the applicable rules and the expedited nature of arbitration.

13. Prehearing motions

The arbitrator(s) shall consider and rule on prehearing motions, including dispositive motions. Any ruling regarding such motion shall be made consistent with Section 19 of this Policy.

14. Evidence

The arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered; strict conformity to legal rules of evidence shall not be necessary.

15. Evidence by affidavit and filing of documents

The arbitrator(s) may receive and consider the evidence of witnesses by affidavit but shall give it only such weight as the arbitrator(s) deems (deem) it entitled to after consideration of any objection made to its admission. All documents to be considered by the arbitrator(s) shall be filed at the hearing.

16. Closing of hearing

The arbitrator(s) shall ask whether the parties have any further proof to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the arbitrator(s) shall declare the hearing closed and the minutes thereof shall be recorded.

17. Waiver of procedures

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these procedures hasn't been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the right to object.

18. Time of award

The award shall be made promptly by the arbitrator(s) unless otherwise agreed by the parties or specified by law. The arbitrator(s) shall be instructed to make the award within 30 calendar days of the close of the hearing or as soon as possible thereafter.

19. Award

a. Form. The award shall be in writing and shall be signed by the arbitrator(s). If either party requests, such award shall be in a form consistent with the rules of the AAA or FINRA, as applicable. All awards shall be executed in the manner required by law. The award shall be final and binding upon the parties, and judicial review shall be limited as provided by law.

b. Scope of relief. The arbitrator(s) shall be governed by applicable federal, state and/or local law. The arbitrator(s) shall have the authority to award compensatory damages and injunctive relief to the extent permitted by applicable law. The arbitrator(s) may award punitive or exemplary damages or attorneys' fees where expressly provided by applicable law. The arbitrator(s) shall not have the authority to make any award that's arbitrary and capricious or to award to the costs of the arbitration that it's otherwise required to bear under this Policy.

c. No precedential effect. No arbitration finding, ruling, order, award or decision will have any preclusive effect as to any other issues or claims in any other arbitration or court proceeding unless the party asserting preclusion and the party against whom preclusion is asserted were also named parties in the original arbitration.

20. Delivery of award to parties

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address via certified mail, return receipt, personal service of the award, or the filing of the award in any manner that's permitted by law.

21. The Federal Arbitration Act and enforcement

This Policy shall be governed by the Federal Arbitration Act (Title 9 U.S.C.) ("FAA"). The award of the arbitrator may be enforced under the terms of the FAA and/or under the law of any state to the maximum extent possible. If a court determines that the award isn't completely enforceable, it shall be enforced and binding on both parties to the maximum extent permitted by law.

22. Judicial proceedings and exclusion of liability

a. Neither the AAA or FINRA, nor any arbitrator in a proceeding under this Policy, is a necessary party in judicial proceedings relating to the arbitration.

b. Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

23. Expenses and fees

Unless otherwise precluded by applicable law, expenses and fees shall be allocated as follows:

a. Filing fees. shall pay any filing fee required by the AAA or FINRA, as applicable.

b. Hearing fees and arbitrator fees. shall pay the hearing fee and arbitrator fee for the hearing.

c. Postponement/cancellation fees. Postponement and cancellation fees shall be payable, at the discretion of the arbitrator, by the party causing the postponement or cancellation.

d. Other expenses. The expenses of witnesses shall be paid by the party requiring the presence of such witnesses. All other ordinary and reasonable expenses of the arbitration, including hearing room expenses; travel expenses of the arbitrator, AAA or FINRA representatives, as applicable; and any witness produced at the arbitrator's direction, shall be paid completely by

e. Legal fees and expenses. Each side shall pay its own legal fees and expenses subject to Paragraph 23 (a) and (b) above and applicable law.

The allocation of expenses as provided for in items "a" through "d" may not be disturbed by the arbitrator except where the arbitrator determines that a party's claims were frivolous or were asserted in bad faith.

24. Serving of notice

Any notices or process necessary or proper for the initiation or continuation of an arbitration under these procedures, for any court action in connection therewith or for the entry of judgment on an award made under these procedures, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party. The AAA or FINRA, as applicable, and the parties also may use facsimile transmission, telex, telegram or other written forms of electronic communication to give the notices required by these procedures, provided that such notice is confirmed by the telephone or subsequent mailing to all affected parties. Service on the other party must be simultaneous with the filing and be made by the same means.

25. Time period for arbitration

Any proceeding under this Policy must be brought within the time period provided for within the statute(s) of limitations applicable to the claims asserted by the claimant.

26. Amendment or termination of arbitration policy

reserves the right to revise, amend, modify or discontinue the Policy at any time in its sole discretion with 30 calendar days' written notice. Such amendments may be made by publishing them in the Handbook or by separate release to employees and shall be effective 30 calendar days after such amendments are provided to employees and will apply prospectively only. *Your continuation of employment after receiving such amendments shall be deemed acceptance of the amended terms.*

27. Interpretation and application of procedure

Except as otherwise provided by this Policy, the arbitrator shall interpret and apply these procedures as they relate to the arbitrator's powers and duties; all other procedures shall be interpreted and applied by the AAA or FINRA, as applicable. Except as otherwise expressly agreed upon, and except as otherwise provided by this Policy, any dispute as to the arbitrability of a particular claim made pursuant to this Policy shall be resolved in arbitration.

28. Severability

If any part or provision of this Policy is held to be invalid, illegal or unenforceable, such holding won't affect the legality, validity or enforceability of the remaining parts and each provision of this Policy will be valid, legal and enforceable to the fullest extent permitted by law.

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NONDISCLOSURE, INVENTIONS ASSIGNMENT AND ARBITRATION AGREEMENT

In exchange for good and valuable consideration, including employment with , **INC.**, a Delaware corporation, its affiliates, successors or assigns (together the "Company") and the Company providing to me Confidential Information as defined herein, the Company and I, the "employee," hereby agree as follows:

1. At-Will Employment. I understand and acknowledge that my employment with the Company is for an unspecified duration and constitutes employment "at will." I also understand and acknowledge that any representation to the contrary is unauthorized and not valid unless obtained in writing and signed by an authorized representative of the Company. I further understand and acknowledge that my employment with the Company may be terminated, and I may resign, at any time for any reason or for no reason, at the option either of the Company or myself, with or without notice.

2. Confidential Information and Non-competition.

(a) Company Information. I hereby agree at all times during and following my employment with the Company to hold in strictest confidence and not to use, except for the benefit of the Company, or to disclose to any person, firm, or corporation without written authorization of the Company, any Confidential Information of the Company. I understand that "Confidential Information" means the following and any and all similar information furnished by the Company before or after the date of this Agreement, orally, in writing, or gathered by inspection, and regardless of whether or not specifically marked as "Confidential": information relating to the Company's past, present, or future research, development, or business affairs, such as trade secrets, inventions (whether or not patentable), software, software and technology architecture, networks, business methodologies, facilities, billing records, policies, financial and operational information, contracts, officer, director, and shareholder information, suppliers, client lists, marketing or sales prospects, projected projects, Company "know how", and all copies, reproductions, notes, analyses, compilations, studies, interpretations, summaries, and other documents, whether or not prepared by me. I also understand that "Confidential Information" does not include any of the foregoing items that have become publicly known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations with respect to the item or items involved.

(b) Former Employer Information. I hereby agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other person or entity for whom I have worked in the past, for whom I am now working, or for whom I may work during the term of my employment with the Company, and that I will not bring onto the premises of the Company any unpublished document or proprietary information or property belonging to any such employer, person, or entity unless consented to in writing by such employer, person, or entity. I represent and warrant that, except as set forth on **Exhibit A**, I am not subject to any agreement, understanding, or other duty (whether pursuant to any non-competition, non-solicitation, or confidentiality agreement or otherwise) that would in any way restrict or hinder the performance of my duties as an employee of the Company.

(c) Third Party Information. I recognize that the Company has received, and in the future will receive, the confidential or proprietary information of third parties subject to a duty of the Company to maintain the confidentiality of such information and to use it only for certain limited purposes. I hereby agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm, or corporation or to use it except as necessary in carrying out my work for the Company in accordance with the Company's agreements or other arrangements with any such third parties.

(d) Non-Competition Period. To the extent permitted by law in my state, I agree that for a period of twelve (12) months following the termination of my employment with the Company (the "Non-Competition Period"), I shall not, directly or indirectly, anywhere within Employee's Geographic Territory (as defined below) be employed by, own, manage, operate, join, control, finance, or participate in the ownership, management, operation, control, or financing of result in the inevitable disclosure of, the Company's trade secrets, proprietary information, or Confidential Information. "Employee's Geographic Territory" shall include any county within which the accounts or customers for which I have responsibility for are located and any county within the United States of America in which I provided any services, sold any products, worked, or otherwise had responsibility in the course and scope of my duties for the Company at any time during the twelve (12) month period preceding my date of separation from the Company. It is the Company's and my intent that this Section 2(d) shall be enforceable to the maximum extent

permitted by law in my state, but only to that extent. In the event that a portion of this Section 2(d) is deemed invalid, the remainder of the provision will remain enforceable.

3. Inventions.

(a) Inventions Retained and Licensed. I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company including those conceived, developed, or reduced to practice prior to execution of this agreement or which are owned by me (collectively referred to herein as "Prior Inventions"), or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with or in connection with any other service provided to the Company, I incorporate into a Company product, process, or machine a Prior Invention owned by me or in which I have an interest, the Company is hereby granted a nonexclusive, transferable, royalty-free, fully-paid, irrevocable, perpetual, world-wide license to make, have made, modify, use, and sell such Prior Invention as part of or in connection with such product, process, or machine.

(b) Assignment of Inventions. Subject to the following paragraph, I hereby agree that I have made or will promptly make full written disclosure to the Company and hereby assign to the Company, or its designee, all of my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, "know-how", discoveries, ideas, trademarks, and trade secrets, whether or not patentable or registrable under copyright, trademark, or similar laws, which I solely or jointly conceive, develop, or reduce to practice, or cause to be conceived or developed or reduced to practice, during the term of my employment with the Company (collectively referred to herein as "Inventions"), except as otherwise provided by applicable law. I understand and agree that the decision whether or not to commercialize or market any Invention is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to me as a result of the Company's efforts to commercialize or market any such invention.

(c) Notwithstanding the forgoing paragraph, the Company shall not own and the assignment obligation shall not apply to Inventions which are conceived or developed entirely on my own time and for which I do not use any equipment, supplies, facilities, or proprietary Information of the Company, Affiliates, or customers if such Inventions (a) do not relate to the current or reasonably anticipated business or research and development efforts of the Company, Affiliate, or customer, and (b) do not result from any work performed by me (alone or with others) for the Company.

(d) Maintenance of Records. I hereby agree to keep and maintain adequate and current written records of all Inventions made by me during my employment with the Company. The records will be in the form of notes, sketches, drawings, whether in electronic or hardcopy form, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

(e) Further Assurances. I hereby agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto; the execution of all applications, specifications, oaths, assignments, and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to such Inventions; and any copyrights, patents, mask work rights, or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable because of my mental or physical incapacity, death, absence, lack of cooperation, or any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

4. Returning Company Documents and Property. I hereby agree that, at the time of leaving the employ of the Company or at any other time requested by the Company, I will immediately deliver to the Company (and will not download, keep in my possession, recreate, or deliver to anyone else) any and all Confidential Information, devices, equipment, other documents or property, or reproductions in any medium of any aforementioned items developed by me or received by me pursuant to my relationship with the Company or otherwise belonging to the Company or its successors or assigns.

5. Notification of New Employer. In the event that I leave the employ of the Company, I hereby consent to notification by the Company to my new employer regarding my rights and obligations under this Agreement and any other

agreement by which I am bound.

6. Representations. I hereby represent that my employment with the Company and my performance of all the terms of this Agreement will not result in a breach of any agreement with a third party, including the breach of any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company or to refrain from competing with any third party. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict herewith.

7. Nonsolicitation. To the extent permitted by law in my state, I agree that, for a period of twelve (12) months following the termination of my employment with the Company, I shall not, directly or indirectly, (i) solicit, induce or attempt to induce any person or entity who is or was, as of the date of termination of my employment with the Company or at any time during the immediately preceding six (6) months, an employee, consultant, or independent contractor of the Company to terminate his, her or its employment or other relationship with the Company; or (iii) solicit, induce or attempt to induce any person or entity who is or was, as of the date of termination of my employment with the Company or at any time during the immediately preceding twelve (12) months, a customer of the Company with whom I personally had contact during my employment and with whom I had no relationship prior to my employment with the Company, to terminate any written or oral agreement or understanding with the Company. It is the Company's and my intent that this Section 7 shall be enforceable to the maximum extent permitted by law in my state, but only to that extent. In the event that a portion of this Section 7 is deemed invalid, the remainder of the provision will remain enforceable.

8. **ARBITRATION AGREEMENT.** The parties hereby agree to submit all disputes I might have against the Company, and all disputes the Company might have against me, to final, binding arbitration to the fullest extent permitted by law. This provision shall be referred to herein as the "ADR Agreement." The Federal Arbitration Act., 9 U.S.C. § 1 *et seq*., shall govern the interpretation and enforcement of this ADR Agreement. The statutory limitations period applicable to a claim asserted in a civil action shall apply to any such claim asserted in any arbitration proceeding under this ADR Agreement. Arbitration is commenced for limitations purposes by submitting the matter to the arbitral forum.

(a) Class and Collective Action Waiver. Notwithstanding any other provision of this ADR Agreement, any arbitration under this ADR Agreement must and will take place on an individual basis only. Class arbitrations and class actions are not agreed to or permitted under this ADR Agreement. Employee and the Company agree that, by entering into this ADR Agreement, employee and the Company each are waiving the right to participate in a class, collective or representative action for all employment-related disputes. As such, neither party may initiate a proposed class, collective or representative action against the other or participate in a class, collective or representative action (e.g., as a class member or aggrieved employee), including but not limited to *v.* *Inc*., Case No. , which is currently pending in the United States District Court for the Northern District of but in which no class or collective action has yet been certified. It is the intent of the parties that a court of competent jurisdiction (not an arbitrator) determine the enforceability of this paragraph to the extent there is a challenge to its enforceability. In the event that a portion of this provision, e.g., the prohibition on the right to participate in a representative action, is deemed invalid, the remainder of the provision and ADR Agreement will remain enforceable.

(b) Claims Covered. The disputes covered by this ADR Agreement shall include any claims, including but not limited to claims known or accrued as of the date of execution of this Agreement, under applicable local, state or federal law that any current or former employee might have against the Company that arise out of and/or are ancillary to the employment relationship including, but not limited to, all claims relating to hiring; wages, hours, or compensation; promotion; layoff; discharge; discipline; job placement; breach of actual or implied contract; claims of unlawful harassment and/or discrimination including, but not limited to, claims based on race, color, sex, pregnancy, religion, creed, ancestry, national origin, disability, marital status, veteran status, military status, age or any other protected class (including claims under Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family & Medical Leave Act, and any other local, state or federal law that deals with employment or employment discrimination); the Fair Labor Standards Act and any other federal, state, or local law that deals with wages or hours, including but not limited to any law providing for the recovery in whole or in part of civil or statutory penalties; denial of non-ERISA fringe benefits such as payroll, vacation, sick time, etc.; violations of public policy; wrongful termination; breach of contract; promissory estoppel; retaliation; negligence; common law and intentional torts (including, but not limited to, defamation, invasion of privacy, intentional infliction of emotional distress, assault and battery); violation of any federal, state, local or other governmental law, statute, regulation or ordinance that arises out of or is ancillary to the employment relationship; and any other common or statutory law claims that arise out of or are ancillary to the employment relationship. The disputes covered by this policy shall also

include any claims an employee might have against any officer, director, employee or agent of the Company, or any of the Company's subsidiaries, divisions and affiliates, if that claim in any way arises out of or is ancillary to the employment relationship. The disputes covered by this policy shall also include any claims under applicable local, state or federal law that the Company might have against the employee that arise out of or are ancillary to the employment relationship. Both the Company and the employee shall be precluded from bringing or raising in court or another forum any dispute that was or could have been submitted to binding arbitration.

(c) Claims Not Covered. Claims not covered by this ADR Agreement include those the employee might have for workers' compensation benefits, unemployment compensation benefits, and claims arising under any of the Company's employee welfare benefit and pension plans (i.e., ERISA claims). Also not covered by this ADR Agreement are claims by either party for injunctive or equitable relief to the extent required to prevent irreparable harm, including but not limited to claims under Sections 2, 3, 4 and 7 of this Agreement.

(d) Failure to Comply. With respect to any claim required to be submitted to arbitration under this ADR Agreement, should either the Company or the employee institute any legal action or administrative proceeding against the other by any method other than by arbitration and upon notice refuses to proceed in arbitration, then the responding party shall be entitled to recover from the initiating party all costs, expenses, and attorneys' fees incurred as a result of such action, including all costs, expenses, and attorneys' fees incurred in connection with a motion or petition to compel arbitration. If as a result of such a motion or petition, a court compels arbitration pursuant to this ADR Agreement, then the party seeking that order shall be entitled to its attorney's fees and costs incurred in pursuing that order or petition, and it is agreed that the court issuing the order or petition shall have jurisdiction to award such fees and costs immediately following the issuance of that order or petition and before the commencement or completion of the arbitration, and without regard to whether the party that successfully compels arbitration ultimately prevails on the claims to be arbitrated.

(e) Arbtiration Procedure. The employee must first attempt to resolve all disputes informally through internal human resource channels. If the dispute cannot be resolved informally, the employee must then submit the matter to final, binding arbitration before Judicial Arbitration and Mediation Services, Inc. ("JAMS"); provided, however, that if no JAMS office serves the venue where the arbitration is to take place according to subsection (1) below, the employee must submit the matter to the American Arbitration Association ("AAA"). The following shall apply to any arbitration under this ADR Agreement:

(1) Venue. Binding arbitration under this ADR Agreement shall be conducted in the county or, if no JAMS office serves that county, the state in which the employee was last principally employed by the Company, unless required by law to be conducted elsewhere, in which case it shall be conducted where required by law.

(2) Applicable Rules. The arbitration proceeding, including discovery, shall be conducted in accordance with the Federal Arbitration Act and the JAMS Employment Arbitration Rules and Procedures then in effect (hereafter "JAMS Rules") or, if proceeding before AAA as provided above, AAA's Employment Arbitration Rules and Mediation Procedures then in effect (hereafter "AAA Rules"). I understand that if I wish to receive a copy of the JAMS or AAA rules currently in effect, I may inform the Company in writing, and the Company will provide them to me before I execute this Agreement. I also understand that JAMS rules are available online at http://www.jamsadr.com/rules-employment-arbitration/ and AAA rules are available at http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004362&revision=latestreleased.

(3) Arbitrator Selection. The arbitration shall be conducted before a neutral arbitrator selected by all parties in accordance with JAMS Rules. The parties may also agree on an arbitrator.

(4) Cost Allocation. If required by applicable law, the Company shall pay all additional costs peculiar to the arbitration to the extent such costs would not otherwise be incurred in a court proceeding (for instance, the Company will, if required, pay the arbitrator's fees to the extent it exceeds Court filing fees).

(5) Attorney's Fees and Costs. Each party shall pay its own costs and attorneys' fees; however, the arbitrator shall have the authority to award costs and attorneys' fees to the prevailing party to the extent permitted by law.

(6) Written Decision. The arbitrator shall follow applicable law and, within thirty days after the conclusion of the arbitration, issue a written opinion setting forth the factual and legal bases for his or her decision.

(f) Duration. This ADR Agreement shall survive the termination of the employee's employment with the Company and applies to any dispute, whether it arises or is asserted before, during or after the termination of the employee's employment with the Company.

10. Entire Agreement. This Agreement sets forth the

entire agreement and understanding between the Company and me relating to the subject matter hereof and merges all prior discussions between us with respect to such subject matter.

11. Amendments. The parties hereby agree that, notwithstanding the provisions of the Electronic Signatures In Global and National Consumers Act, no modification of or amendment to the Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the parties. Any subsequent change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement.

12. Severability. If one or more of the provisions in this Agreement are deemed void or voidable under applicable law, then the remaining provisions will continue in full force and effect without the inclusion of any such provisions.

13. Successors and Assigns. I agree that I will not assign this Agreement or any rights and obligations hereunder to any third party. This Agreement will be binding upon my heirs, executors, administrators, and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

14. Headings. The section headings herein contained have been inserted for convenience and reference only and shall not be used to interpret, construe, or in any way affect the meaning or interpretation of the terms and provisions hereof.

15. Waiver. A waiver by any party hereto of any condition or the breach of any term, covenant, representation, or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall not be deemed or construed as a further or continuing waiver of any such condition or the breach of any other term, covenant, representation, or warranty set forth in this Agreement.

16. Survival. Sections 2-5 and 7-17 shall survive any termination or expiration of this Agreement.

17. Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS AGREEMENT, AND I UNDERSTAND AND AGREE TO ITS TERMS. I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY, AND HAVE NOT RELIED UPON ANY PROMISES OR REPRESENTATIONS OTHER THEN THOSE CONTAINED HEREIN. I ALSO ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY IF I SO CHOOSE REGARDING THIS AGREEMENT.

I UNDERSTAND I AM GIVING UP MY RIGHT TO A JURY TRIAL BY ENTERING INTO THIS AGREEMENT.

I UNDERSTAND I AM GIVING UP MY RIGHT TO COMMENCE OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION OR OTHER FORM OF REPRESENTATIVE ACTION AND INSTEAD AGREE TO ARBITRATE ANY EMPLOYMENT-RELATED DISPUTE ON AN INDIVIDUAL BASIS ONLY.

NOTE: SIGN HERE AND EXHIBIT A

Employee Signature:

_____

Print Name: _____

Date: _____

INC.:

By: _____
Its:

The American Arbitration Association
Management Conference Guide

Case Name:
Case Numb
Date: Augus
Time: 12:00
Arbitrator: J
Administrat

We provide this worksheet only as a guide. The Parties or the Arbitrator may not require that all items be incorporated into the schedule, nor are they precluded from adding items or amending them as they deem appropriate.

1. **Hearing on the Merits:**

   The parties and the Arbitrator should consider scheduling all necessary hearing dates at this time.

   Date(s): July 18-22, 2022 Time: _____a.m. p.m.

   Location: New York, NY at an office TBD.

   Approximate number of attendees at the hearing: 15 plus witnesses as called.

   The AAA can provide videoconferencing services through Zoom. If the parties and arbitrator agree to use the Zoom service, we would be happy to schedule and set up a test meeting(s) in advance to make sure all are comfortable using the technology. To find out more about Zoom's functionality, because it is a commercial product, professionally produced tutorials/written instructions can be found on its website at https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials.

2. **Pre-Hearing Mediation Attempt:**

   Mediation Completed By: _____

   In order to preserve the schedule, your arbitrator should calendar a date by when the parties can attempt pre-hearing mediation.

   The parties may contact the AAA if they are in agreement to explore the option of mediation at any point in time. Your case manager can help locate and schedule a mediator for your case.

3. **Specification of Claims and Counterclaims:**

   Claims: Deadline to Specify: _August 24, 2021____ Response: August 31, 2021

   Counterclaims: Deadline to Specify: _August 24, 2021_ Response: August 31, 2021

4. Date for Identification and Exchange of Witnesses:

Claimant: June 20, 2022 Respondent: June 20, 2022

5. Exchange of Documents/Discovery:

The parties may agree to utilize the AAA Discovery Protocols.

Discovery Requests Due By: October 4, 2021

Discovery Responses Due By: November 8, 2021

Depositions (Fact) Completed By: March 21, 2022

Identification of Expert, if any, By: April 11, 2022

Discovery Completed By: May 16, 2022

Discovery Disputes:

In the event the parties encounter any issues related to discovery, the standard procedure for resolving such disputes shall be: Meet and confer, and to the extent an agreement cannot be reached, contact the arbitrator.

6. Stipulations of Uncontested Facts (If Any):

Date: June 20, 2022

7. Advanced Exchange of Identification of Exhibits:

Date: July 1, 2022

Number of Copies to be made and brought to the hearing: Five

Each proposed exhibit shall be pre-marked for identification and sufficient copies brought to the hearing for the arbitrator(s). It is suggested that the parties attempt to create a joint exhibit notebook. Please be advised that the AAA does not need a copy of the parties' exhibits.

OPTION: The parties and arbitrator(s) agree to utilize the WebFile Hearing Exhibits space for transmission of hearing exhibits in lieu of exchanging hard or electronic copies of the exhibits.

8. Communication:

~~**OPTION 1 (All Communications to AAA for Transmittal to Arbitrator(s))**~~
~~Any and all documents to be filed with or submitted to the Arbitrator(s) outside the hearing shall be provided to the AAA for transmittal to the Arbitrator(s). Copies of said~~

~~documents shall also be sent to the opposing party(s). There shall be no direct oral or written communication between the parties and the Arbitrator(s), except at oral hearings.~~

OPTION 2 (Direct Exchange)
The parties agree to participate in Direct Exchange. Provided there is no ex parte communication with the Arbitrator(s), the parties may communicate directly with the Arbitrator(s) by submitting documents to the Arbitrator(s) and also sending copies to the other party(s) and to the AAA (except for hearing exhibits and discovery documents). Email submission of documents and email requests for action by the Arbitrator(s) are allowed, provided that the AAA and all parties also receive copies. There shall be no direct oral or written communication between the parties and the Arbitrator(s) except as contemplated by this Order. Any communication to the Arbitrator(s) shall be copied to the AAA.

9. Cybersecurity/Privacy:

Having reviewed the *AAA-ICDR Best Practices Guide for Maintaining Cybersecurity and Privacy* and discussing what specific precautions might be required with regard to cybersecurity, privacy, and data protection in order to ensure an appropriate level of security for this case, the following measures shall be implemented:

_____
_____
_____

10. Court Reporter:

Pursuant to the rules, any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party(s) and the AAA of these arrangements at least **three days in advance of the hearing**. The requesting party or parties shall pay the cost of the record. If the transcripts agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

YES NO **TO BE DETERMINED**

Requested by: Claimant Respondent Both Parties

11. Form of Award:

Pursuant to the rules, a reasoned opinion is required unless the parties agree otherwise. If a findings of fact and conclusion of law is required or requested, the parties may want to consider a deadline for the exchange of proposed awards between the parties and submission of proposed awards to the arbitrator.

12. Additional Management Conference Call:

YES NO

Date: (i) On or about December 12, 2022 and (ii) May 23, 2022 Time:

__TBD_____

13. Other Issues Discussed:

In accord with the intent that arbitration be efficient both in terms of costs and time, the Parties jointly propose that interrogatory requests be limited to no more than 25 each party; and that each party be permitted no more than 10 depositions, excluding expert discovery. The Parties also request that arrangements be made for the hearing to be in person if Covid-Safety Protocols would so permit at the time. The Parties also intend to execute and to submit to the Arbitrator for approval a Confidentiality Agreement that will govern the exchange of documents and information in discovery, as well as at the hearings, in accord with AAA procedures.

Deadline	**Event**
June 2, 2021	Exchange initial discovery requests - the parties agree that to the extent interrogatories are requested that they will be limited to 10. Nothing herein precludes either party from serving additional discovery requests following June 2.
July 27, 2021	On or before this date, the parties will meet and confer in good faith regarding any open discovery issues will discuss ESI (custodian, search terms, etc). (The specification of this date does not preclude the parties from earlier conferring on any issues that may arise.)
August 24, 2021	Status conference with Arbitrator - 2 PM ET - To the extent that there are any open issues regarding fact discovery, said issues will be argued and resolved during this conference. The scheduling of this conference does not preclude the parties from bringing discovery disputes to the Arbitrator before the conference date.
September 15, 2021-October 27, 2021	There will be a simultaneous identification of experts and the nature/basis of testimony on September 15, 2021; both parties will submit expert reports on October 13, 2021; and, if necessary, both parties will submit rebuttal expert reports on October 27, 2021.
January 7 and 12, 2022	On or before January 7, either party may file a letter – of no more than 3 single-spaced pages in length – seeking leave to file a motion for summary disposition. On or before January 12, either party may file a letter – of no more than 3 single-spaced pages in length – responding to the letter of the other seeking leave to file a motion for summary disposition.

January 14, 2022	End of fact and expert discovery (including all depositions and third-party discovery) and all discovery motions will have been filed prior to this date.
January 18, 2022	Status conference with the Arbitrator - 2 PM ET. The request(s) for leave to file a summary disposition motion will be resolved during this conference. In addition, the parties and the Arbitrator will discuss the scheduling of the hearing, to the extent that it has not yet been finalized - including how many days should be reserved for the hearing.
February 14, 2022-March 14, 2022	Motions for Summary Disposition(s), if any, will be submitted by any party on or before February 14, 2022; opposition papers will be submitted on or before March 7, 2022; and reply papers will be submitted on or before March 14, 2022.
April 15, 22 and 26, 2022	Assuming there is to be a hearing, the parties will exchange, on or before April 15, witness and exhibit lists. On or before April 22, the parties will exchange pre-hearing memos and will file any applications regarding evidentiary or procedural issues. On or before April 26, the parties will respond to the applications (regarding evidentiary or procedural issues) of the other.
April 27, 2022	A final pre-hearing conference with the Arbitrator will take place – 2 PM ET. All remaining evidentiary, procedural and logistical issues will be discussed.
May 2022	The parties and the Arbitrator are currently holding all of May, 2022 for the scheduling of the hearing. The parties should communicate as soon as they can – but no later than the August 24, 2021 conference – regarding proposed dates.

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

How to File Your Arbitration Case

Step 1. Check your contract (or agreement) to confirm jurisdiction.

In order to proceed with case administration, the ICDR® must verify, on a threshold level, whether we have the administrative jurisdiction. Check to see whether your contract or agreement provides for an arbitration clause which refers to either the AAA® (American Arbitration Association®) or the ICDR (International Centre for Dispute Resolution®). Typically, an arbitration clause is located towards the end of a contract. If the contract does contain the clause you may proceed to step 2. Otherwise, please see Step 1-1.

Step 1-1. You do not have a contract (or agreement) with the other side, the contract does not contain an arbitration clause, or it contains an arbitration clause but it does not refer to AAA or ICDR.

In these situations, the ICDR can proceed if the other side agrees. You may contact the other side(s) and jointly fill out a Submission to Arbitration, which can be found on our website. Once you have the complete Submission agreement form signed by all parties, you may proceed to Step 2.

Still not sure? For any enquiry regarding an arbitration clause, please contact the ICDR at any time.

Once you confirm the ICDR's jurisdiction, you may begin the arbitration process by getting together the following documents:

- Notice of Arbitration and/or a Statement of Claim explaining the nature of the dispute and the relief requested
- The contract with the arbitration clause that refers to the AAA or ICDR or the Submission agreement signed by all parties
- Any supporting documents or exhibits
- Appropriate filing fee

Step 3. File your case.

When you have all the above documents ready, you can file your case in any one of the following ways:

- Online: https://apps.adr.org/webfile
- Email box: casefiling@adr.org
- Facsimile: 1 877-304-8457 or +1 212-484-4178 (fax number outside the US)
- Mail: American Arbitration Association—Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, USA

Important Note: You must also send a copy of all documents (Notice of Arbitration and any supporting documents) to the other side and keep a copy for your records. Additional information about filing by mail can be found on our website.

Step 3. What happens next?

Initiation Letter: Within a few days of submitting all the necessary documents, you will receive an Initiation letter acknowledging the receipt of your filing. The Initiation letter contains important information including the date, time, and agenda for an administrative conference call, in which all parties may participate.

Administrative Conference Call: This conference call is important to establish effective conduct throughout the process. During this call, various administrative matters will be discussed, such as the selection method for the arbitrator(s), the possibility of mediation, and other issues. In cases where a party is unable or unwilling to participate, the ICDR may proceed, and all parties will be given an opportunity to participate with written comments. From this point on, your case manager will assist you regarding all administrative matters.

Important Note: Please keep in mind that since case managers must remain impartial and independent, they are not your legal representatives. Therefore, all communication from you to us must be made with notice to the other side (i.e., copying the other side in the email communication to us or via joint conference call). While ICDR staff cannot offer parties or their counsel legal advice, we can assist the parties in facilitating procedural solutions. Please do not hesitate to call or email us if you have any procedural or administrative question.

Step 4. Emergency Measures of Protection under Article 37

If you are in need of emergency relief prior to the constitution of the abitrator tribunal and the ICDR's International Dispute Resolution Procedures applies to the proceeding (see your arbitration clause), you may initiate an Article 37 proceeding.

You must notify the ICDR and all other parties in writing that you wish to invoke emergency relief under Article 37, clearly stating:

- The nature of the relief sought.
- The reasons why such relief is required on an emergency basis.
- The reasons why the party is entitled to such relief.
- That all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

Such notice may be given by email, facsimile transmission, or other reliable means. This type of request needs to be filed either simultaneously with the main dispute or anytime after the main dispute has been filed. Please find more detailed information about the process on our website.

EMPLOYMENT

Employment

Arbitration Rules and Mediation Procedures

AMERICAN ARBITRATION ASSOCIATION®

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Rules Amended and Effective November 1, 2009
Introduction Revised October 1, 2017

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Employment Arbitration Rules and Mediation Procedures

Introduction

Federal and state laws reflecting societal intolerance for certain workplace conduct, as well as court decisions interpreting and applying those statutes, have redefined responsible corporate practice and employee relations. Increasingly, employers and employees face workplace disputes involving alleged wrongful termination, sexual harassment, or discrimination based on race, color, religion, sex, sexual orientation, national origin, age and disability.

As courts and administrative agencies become less accessible to civil litigants, alternative dispute resolution (ADR) procedures have become more common in contracts of employment, personnel manuals, and employee handbooks as a means of resolving workplace disputes privately, promptly and economically. Millions of workers are now covered by employment ADR clauses administered by the American Arbitration Association (AAA).

The American Arbitration Association, a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, and all levels of government. Services are available through AAA headquarters in New York City and offices in major cities throughout the United States and internationally. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on various forms of alternative dispute resolution.

The Employment Due Process Protocol

The *Employment Due Process Protocol* was developed in 1995 by a special Task Force composed of individuals representing management, labor, employment, civil rights organizations, private administrative agencies, government, and the American Arbitration Association. The Due Process Protocol, which was endorsed

by the Association in 1995, seeks to ensure fairness and equity in resolving workplace disputes. It encourages mediation and arbitration of statutory disputes, provided there are due process safeguards. It conveys the hope that ADR will reduce delays caused by the huge backlog of cases pending before administrative agencies and the courts. The Due Process Protocol "recognizes the dilemma inherent in the timing of an agreement to mediate and/or arbitrate statutory disputes" but does not take a position on whether an employer can require a pre-dispute, binding arbitration program as a condition of employment.

The Due Process Protocol has been endorsed by organizations representing a broad range of constituencies. They include the American Arbitration Association, the American Bar Association Labor and Employment Section, the American Civil Liberties Union, the Federal Mediation and Conciliation Service, the National Academy of Arbitrators, and the National Society of Professionals in Dispute Resolution. The National Employment Lawyers Association has endorsed the substantive provisions of the Due Process Protocol.

It has been incorporated into the Report of the United States Secretary of Labor's *Task Force in Excellence in State and Local Government* and cited with approval in numerous court opinions.

AAA's Employment ADR Rules

On June 1, 1996, the Association issued National Rules for the Resolution of Employment Disputes (now known as the *Employment Arbitration Rules and Mediation Procedures*). The rules reflected the guidelines outlined in the Due Process Protocol and were based upon the AAA's California Employment Dispute Resolution Rules, which were developed by a committee of employment management and plaintiff attorneys, retired judges and arbitrators, in addition to Association executives. The revised rules were developed for employers and employees who wish to use a private alternative to resolve their disputes and included procedures which ensure due process in both the mediation and arbitration of employment disputes. The rules enabled parties to have complaints heard by an impartial person of their joint selection, with expertise in the employment field.

AAA's Policy on Employment ADR

The AAA's policy on employment ADR is guided by the state of existing law, as well as its obligation to act in an impartial manner. In following the law, and in the interest of providing an appropriate forum for the resolution of employment

disputes, the Association administers dispute resolution programs which meet the due process standards as outlined in its *Employment Arbitration Rules and Mediation Procedures* and the Due Process Protocol. If the Association determines that a dispute resolution program on its face substantially and materially deviates from the minimum due process standards of the *Employment Arbitration Rules and Mediation Procedures* and the Due Process Protocol, the Association may decline to administer cases under that program. Other issues will be presented to the arbitrator for determination.

Notification

If an employer intends to utilize the dispute resolution services of the Association in an employment ADR plan, it should at least 30 days prior to the planned effective date of the program: (1) notify the Association of its intention to do so; and (2) provide the Association with a copy of the employment dispute resolution plan. If an employer does not comply with this requirement, the Association reserves the right to decline its administrative services. Copies of all plans should be sent to the American Arbitration Association, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; Email: **casefiling@adr.org**.

Designing an ADR Program

The guiding principle in designing a successful employment ADR system is that it must be fair in fact and perception.

The American Arbitration Association encourages employers to consider the wide range of legally-available options to resolve workplace disputes outside the courtroom. A special emphasis is placed by the Association on encouraging the development of in-house dispute resolution procedures, such as open door policies, ombuds, peer review and internal mediation. The Association recommends an external mediation component to resolve disputes not settled by the internal dispute resolution process.

Programs which use arbitration as a final step may employ:

- pre-dispute, voluntary final and binding arbitration;
- pre-dispute, mandatory nonbinding arbitration;
- pre-dispute, mandatory final and binding arbitration; or
- post-dispute, voluntary final and binding arbitration.

Although the AAA administers binding arbitration systems that have been required as a condition of initial or continued employment, such programs must be consistent with the Association's *Employment Arbitration Rules and Mediation Procedures* and the *Employment Due Process Protocol*.

Specific guidance on the responsible development and design of employment ADR systems is contained in the Association's publication, *Resolving Employment Disputes: A Practical Guide*, which is available from the AAA's website, **www.adr.org**.

Types of Disputes Covered

These dispute resolution procedures were developed for arbitration agreements contained in employee personnel manuals, an employment application of an individual employment agreement, independent contractor agreements for workplace disputes and other types of employment agreements or workplace agreements, or can be used for a specific dispute. They do not apply to disputes arising out of collective bargaining agreements.

Employment Arbitration Rules and Mediation Procedures

1. Applicable Rules of Arbitration

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter "AAA") or under its *Employment Arbitration Rules and Mediation Procedures* or for arbitration by the AAA of an employment dispute without specifying particular rules*. If a party establishes that an adverse material inconsistency exists between the arbitration agreement and these rules, the arbitrator shall apply these rules.

If, within 30 days after the AAA's commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 60 days to permit the party to obtain a stay of arbitration from the court. These rules, and any amendment of them, shall apply in the form in effect at the time the demand for arbitration or submission is received by the AAA.

* *The National Rules for the Resolution of Employment Disputes have been re-named the Employment Arbitration Rules and Mediation Procedures. Any arbitration agreements providing for arbitration under its National Rules for the Resolution of Employment Disputes shall be administered pursuant to these Employment Arbitration Rules and Mediation Procedures.*

2. Notification

An employer intending to incorporate these rules or to refer to the dispute resolution services of the AAA in an employment ADR plan, shall, at least 30 days prior to the planned effective date of the program:

- **i.** notify the Association of its intention to do so and,
- **ii.** provide the Association with a copy of the employment dispute resolution plan.

Compliance with this requirement shall not preclude an arbitrator from entertaining challenges as provided in Section 1. If an employer does not comply with this requirement, the Association reserves the right to decline its administrative services.

3. AAA as Administrator of the Arbitration

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

4. Initiation of Arbitration

Arbitration shall be initiated in the following manner.

a. The parties may submit a joint request for arbitration.

b. In the absence of a joint request for arbitration:

(i) The initiating party (hereinafter "Claimant[s]") shall:

(1) File a written notice (hereinafter "Demand") of its intention to arbitrate at any office of the AAA, within the time limit established by the applicable statute of limitations. Any dispute over the timeliness of the demand shall be referred to the arbitrator. The filing shall be made in duplicate, and each copy shall include the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and requested hearing location.

(2) Simultaneously provide a copy of the Demand to the other party (hereinafter "Respondent[s]").

(3) Include with its Demand the applicable filing fee, unless the parties agree to some other method of fee advancement.

(ii) The Respondent(s) may file an Answer with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the Demand. The Answer shall provide the Respondent's brief response to the claim and the issues presented. The Respondent(s) shall make its filing in duplicate with the AAA, and simultaneously shall send a copy of the Answer to the Claimant. If no answering statement is filed within the stated time, Respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(iii) The Respondent(s):

(1) May file a counterclaim with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the Demand. The filing shall be made in duplicate. The counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and the remedy sought.

(2) Simultaneously shall send a copy of any counterclaim to the Claimant.

(3) Shall include with its filing the applicable filing fee provided for by these rules.

(iv) The Claimant may file an Answer to the counterclaim with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the counterclaim. The Answer shall provide Claimant's brief response to the counterclaim and the issues presented. The Claimant shall make its filing in duplicate with the AAA, and simultaneously shall send a copy of the Answer to the Respondent(s). If no answering statement is filed within the stated time, Claimant will be deemed to deny the counterclaim. Failure to file an answering statement shall not operate to delay the arbitration.

c. The form of any filing in these rules shall not be subject to technical pleading requirements.

5. Changes of Claim

Before the appointment of the arbitrator, if either party desires to offer a new or different claim or counterclaim, such party must do so in writing by filing a written statement with the AAA and simultaneously provide a copy to the other party(s), who shall have 15 days from the date of such transmittal within which to file an answer with the AAA. After the appointment of the arbitrator, a party may offer a new or different claim or counterclaim only at the discretion of the arbitrator.

6. Jurisdiction

a. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

b. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

c. A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

7. Administrative and Mediation Conferences

Before the appointment of the arbitrator, any party may request, or the AAA, in its discretion, may schedule an administrative conference with a representative

of the AAA and the parties and/or their representatives. The purpose of the administrative conference is to organize and expedite the arbitration, explore its administrative aspects, establish the most efficient means of selecting an arbitrator, and to consider mediation as a dispute resolution option. There is no administrative fee for this service.

At any time after the filing of the Demand, with the consent of the parties, the AAA will arrange a mediation conference under its Mediation Procedures to facilitate settlement. The mediator shall not be any arbitrator appointed to the case, except by mutual written agreement of the parties. There is no additional filing fee for initiating a mediation under the AAA Mediation Procedures for parties to a pending arbitration.

8. Arbitration Management Conference

As promptly as practicable after the selection of the arbitrator(s), but not later than 60 days thereafter, an arbitration management conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the Arbitration Management Conference will be conducted by telephone conference call rather than in person. At the Arbitration Management Conference the matters to be considered shall include, without limitation:

- **i.** the issues to be arbitrated;
- **ii.** the date, time, place, and estimated duration of the hearing;
- **iii.** the resolution of outstanding discovery issues and establishment of discovery parameters;
- **iv.** the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- **v.** the exchange of stipulations and declarations regarding facts, exhibits, witnesses, and other issues;
- **vi.** the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
- **vii.** the value of bifurcating the arbitration into a liability phase and damages phase;
- **viii.** the need for a stenographic record;
- **ix.** whether the parties will summarize their arguments orally or in writing;
- **x.** the form of the award;
- **xi.** any other issues relating to the subject or conduct of the arbitration;
- **xii.** the allocation of attorney's fees and costs;

xiii. the specification of undisclosed claims;

xiv. the extent to which documentary evidence may be submitted at the hearing;

xv. the extent to which testimony may be admitted at the hearing telephonically, over the internet, by written or video-taped deposition, by affidavit, or by any other means;

xvi. any disputes over the AAA's determination regarding whether the dispute arose from an individually-negotiated employment agreement or contract, or from an employer plan (see Costs of Arbitration section).

The arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

There is no AAA administrative fee for an Arbitration Management Conference.

9. Discovery

The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.

The AAA does not require notice of discovery related matters and communications unless a dispute arises. At that time, the parties should notify the AAA of the dispute so that it may be presented to the arbitrator for determination.

10. Fixing of Locale (the city, county, state, territory, and/or country of the Arbitration)

If the parties disagree as to the locale, the AAA may initially determine the place of arbitration, subject to the power of the arbitrator(s), after their appointment to make a final determination on the locale. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration.

11. Date, Time and Place (the physical site of the hearing within the designated locale) of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

12. Number, Qualifications and Appointment of Neutral Arbitrators

a. If the arbitration agreement does not specify the number of arbitrators or the parties do not agree otherwise, the dispute shall be heard and determined by one arbitrator.

b. Qualifications

i. Neutral arbitrators serving under these rules shall be experienced in the field of employment law.

ii. Neutral arbitrators serving under these rules shall have no personal or financial interest in the results of the proceeding in which they are appointed and shall have no relation to the underlying dispute or to the parties or their counsel that may create an appearance of bias.

iii. The roster of available arbitrators will be established on a non-discriminatory basis, diverse by gender, ethnicity, background, and qualifications.

iv. The AAA may, upon request of a party within the time set to return their list or upon its own initiative, supplement the list of proposed arbitrators in disputes arising out of individually-negotiated employment contracts with persons from the Commercial Roster, to allow the AAA to respond to the particular need of the dispute. In multi-arbitrator disputes, at least one of the arbitrators shall be experienced in the field of employment law.

c. If the parties have not appointed an arbitrator and have not provided any method of appointment, the arbitrator shall be appointed in the following manner:

i. Shortly after it receives the Demand, the AAA shall send simultaneously to each party a letter containing an identical list of names of persons chosen from the Employment Dispute Resolution Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.

ii. If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

iii. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

13. Party Appointed Arbitrators

a. If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed.

b. Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-16 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-16(a) that the party-appointed arbitrators are to be non-neutral and need not meet those standards. The notice of appointment, with the name, address, and contact information of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

c. If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.

d. If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 15 days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

a. If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.

b. If no period of time is specified for appointment of the chairperson and the party-appointed arbitrators or the parties do not make the appointment within 15 days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

c. If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

15. Disclosure

a. Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

b. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

c. In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-15 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

16. Disqualification of Arbitrator

a. Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

- **i.** partiality or lack of independence,
- **ii.** inability or refusal to perform his or her duties with diligence and in good faith, and
- **iii.** any grounds for disqualification provided by applicable law. The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be nonneutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

b. Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

17. Communication with Arbitrator

a. No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to Section R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

b. Section R-17(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-16(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-16(a), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-17(a) should nonetheless apply prospectively.

18. Vacancies

a. If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with applicable provisions of these Rules.

b. In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

c. In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

19. Representation

Any party may be represented by counsel or other authorized representatives. For parties without representation, the AAA will, upon request, provide reference to institutions which might offer assistance. A party who intends to be represented shall notify the other party and the AAA of the name and address of the representative at least 10 days prior to the date set for the hearing or conference at which that person is first to appear. If a representative files a Demand or an Answer, the obligation to give notice of representative status is deemed satisfied.

20. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcripts agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

21. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

22. Attendance at Hearings

The arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator also

shall have the authority to decide whether any person who is not a witness may attend the hearing.

23. Confidentiality

The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.

24. Postponements

The arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on his or her own initiative.

25. Oaths

Before proceeding with the first hearing, each arbitrator shall take an oath of office. The oath shall be provided to the parties prior to the first hearing. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

26. Majority Decision

All decisions and awards of the arbitrators must be by a majority, unless the unanimous decision of all arbitrators is expressly required by the arbitration agreement or by law.

27. Dispositive Motions

The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.

28. Order of Proceedings

A hearing may be opened by: (1) recording the date, time, and place of the hearing; (2) recording the presence of the arbitrator, the parties, and their representatives, if any; and (3) receiving into the record the Demand and the Answer, if any. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination.

With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute. When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including web conferencing, internet communication, telephonic conferences and means other than an in-person presentation of evidence. Such alternative means must still afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and when involving witnesses, provide that such witness submit to direct and cross-examination.

The arbitrator, in exercising his or her discretion, shall conduct the proceedings with a view toward expediting the resolution of the dispute, may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

29. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be based solely on the default of a party. The arbitrator shall require the party who is in attendance to present such evidence as the arbitrator may require for the making of the award.

30. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party or arbitrator is absent, in default, or has waived the right to be present, however "presence" should not be construed to mandate that the parties and arbitrators must be physically present in the same location.

An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The arbitrator may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party is absent, in default, or has waived the right to be present.

If the parties agree or the arbitrator directs that documents or other evidence may be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator, unless the parties agree to a different method of distribution. All parties shall be afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

31. Inspection

Upon the request of a party, the arbitrator may make an inspection in connection with the arbitration. The arbitrator shall set the date and time, and the AAA shall notify the parties. In the event that one or all parties are not present during the inspection, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

32. Interim Measures

At the request of any party, the arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court, as stated in Rule 39(d), Award.

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

33. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Rule 30 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon closing of the hearing.

34. Reopening of Hearing

The hearing may be reopened by the arbitrator upon the arbitrator's initiative, or upon application of a party for good cause shown, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

35. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, upon the appointment of the arbitrator, the arbitrator shall specify a fair and equitable procedure.

36. Waiver of Objection/Lack of Compliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state objections thereto in writing or in a transcribed record, shall be deemed to have waived the right to object.

37. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any extension.

38. Serving of Notice

a. Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party, or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

b. The AAA, the arbitrator, and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (e-mail), or other methods of communication.

c. Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

39. The Award

a. The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator. Three additional days are provided if briefs are to be filed or other documents are to be transmitted pursuant to Rule 30.

b. An award issued under these rules shall be publicly available, on a cost basis. The names of the parties and witnesses will not be publicly available, unless a party expressly agrees to have its name made public in the award.

c. The award shall be in writing and shall be signed by a majority of the arbitrators and shall provide the written reasons for the award unless the parties agree otherwise. It shall be executed in the manner required by law.

d. The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with applicable law. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Rules 43, 44, and 45 in favor of any party and, in the event any administrative fees or expenses

are due the AAA, in favor of the AAA, subject to the provisions contained in the Costs of Arbitration section.

e. If the parties settle their dispute during the course of the arbitration and mutually request, the arbitrator may set forth the terms of the settlement in a consent award.

f. The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any manner that may be required by law.

g. The arbitrator's award shall be final and binding.

40. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto. If applicable law requires a different procedural time frame, that procedure shall be followed.

41. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at that party's expense, certified copies of any papers in the AAA's case file that may be required in judicial proceedings relating to the arbitration.

42. Applications to Court

a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

b. Neither the AAA nor any arbitrator in a proceeding under these rules is or shall be considered a necessary or proper party in judicial proceedings relating to the arbitration.

c. Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

d. Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

43. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The AAA administrative fee schedule in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

AAA fees shall be paid in accordance with the Costs of Arbitration section. The AAA may, in the event of extreme hardship on any party, defer or reduce the administrative fees. (To ensure that you have the most current information, see our website at **www.adr.org**).

44. Neutral Arbitrator's Compensation

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator. Payment of the arbitrator's fees and expenses shall be made by the AAA from the fees and moneys collected by the AAA for this purpose.

Arbitrator compensation shall be borne in accordance with the Costs of Arbitration section.

45. Expenses

Unless otherwise agreed by the parties or as provided under applicable law, the expenses of witnesses for either side shall be borne by the party producing such witnesses.

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator shall be borne in accordance with the Costs of Arbitration section.

46. Deposits

The AAA may require deposits in advance of any hearings such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting and return any unexpended balance at the conclusion of the case.

47. Suspension for Non-Payment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend or terminate the proceedings.

48. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be resolved by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other procedures shall be interpreted and applied by the AAA.

AAA Administrative Fees for Employment/Workplace Cases

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT ***www.adr.org/employmentfeeschedule.***

Optional Rules for Emergency Measures of Protection

O-1. Applicability

Where parties by special agreement or in their arbitration clause have adopted these rules for emergency measures of protection, a party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile transmission, or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

O-2. Appointment of Emergency Arbitrator

Within one business day of receipt of notice as provided in Section O-1, the AAA shall appoint a single emergency arbitrator from a special AAA panel of emergency arbitrators designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed in the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

O-3. Schedule

The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone conference or on written submissions as alternatives to a formal hearing.

O-4. Interim Award

If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief, and that such party is entitled to

such relief, the emergency arbitrator may enter an interim award granting the relief and stating the reasons therefore.

O-5. Constitution of the Panel

Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.

O-6. Security

Any interim award of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.

O-7. Special Master

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in Section O-1 of this article and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.

O-8. Costs

The costs associated with applications for emergency relief shall be apportioned in the same manner as set forth in the Costs of Arbitration section.

Employment Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association (AAA) or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedures, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a Request for Mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for Mediation may also be filed online via AAA WebFile® at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- **i.** A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- **ii.** The names, regular mail addresses, email addresses (if available), and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- **iii.** A brief statement of the nature of the dispute and the relief requested.
- **iv.** Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in "mediation by voluntary submission". Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

M-3. Fixing of Locale (the city, county, state, territory and, if applicable, country of the mediation)

i. When the parties' agreement to mediate is silent with respect to locale and the parties are unable to agree upon a locale, the AAA shall have the authority to consider the parties' arguments and determine the locale.

ii. When the parties' agreement to mediate requires a specific locale, absent the parties' agreement to change it, the locale shall be that specified in the agreement to mediate.

iii. If the reference to a locale in the agreement to mediate is ambiguous, the AAA shall have the authority to consider the parties' arguments and determine the locale.

M-4. Representation

Any party may participate without representation (pro se), or by any representative of that party's choosing, or by counsel, unless such choice is prohibited by applicable law. A party intending to have representation shall notify the other party and the AAA of the name, telephone number and address, and email address if available of the representative.

M-5. Appointment of the Mediator

Parties may search the online profiles of the AAA's Panel of Mediators at **www.aaamediation.org** in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

i. Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.

ii. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable to that party. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.

iii. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-6. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-7. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-5.

M-8. Duties and Responsibilities of the Mediator

i. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.

ii. The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications

may be conducted via telephone, in writing, via email, online, in person or otherwise.

iii. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

iv. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

v. In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.

vi. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

vii. The mediator shall set the date, time, and place for each session of the mediation conference. The parties shall respond to requests for conference dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established conference schedule. The AAA shall provide notice of the conference to the parties in advance of the conference date, when timing permits.

M-9. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference. Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-10. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-11. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- **i.** Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- **ii.** Admissions made by a party or other participant in the course of the mediation proceedings;
- **iii.** Proposals made or views expressed by the mediator; or
- **iv.** The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-12. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-13. Termination of Mediation

The mediation shall be terminated:

- **i.** By the execution of a settlement agreement by the parties; or
- **ii.** By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- **iii.** By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- **iv.** When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-14. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures. Parties to a mediation under these procedures may not call the mediator, the AAA or AAA employees as a witness in litigation or any other proceeding relating to the mediation. The mediator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

M-15. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-16. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-17. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne by the company unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-18. Cost of the Mediation

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT ***www.adr.org/employmentfeeschedule.***

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LABOR

Labor Arbitration Rules

(Including Expedited Labor Arbitration Rules)

American Arbitration Association®

Available online at **adr.org/labor**

Rules Amended and Effective July 1, 2013
Fee Schedule Amended and Effective January 1, 2019

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Labor Arbitration Rules
(Including Expedited Labor Arbitration Rules)

Introduction

Every year, labor and management enter into thousands of collective bargaining agreements. Virtually all of these agreements provide for arbitration of unresolved grievances. For decades, the American Arbitration Association® (AAA) has been a leading administrator of labor-management disputes.

The American Arbitration Association is a public-service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Arbitration is a tool of industrial relations. Like other tools, it has limitations as well as advantages. In the hands of an expert, it produces useful results. When abused or made to do things for which it was never intended, the outcome can be disappointing. For these reasons, all participants in the process — union officials, employers, personnel executives, attorneys, and the arbitrators themselves — have an equal stake in orderly, efficient, and constructive arbitration procedures. The AAA's Labor Arbitration Rules provide a time-tested method for efficient, fair, and economical resolution of labor-management disputes. By referring to them in a collective bargaining agreement, the parties can take advantage of these benefits.

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them.

For relatively uncomplicated grievances, parties who use the labor arbitration services of the American Arbitration Association may agree to use expedited procedures that provide a prompt and inexpensive method for resolving disputes. This option responds to a concern about rising costs and delays in processing grievance arbitration cases. The AAA's Expedited Labor Arbitration Procedures, by eliminating or streamlining certain steps, are intended to resolve cases within a month of the appointment of the arbitrator. The procedures are in the following pages.

Labor Arbitration Rules

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever, in a collective bargaining agreement or submission, they have provided for arbitration by the American Arbitration Association (hereinafter the AAA) or under its rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules.

2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

3. Jurisdiction

a. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.

b. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

c. A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

4. Panel of Neutral Labor Arbitrators

The AAA shall establish and maintain a National Roster of Labor Arbitrators and shall appoint arbitrators as provided in these rules.

5. Initiation under an Arbitration Clause in a Collective Bargaining Agreement

Arbitration under an arbitration clause in a collective bargaining agreement under these rules may be initiated by either party in the following manner:

a. by giving written notice to the other party of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, including phone number and email address, the remedy sought, and the hearing locale requested.

b. by filing at any regional office of the AAA a copy of the notice, together with a copy of the collective bargaining agreement or other relevant documents that relate to the dispute, including the arbitration provisions, together with the appropriate filing fee as provided in the schedule included with the rules. After the arbitrator is appointed, no new or different claim may be submitted except with the consent of the arbitrator and all other parties.

6. Answer

The party upon whom the demand for arbitration is made may file an answering statement with the AAA within 10 days after notice from the AAA, simultaneously sending a copy to the other party. If no answer is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answer shall not operate to delay the arbitration.

7. Initiation under a Submission

Parties to any collective bargaining agreement may initiate an arbitration under these rules by filing at any regional office of the AAA a copy of a written agreement to arbitrate under these rules (submission), signed by the parties and setting forth the nature of the dispute, the names and addresses of all other parties, including phone number and email address, the remedy sought and the hearing locale requested.

8. Fixing of Locale

The parties may mutually agree on the geographic region (locale) where the arbitration is to be held. If the locale is not designated in the collective bargaining agreement or submission, and if the parties disagree as to the locale, the AAA may initially determine the place of arbitration, subject to the power of the arbitrator(s), after their appointment, to make a final determination on the locale. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration.

9. Qualifications of Arbitrator

Any neutral arbitrator appointed pursuant to Section 10, 11, or 12, or selected by mutual agreement of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section 15. If the parties specifically agree in writing, the arbitrator shall not be subject to disqualification for those reasons. Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section 15.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party appointed.

10. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall submit simultaneously to each party an identical list of names of persons chosen from the National Roster of Labor Arbitrators. The Parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party shall have 10 days from the transmittal date in which to strike names objected to, number the remaining names to indicate the order of preference, and return the list to the AAA.

If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of any additional list.

11. Direct Appointment by Parties

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make an appointment within that period, the AAA may make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within 10 days thereafter such arbitrator has not been so appointed, the AAA shall make the appointment.

12. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators

If the parties have appointed their arbitrators or if either or both of them have been appointed as provided in Section 11, and have authorized those arbitrators to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension thereof, the AAA may appoint a neutral arbitrator who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the parties do not make the appointment within 10 days from the date of the appointment of the last party-appointed arbitrator, the AAA shall appoint a neutral arbitrator who shall act as chairperson.

If the parties have agreed that the arbitrators shall appoint the neutral arbitrator from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner prescribed in Section 10, a list selected from the National Roster, and the appointment of the neutral arbitrator shall be made as prescribed in that section.

13. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the parties otherwise agree.

14. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator shall be sent to the arbitrator by the AAA and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

15. Disclosure and Challenge Procedure

Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration. Such obligation shall remain in effect throughout the arbitration. Upon receipt of this information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator. Upon objection of a party to the continued service of a neutral arbitrator, the AAA, after consultation with the parties and the arbitrator, shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

16. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules, and the matter shall be reheard by the new arbitrator unless the parties agree upon an alternative arrangement.

17. Date, Time, and Place of Hearing

The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to established deadlines and hearing schedules. Upon the request of either party or the AAA, the arbitrator shall have the authority to convene a scheduling conference call and/or issue a Notice of Hearing setting the date, time and place for each hearing.

The parties will receive a formal written Notice of Hearing detailing the arrangements agreed to by the parties or ordered by the arbitrator at least five days in advance of the hearing date, unless otherwise agreed by the parties.

18. Representation

Any party may be represented by counsel or other authorized representative.

19. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be or, in appropriate cases, determined by the arbitrator to be the official record of the proceeding, it must be made available to the arbitrator and to the other party for inspection, at a time and place determined by the arbitrator even if one party does not agree to pay for the transcript.

20. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

21. Attendance at Hearing

The arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party, during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

22. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

23. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

24. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions.

25. Order of Proceedings

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties, and counsel, if any; and by the receipt by the arbitrator of the demand and answer, if any, or the submission.

Exhibits may, when offered by either party, be received in evidence by the arbitrator. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.

The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision on which could dispose of all or part of the case.

26. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the other party to submit such evidence as may be required for the making of an award.

27. Evidence and Filing of Documents

The parties may offer such evidence as is relevant and material to the dispute, and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses and documents may do so independently or upon the request of any party. The arbitrator shall determine the admissibility, the relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

All documents that are not filed with the arbitrator at the hearing, but arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the AAA for transmission to the arbitrator or transmitted to the arbitrator directly if the parties agree. All parties shall be afforded the opportunity to examine such documents.

Documents may be filed by regular or electronic mail or telephone facsimile, and will be deemed timely if postmarked or otherwise transmitted to the arbitrator or the AAA on or before the due date.

28. Evidence by Affidavit

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as the arbitrator deems proper after consideration of any objection made to its admission.

29. Inspection

Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute after notice to the parties, who may, if they so desire, be present at the inspection.

30. Closing of Hearing

The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs or other documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 27 and the date for their receipt is later than the date set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make an award shall commence to run, in the absence of another agreement by the parties, upon the closing of the hearings.

31. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening of the hearing would prevent the making of the award within the specific time agreed upon by the

parties in the contract out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearings and shall have 30 days from the closing of the reopened hearing within which to make an award.

32. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearing. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

33. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

34. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any such extension.

35. Serving of Notice

Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party. The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission, or other written forms of electronic communication to give the notices required by these rules.

Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

36. Time of Award

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing or, if oral hearings have been waived, the award shall be rendered no later than 30 days from the date of transmitting the final statements and proofs to the arbitrator.

37. Form of Award

The award shall be in writing and shall be signed (electronic signature acceptable) either by the neutral arbitrator or by a concurring majority if there is more than one arbitrator. The parties shall advise the AAA whenever they do not require the arbitrator to accompany the award with an opinion.

38. Award Upon Settlement

If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award".

39. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the party at its last known address or to its representative; personal or electronic service of the award; or the filing of the award in any other manner that is permitted by law.

40. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto. If applicable law requires a different procedural time frame, that procedure shall be followed.

41. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party, at its expense, certified copies of documents contained in the arbitration case file in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

42. Judicial Proceedings and Exclusion of Liability

a. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.

b. Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration conducted under these rules.

43. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an administrative fee schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing shall be applicable.

44. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. Expenses of the arbitration, other than the cost of the stenographic record, including required traveling and other expenses of the arbitrator and of AAA representatives and the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise, or unless the arbitrator, in the award, assesses such expenses or any part thereof against any specified party or parties.

45. Suspension for Non-Payment

If administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the AAA may suspend or terminate the proceedings.

46. Communication with Arbitrator

There shall be no direct communication between the parties and a neutral arbitrator on substantive matters relating to the case other than at oral hearings, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

This rule does not prohibit communications on non-substantive matters such as travel arrangements and driving directions, nor does it prohibit direct communications in special circumstances (such as emergency delays) when the AAA is unavailable.

47. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of any such rule, it shall be decided by a majority vote. If that is not possible, the arbitrator or either party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Administrative Fees

Full Service Administrative Fee

The initial administrative fee is $325 for each party, due and payable at the time of filing. No refund of the initial fee is made when a matter is withdrawn or settled after the filing of the demand for arbitration or submission.

Arbitrator Compensation

Unless mutually agreed otherwise, the arbitrator's compensation shall be borne equally by the parties, in accordance with the fee structure disclosed in the arbitrator's biographical profile submitted to the parties.

Hearing Room Rental

Hearing rooms are available on a rental basis at AAA offices. Please check with your Case Management Center or local AAA office for specific availability and rates.

Postponement Fees

A fee of $150 is payable by a party causing a postponement of any scheduled hearing that is subsequently rescheduled by the AAA.

Expedited Labor Arbitration Procedures

In response to the concern of parties over rising costs and delays in grievance arbitration, the American Arbitration Association has established expedited procedures under which cases are scheduled promptly and awards rendered no later than seven days after the hearings. In return for giving up certain features of traditional labor arbitration, such as transcripts, briefs, and extensive opinions, the parties using these simplified procedures can obtain quick decisions and realize certain cost savings.

Leading labor arbitrators have indicated a willingness to offer their services under these procedures, and the Association makes every effort to assign the best possible arbitrators with early available hearing dates. Since the establishment of these procedures, an ever increasing number of parties have taken advantage of them.

E1. Agreement of Parties

The Streamlined Labor Arbitration Rules, or the Expedited Labor Arbitration Rules of the American Arbitration Association, in the form obtaining when the arbitration is initiated, shall apply whenever the parties have agreed to arbitrate under them.

These procedures shall be applied as set forth below, in addition to any other portion of the Labor Arbitration Rules not in conflict with these expedited procedures.

E2. Appointment of Neutral Arbitrator

The AAA shall appoint a single neutral arbitrator from its National Roster of Labor Arbitrators, who shall hear and determine the case promptly.

E3. Qualifications of Neutral Arbitrator

Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration. The prospective arbitrator shall also disclose any circumstance likely to prevent a prompt hearing. The disclosure obligations in this section shall remain in effect throughout the arbitration. Upon

receipt of such information, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

E4. Vacancies

The AAA is authorized to substitute another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly.

E5. Date, Time, and Place of Hearing

The arbitrator shall fix the date, time, and place of the hearing, notice of which must be given at least 24 hours in advance. Such notice may be given orally, electronically or by facsimile.

E6. No Stenographic Record

There shall be no stenographic record of the proceedings.

E7. Proceedings

The hearing shall be conducted by the arbitrator in whatever manner will most expeditiously permit full presentation of the evidence and arguments of the parties. The arbitrator shall make an appropriate minute of the proceedings. Normally, the hearing shall be completed within one day. In unusual circumstances and for good cause shown, the arbitrator may schedule an additional hearing to be held within seven days.

E8. Post-hearing Briefs

There shall be no post-hearing briefs.

E9. Time of Award

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, no later than seven days from the date of the closing of the hearing.

E10. Form of Award

The award shall be in writing and shall be signed by the arbitrator. If the arbitrator determines that an opinion is necessary, it shall be in summary form.

Administrative Fees

Expedited Administrative Fee

The initial administrative fee is $150 for each party, due and payable at the time of filing. No refund of the initial fee is made when a matter is withdrawn or settled after the filing of the demand for arbitration or submission.

An additional fee of $25.00 for each party shall apply if a list of arbitrators is requested.

Arbitrator Compensation

Unless mutually agreed otherwise, the arbitrator's compensation shall be borne equally by the parties, in accordance with the fee structure disclosed in the arbitrator's biographical profile submitted to the parties.

Hearing Room Rental

Hearing rooms are available on a rental basis at AAA offices. Please check with your Case Management Center or local AAA office for specific availability and rates.

Postponement Fees

A fee of $150 is payable by a party causing a postponement of any scheduled hearing that is subsequently rescheduled by the AAA.

Fees for Additional Services

The AAA reserves the right to assess additional administrative fees for services performed by the AAA that go beyond those provided for in the AAA's rules, but which are required as a result of the parties' agreement or stipulation.

Optional Labor Services

Parties who use the labor arbitration services of the American Arbitration Association may mutually agree to use any of the Optional Labor Services, as opposed to the process being managed under the standard Labor Rules.

These options respond to a concern about rising costs and delays in processing grievance-arbitration cases and were designed to give the parties more economical considerations to resolve their dispute. Any issue not specifically identified under these Optional Labor Services will default to the Labor Rules.

O1. List Only Service

Parties can contact the AAA and request one list of no more than 15 names. Within 48 hours of receipt of the joint request, the AAA will submit the list of names and then the AAA closes its file. The administrative fee for a list only is $150 per party.

Note: The AAA Full Service Administration Fee is available at a cost of $325 per party.

O2. List with Appointment

Parties can contact the AAA and request one list of no more than 15 names. Within 48 hours of receipt of the joint request, the AAA will submit a list with a return date of 10 days, for review and appointment of the arbitrator based on the parties' mutual selection. The AAA will notify the parties of the selection of the arbitrator. The administrative fee for list with appointment is $200 per party.

Note: The AAA Full Service Administration Fee is available at a cost of $325 per party.

O3. Rapid Resolve Procedure

For relatively uncomplicated grievances, this procedure provides a prompt and inexpensive method for resolving labor disputes. Under this procedure, the parties have the option of filing up to three grievances in one demand. The same Arbitrator will hear all grievances within a single day of hearing being set aside. The written award will be rendered within 48 hours and is limited to a one-paragraph decision on each grievance, unless the Arbitrator determines otherwise. The total cost is $750.00 per party, which includes the AAA's Administrative Fee and the Fee of the Arbitrator.

O4. Documents Only Procedure

Under this procedure, the parties may agree to waive in-person hearings and resolve the dispute through the submission of documents. This is a simple process for the resolution of grievances where a face-to-face hearing is not necessary. The Arbitrator determines the time frame for the submission of written evidence, the record is closed and the award is issued within 14 days. A telephonic conference is optional. The total cost is $650.00 per party, which includes the AAA's Administrative Fee and the Fee of the Arbitrator.

O5. Emergency Scheduling Procedure

This procedure allows the parties the opportunity to schedule hearing dates very quickly. Under this procedure, the parties will have the ability to file a demand and receive a limited list of experienced neutrals who have confirmed they are available for a hearing on a specific date within a 14-day time period. By agreement of the parties, a grievance can be scheduled within 24 hours of filing a demand. The procedures can be utilized on existing cases filed with the AAA. There are no additional costs for using these procedures *(regular fees apply)*.

O6. Administration of Permanent Panels

For parties who are engaged in an ad-hoc or non-administered arbitration system, the AAA can assist the parties with the management of their Permanent Panels. The AAA can identify new panel members, assist in rotating the panel members off their roster, or assist in appointing the arbitrator from their roster. The cost varies depending on the services provided.

O7. Grievance Mediation Services

When negotiations are at an impasse, the AAA's Grievance Mediation Services can provide an informal, effective and confidential means of reaching settlement. These procedures can assist unions and management to define and clarify issues, understand differences, identify interests and explore solutions to reach mutually satisfactory agreements that preserve important relationships. Mediation is very cost-effective when compared to other dispute resolution options. At the

AAA, there is no cost to search the AAA's roster of labor neutrals to identify an appropriate mediator for the case at hand. The total cost is $150.00 per party plus the fee of the Mediator.

O8. Customized Services

The AAA's role in the dispute resolution process is to administer cases from filing to closing. Additional AAA services include assistance in the design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms and courts. By agreement of the parties, they can customize the administration of their case, which can include limitations, identification of an alternative method for the appointment of the arbitrator, a specific process for the scheduling of the hearing, or to simply define the specific services needed on their case. Ultimately, the AAA aims to move cases through the arbitration process in a fair and impartial manner that is agreed upon by the parties.

For more information about any of these services, please contact **1.888.774.6904,** or send an email to **labormediation@adr.org.**

Rules, forms, procedures, and guides, as well as information about applying for a fee reduction or deferral, are subject to periodic change and updating. To ensure that you have the most current information, see our website at **www.adr.org.**

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Arbitrator Reference Manual

The information provided in these materials is for general informational purposes only and should not be construed as legal advice or legal opinion on specific facts or circumstances.

NOTICE AND DISCLAIMER

The materials contained in this document are intended for the individual and private use of arbitrators on the AAA's Panel of Arbitrators to further the AAA's mission of providing exceptional arbitrators to meet the conflict management and dispute resolution needs of the public now and in the future. All other use is strictly prohibited without prior written authorization from the AAA. Prohibited use includes but is not limited to the copying, renting, leasing, selling, distributing, transmitting, or transfer of all or any portions of the material, or use for any other commercial and/or solicitation purposes of any type.

The commentary contained in this manual is for illustrative purposes and to provide guidance in a learning environment, and is not intended to establish or supersede legal norms, provisions of the rules, codes of ethics, or parties' arbitration agreements. Facts and circumstances in actual cases may differ, and therefore, arbitrators may need to make decisions or take actions different from those illustrated and discussed in this manual.

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Introduction

Welcome to Arbitration Fundamentals and Best Practices for New AAA Arbitrators, the American Arbitration Association's core foundation course for new arbitrators. The course's three modules consist of (1) pre-workshop online home study material, (2) the two-day workshop, and (3) advanced material for managing AAA cases as well as panel-specific programming in the form of webinars, conference seminars and online programming. They are designed to prepare you to effectively manage many of the substantive and procedural issues which may arise during any AAA arbitration proceeding to which you are appointed.

You and your fellow arbitrators have been chosen for your expertise, integrity, and good judgment. As the window through which the parties and their attorneys will view the arbitration process, you shoulder much of the responsibility for making sure cases to which you are assigned deliver the benefits arbitration offers, namely speed, economy and justice. To achieve these benefits, it is imperative that you manage the arbitration process with efficiency and economy.

The importance of your management role in the successful conduct of arbitration matters cannot be overemphasized. Regardless of the outcome, if the parties feel they have had a prompt, fair, and well-managed hearing before a knowledgeable, impartial, well-trained arbitrator, they will view arbitration as the beneficial alternative to litigation it is designed to be.

We, at the Association, are committed to working with you to provide the highest standards of service to those who employ arbitration for the resolution of their disputes.

India Johnson
President & CEO

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Mission Statement

The American Arbitration Association is dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution. As a not-for-profit organization our mission is one of service and education.

We are committed to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training, and innovative process knowledge to meet the conflict management needs of the public now and in the future.

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Character Traits of an Excellent Arbitrator

Intelligent, knowledgeable, impartial and well-trained arbitrators of high moral character are those that serve the parties and the arbitration process well, doing justice to both. Conversely, arbitrators who are unfamiliar with the rules, procedures and subject matter serve neither the parties nor the process.

Arbitrators shoulder much of the responsibility for making sure the cases to which you are assigned deliver the benefits arbitration purportedly offers – namely **speed**, **economy** and **justice**.

The AAA's role in this regard is to take care of all the administrative details. Your role is to manage the arbitration proceedings and to decide the merits of the parties' dispute.

The following acrostic for the word "arbitrator" highlights some character traits, which are hallmarks of an excellent arbitrator:

- **A**UTHORITATIVE – You should have a firm knowledge of arbitration rules and procedures as well as a thorough understanding of your role and authority. Additionally, at the outset of your appointment, you should establish yourself as the one in control of the process.
- **R**ELIABLE – You should be on time and prepared for any scheduled hearing or conference call, avoid asking for postponements, and render awards on time.
- **B**ALANCED – You must be evenhanded, allowing the parties an equal opportunity to present their positions on any issue.
- **I**NTUITIVE – Full consideration of all evidence and testimony is crucial, but intuition is invaluable when separating the "wheat from the chaff."
- **T**EACHABLE – While you, like most arbitrators, will likely be selected because of your recognized knowledge of the subject matter of the arbitration, it is extremely important that you approach each case with an open mind and view it as an educational experience.
- **R**ESPONSIVE – It is critical to the quality of the process that you respond promptly to AAA communications and render prompt rulings on the parties' various motions and requests.
- **A**TTENTIVE – Parties expect and deserve your complete and undivided attention during conference calls, preliminary hearings and evidentiary hearings.
- **T**HOROUGH – You must be certain that when rendering an award, all issues raised by the parties are addressed and disposed of completely.
- **O**BJECTIVE – Objectivity is your stock in trade. Any appearance of bias will diminish your acceptability.
- **R**ESPONSIBLE – Both the AAA and the parties expect you to be fully committed to each case to which you are assigned and to be prepared to execute all duties and responsibilities related to the office.

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Arbitrator's Role, Authority and Responsibilities

1. Nature of the Arbitrator's Office

The office of arbitrator is quasi-judicial in nature. The judicial nature of the arbitrator's office does not mandate a legalistic approach to problem-solving or reliance on the strict application of the rules of evidence or rules of civil procedure. The guiding principles under the *Commercial Arbitration Rules* are to:

- hear all the evidence that may be relevant and material to the dispute, and necessary to understand and determine the dispute; and
- determine the admissibility, relevance and materiality of the evidence with a view toward conducting an efficient resolution of the dispute. At the same time, arbitrators must treat the parties equally and must allow them to present their claims and defenses.

2. No Delegation of Authority

You must exercise this decision-making authority alone to the best of your ability. ***You may not delegate your authority to others.*** Such delegation would subject your award to attack in court, if, for instance, you sought clarification of a point of law through outside consultation and did not first receive permission of the parties to seek assistance.

Canon VI B of *The Code of Ethics for Arbitrators in Commercial Disputes* states:

> *The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant, or other persons in connection with reaching his or her decision if the arbitrator informs them of the use of assistance and such persons agree to be bound by the provisions of this Canon.*

Therefore, it is recommended that the scope of the associate's or assistant's role be put forth to the parties in writing and submitted to the AAA along with their terms of compensation prior to utilizing the services of an associate or assistant. The provider of the assistance must also disclose any relationships that may present a conflict of interest and be bound by the duty of confidentiality.

The AAA will then seek the approval of the parties. After the agreement of the parties has been received, the arbitrator will be so informed by the AAA.

Best practice suggests that the use of assistants or other helpers should be the exception to the rule, used rarely and only when the parties have provided their consent in advance.

3. Sources of Arbitrator Authority

As an arbitrator, your authority is derived from three sources:

1. Parties' arbitration agreement
2. Applicable arbitration rules
3. Applicable arbitration law (i.e., state and federal statutes)

- Keep in mind parties are only bound to arbitrate those issues they have specifically agreed to arbitrate.

- Your authority to hear and decide any particular case exists only by virtue of the agreement of the parties to the dispute.

- As an arbitrator, you are endowed with only such authority as the parties confer upon you.

- One of the few statutory grounds for a court overturning an arbitrator's award is when an arbitrator exceeds the limits of his or her authority.

As an arbitrator, you may be asked to decide issues pertaining to arbitrability and/or jurisdiction as potential threshold issues during the arbitration process. Such arbitrability or jurisdictional determination should be distinguished from the AAA's initial administrative decision as to whether the minimum filing requirements have been meet, sufficient for the AAA to initiate the case.

When addressing potential arbitrability/jurisdictional issues, you will need to take the applicable rules along with any state and/or federal statutes and the parties' contentions into consideration.

4. Scope of Arbitrator Authority

To determine the extent and limitations of your authority, you must examine:

1. the parties' arbitration agreement;
2. applicable procedural rules (such as those of the AAA);
3. applicable state and federal statutes.

You should refer to the appropriate documents when writing your award to make certain you have answered every question put before you without, in any way, exceeding your authority.

5. AAA Arbitrator Responsibilities

- The Parties We Serve
- To the Arbitration Process, and
- The American Arbitration Association

In addition to the responsibilities inherent in the role and the authority granted to all arbitrators, those who are members of the AAA's Panel of Arbitrators embrace additional ideals and principles. These include:

- a belief that the arbitration process is an expedient, more efficient and less formal alternative to litigation.
- a commitment to speed, economy and a just resolution for all disputes brought before them.
- a dedication to the highest demonstrated practice of ethical behavior and integrity.
- the responsibility to provide the very best service to the users of arbitration who place their trust in the American Arbitration Association.
- a respect for others who contribute to the arbitration process and the role they play most notably the case management staff of the AAA who serve as partners in the management of the process.
- a commitment to ongoing education and training to enhance dispute resolution skills.
- an appreciation of the American Arbitration Association and the policies and practices it applies to best serve the field of Alternative Dispute Resolution.
- the expectations for promoting the AAA and how you can leverage the fact that you are part of the AAA Roster for your marketing purposes.
- recognition that you cannot say you are an "AAA Certified Arbitrator." The AAA does not certify panelists.
- assistance in identifying opportunities for engaging the AAA.

6. Arbitrator Performance and Demeanor

When serving as an arbitrator you must always consider how your performance and demeanor impacts the parties' impressions of arbitration, the AAA, your fellow AAA arbitrators.

When parties and their representatives do not receive the efficient and economical process they were expecting, they generally hold the arbitrator responsible.

When parties and their representatives do not receive the well-managed arbitration they were expecting—marked by competent process management skills and impeccable integrity, fairness, and neutrality—they generally hold the arbitrator responsible.

Should you, or any AAA arbitrator, not demonstrate a rational decision-making capacity and proficient award writing skills, the parties may very likely question the value of the arbitration process.

Should you, or any AAA arbitrator, not conduct yourself professionally in a manner that conveys an impeccable demeanor and an even temperament, the parties may call into question the integrity of the arbitration process, the quality of the AAA's roster of arbitrators, and question AAA arbitration as an acceptable and valued alternative to litigation.

The AAA provides a forum that is neutral regardless of whether the parties are corporations or individuals, and regardless of sex, race, age, or other protected characteristics. The AAA's expectation is that arbitrators serving on its National Roster

will conduct themselves professionally throughout the entire arbitration process in a manner that reflects well on themselves personally, the arbitration process in general, and the valued reputation of the AAA.

The AAA continuously reviews its Roster to determine whether the composition of the Roster matches the characteristics and needs of our various caseloads, and whether panelists meet all requirements of the *Standards and Responsibilities for Members of the AAA Roster of Arbitrators and Mediators.* As a result, some panelists are rotated off the Roster each year based on Roster characteristics, caseload needs, and/or failure to meet all of the requirements of the *Standards*. Feedback provided by parties and their representatives—both positive and negative—is also taken into consideration when reviewing our various arbitration panels.

AAA Case Management System and the Arbitration Process

Staff Overview

The American Arbitration Association (AAA) provides superior case management with high quality and innovative case management services. AAA's Case Management Teams are comprised of Vice Presidents, Directors of ADR Services, Managers of ADR Services, Case Administrators and administrative support staff. Administrators, as well as our regional vice presidents, are available throughout the course of the proceeding to provide personalized service and continuity for the parties and the arbitrators. While the Case Administrator (or AAA executive in instances of large, complex cases) serves as the primary point person for case participants, the ultimate responsibility rests with an entire team of professionals.

The arbitrators rely on the Case Administrator to accomplish administrative tasks so that the arbitrator is free to focus on the matter in dispute. The parties rely on the Case Administrator to facilitate communications and serve as an impartial, familiar point of contact in the administrative process.

Managing the arbitration process is what parties want and expect from the AAA and **YOU**, as an arbitrator. Many parties have learned the hard way that self-administered ("ad-hoc") arbitrations (i.e., arbitrations which do not use a neutral, third-party administrator) can be very frustrating and in some cases impossible to conduct. Locating and selecting qualified arbitrators, scheduling hearings, facilitating the exchange of information, enforcing deadlines, managing financial considerations, and possibly most importantly, maintaining the integrity of the process, can take considerable time and energy.

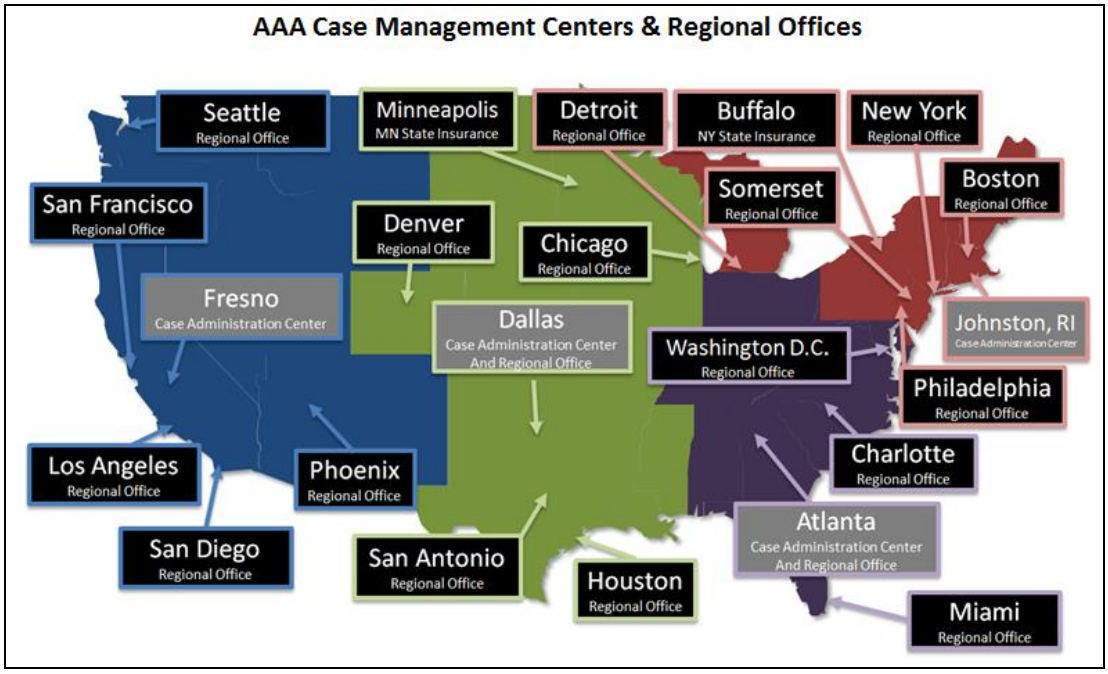
One of the primary reasons business people and their attorneys specify their arbitrations be conducted by the AAA in accordance with its rules is the quality and expertise of the Association's case management services. Together, the AAA and its arbitrators form a ***conflict management partnership***. The partnership's business is to get parties through the arbitration process for the lowest cost possible, in the shortest time possible, with the best result possible.

What <u>you</u> can expect from our staff:

- adherence to the highest standards of neutrality and integrity when interacting with parties involved in a dispute;
- a management team, among the most knowledgeable and talented in the dispute resolution field, with experience in administering cases in a fair, impartial, prompt, effective and economical fashion;
- experienced case administrators with you every step of the way. Case Administrators assist case participants with the procedural elements of the case;

- increased use of electronic exchanges of information and communication, allowing for greater efficiency; and

- a variety of advanced case administration services like video conferencing for use at hearings, and management of electronically filed documents.



Arbitrator Panel Overview

The AAA is highly selective with regard to the individuals that are admitted to its panels. Arbitrators undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations. As an arbitrator appointed to AAA matters, you have an obligation to uphold the shared mission and vision of the AAA as well as comply with the Code of Ethics, Statement of Ethical Principles, applicable rules, protocols, and any applicable law.

The parties have, for various reasons, elected to adopt an alternative to court. As an AAA arbitrator, you must keep in the forefront the differences between the arbitration process and the court system. While you may be comfortable incorporating elements of litigation within the arbitration process, the AAA discourages this practice unless you have certainty from counsel and their *clients* of what their expectations are from the arbitration process.

AAA staff will work closely with you. While the AAA can neither provide legal advice nor tell you how you should rule on any particular point, the AAA can leverage its vast experience and expertise to guide you and provide options to consider prior to making a decision.

As with the acrostic that was discussed on Day 1 of the course, your role as an arbitrator is to bring resolution and decide the dispute. The AAA markets ADR using various methods and

statistics which stem directly from how you as an AAA arbitrator effectively manage the case. As you will see in the AAA Arbitration Roadmap® below, keeping the parties on target and focused on timelines highlights what a party can expect when involved in an AAA Arbitration. Similarly, the AAA often explores various cost propositions as it pertains to our fees and your compensation when determining and competing for other opportunities. Keeping all these factors in line and providing the parties real value for their engagement in ADR is a key aspect of the partnership between you and the AAA.

What the AAA expects from its Arbitrators:

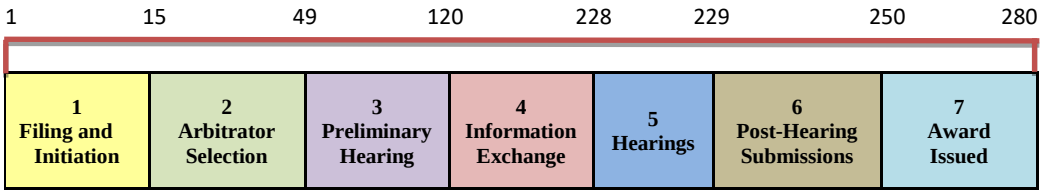
- support and promote the services of the AAA;
- manage the dispute resolution process with fairness and skill, and an eye towards time and cost efficiency;
- be open to alternatives and suggestions from the case management staff. Utilize case staff as a resource for procedural questions and process efficiency;
- be responsive and accessible to the AAA staff and parties;
- adhere to the highest level of standards and ethics and meet AAA continuing education requirement;
- demonstrate competency with use of technology;
    - use of eCenter: Invitation to Serve Tasks, Online Forms, email, PDF Writer.

The Arbitration Process

- AAA Arbitration Roadmap

The AAA follows a simple seven-step process known as the AAA Arbitration Roadmap, which shows how cases proceed under AAA administration, from beginning to end, when using the AAA's *Commercial Arbitration Rules*. The AAA Arbitration Roadmap also demonstrates how parties can positively influence the arbitration process in terms of time and costs. The times portrayed in the graphic shown below are based on a study of AAA cases administered under the AAA's *Commercial Arbitration Rules* and awarded in 2014 with claims between $75,000 and $500,000 and are medians, meaning that half the cases in the study took less time and half took more. Note that actual timeframes may differ significantly based on the facts of a particular case.

Timeline
(in days)



The AAA staff is responsible for the first two steps of the AAA Arbitration Roadmap.

- Filing and Initiation

The AAA commences administration of an arbitration when one party submits a *Demand for Arbitration*, a copy of the arbitration provision and the appropriate Filing Fee to the AAA. The AAA will acknowledge receipt to all parties and set an initial time period for the respondent to file an answer and/or counterclaim, based on the applicable rules.

- Arbitrator Selection

During the period of time provided to respondent or shortly after the expiration of same, the AAA assists the parties in selecting an arbitrator. Although the exact appointment process may vary depending on the nature of the case, the AAA obtains the parties' input on the necessary qualifications and then provides a list of prospective arbitrators and their resumes for all parties to review. The parties are encouraged to agree upon an arbitrator, but if they are unable to do so the AAA will establish a deadline for each party to independently state its preferences from those candidates on the list. We encourage the parties to complete this task online via AAA WebFile. The AAA will then invite via email the most mutually agreeable arbitrator to serve on the case. Arbitrators are strongly encouraged to complete the required appointment documents online via eCenter.

Working with AAA staff, AAA arbitrators are responsible for the expedient, efficient, and cost-effective management of steps 3 through 7 – that is, Preliminary Hearing (if applicable), Information Exchange & Preparation, Hearing(s), Post-Hearing Submissions (if applicable), and The Award.

- Preliminary Hearing

The Preliminary Hearing is a management meeting conducted by the arbitrator and facilitated by the AAA. Preliminary hearings are particularly important and being well prepared as an arbitrator will set a positive tone with the parties and contribute to an efficient arbitration process. It is usually the first time the parties and the arbitrator discuss the case and is often conducted via conference call. Working with the arbitrator, the parties will identify the steps and actions needed to prepare for the evidentiary hearing and establish a schedule for the exchange of information. The parties and the arbitrator will also establish dates for the submission of final witness lists, exhibits and possibly pre-hearing briefs, depending upon the complexity of the matter. Finally, dates for the evidentiary hearing will be set. The result is a Scheduling Order that will serve as the parties' framework for hearing preparations. The arbitrator prepares the Scheduling Order and makes it available to the AAA and parties within a few days following the preliminary hearing.

Based on the information provided in the Scheduling Order, the AAA will invoice the parties for anticipated arbitrator compensation, including the arbitrator's estimated fees and expenses for the scheduled hearings and anticipated study time. The due date for this deposit is usually 30 days prior to the first evidentiary hearing. Any unused deposits are promptly refunded at the conclusion of the case.

- Information Exchange and Preparation

Working within the timeframes set forth at the Preliminary Hearing, the parties exchange information and ready their presentations. The arbitrator addresses any impasses the parties may encounter regarding the exchange of information with a view toward achieving an efficient and economical resolution of the dispute. At the conclusion of this step, the parties should have completed preparations for presenting evidence and arguments on the dispute. Proposed exhibits and final witness lists are often submitted at the conclusion of this phase.

- Hearings

Parties present evidence and testimony to the arbitrator in a format that is similar to, but less formal than, a court proceeding. The hearings conclude when the arbitrator determines that each side has had a full opportunity to present its evidence.

- Post-Hearing Submissions

The arbitrator may keep the record open at the end of the hearing for a number of reasons, including: to accept additional documentary evidence that was unavailable at the hearing; to allow the parties a final opportunity to argue their positions in writing; or to receive briefs on a specific issue that may have come up during the hearing. If post-hearing submissions are necessary, parties typically file them within 30 days although this timeframe can be adjusted to meet the parties' needs.

- The Award

Once the hearings are declared closed, the arbitrator has a specific number of days to render the award, pursuant to the applicable rules. The award should address all claims and counterclaims presented during the arbitration. Arbitrators must be careful to render their awards within the specified time period. The award may direct one or more parties to pay another party a monetary amount or it may direct parties to take specific actions based on how the arbitrator decided the matters in the case.

Aside from addressing administrative matters unrelated to the merits of the case, the services provided by the arbitrator and the AAA are completed when the award is issued. Although parties often voluntarily comply with awards, enforcement may be accomplished through a simple court proceeding.

ARBITRATOR SELECTION: APPOINTMENT AND DISCLOSURE

- The AAA Case Administrator will:
  - solicit input from the parties on their desired qualifications for potential arbitrators.
  - create a list of arbitrators from the AAA's National Panel of Arbitrators who meet the criteria provided by the parties. To the extent that numerous panelists meet the parties' criteria, the AAA winnows the pool of eligible arbitrators down to a manageable number based on the following:
    - expertise and professional background;
    - training;

- location;
- record of service: the number of cases you have served on. This does not mean that if you have never served you are never put on a list;
- availability to serve;
- compensation rates (particularly on smaller cases).

The number of names included on a list of arbitrators depends on a number of factors including: the amount in dispute (claim), number of arbitrators to be appointed on the case, the parties' arbitration clause, and/or applicable rules.

Commercial Rules

Expedited Procedures (E-4)	5 names
Regular Track (R-12)	Single Arbitrator – 10 names Three Arbitrators – generally 15 names
Large Complex Case	Single Arbitrator – 10 names Three Arbitrators – generally 15 names

Construction Rules

Fast-Track Procedures (F-5)	5 names
Regular Track (R-14)	Single Arbitrator – 10 names Three Arbitrators – generally 15 names
Large Complex Case	Single Arbitrator – 10 names Three Arbitrators – generally 15 names

Employment Rules

Single Arbitrator – 10 names
Three Arbitrators – generally 15 names

- provide the list of arbitrators, along with their resumes, to the parties and set a deadline for their selections. The parties are encouraged to access their case on AAA WebFile, to view the arbitrator's resumes and to complete the strike and rank process. Each party will independently strike any unacceptable candidates and number the acceptable candidates in order of preference. The parties Lists for Selection of Arbitrator are not exchanged between the parties. Once this process is completed online, the Case Administrator will receive notice and there is no need to mail, fax, or email the list back to AAA.

- peview the lists to determine if there is a "mutually agreeable arbitrator", however this is not always the case.

  - When the AAA receives the lists, any arbitrator who has been struck by a party is automatically eliminated.

  - The candidate who is acceptable to both parties and has the lowest combined total ranking is considered to be the parties' most mutually acceptable choice and is invited to serve on the case.

- In three-arbitrator cases, the three arbitrators with the lowest combined totals are invited to serve.

➢ immediately email the mutually agreed-upon or most mutually agreeable candidate from the ranked lists submitted by the parties. The email will include a link to eCenter where the proposed arbitrator will find an assigned task (Invitation to Serve).

➢ when there are no mutual preferences or if all the mutually acceptable arbitrators decline to serve, the AAA will on occasion submit a second list of proposed arbitrators. The AAA, however, has the authority to appoint an arbitrator, without the submission of additional lists. This is called an "administrative appointment." Such appointments are final except for being subject to the disclosure and challenge provisions of the rules and/or applicable law.

➢ manage any challenges to the selected arbitrator's service (usually as the result of disclosures).

- The Arbitrator will:

➢ log into eCenter and click on the 'Invitation to Serve' task for the specific case.

o Conflicts Check: Arbitrators are required to complete a thorough conflicts check and complete the Notice of Appointment and Disclosure Worksheet (Arbitrator's Oath).

- Review Filing Documents and Service Lists
- Parties' Checklist for Conflicts
- Firm's Conflict Database, if available/applicable
- Reasonable attempt to Investigate

o Time Commitment: Make sure you can devote the necessary days and hours to ensure the parties an expeditious hearing. If your schedule prohibits responsiveness to parties and delays the hearing beyond what the parties contemplate, it's better if you decline. Be realistic. One of the benefits of arbitration is the expeditious resolution of disputes. The last thing we want to do is waste your time, our time and the parties' time.

o Decline appointment if conflict would prejudice you or present an appearance of bias or if you cannot commit the necessary time to manage and hear the case.

➢ complete and return the *Notice of Appointment (Arbitrator's Oath).*

o It is vitally important that we have this in the file as a record of your acceptance to serve.

o You are to make disclosures about relationships on this form, attaching additional pages if needed. Although this is the time to make initial disclosures, please keep in mind that it is your duty to disclose any conflicts that may arise or come to your attention throughout the life of the case.

COMPENSATION AND CASE-RELATED FINANCES THROUGHOUT THE ARBITRATION

While payment of the arbitrator should not be the primary focus of the AAA or the primary motivation of the arbitrator, it is a necessary and important aspect of the arbitration process. There are a few basic steps you and AAA staff can take to minimize the time spent on case-related finances.

- The AAA Case Administrator will:
  - verify your compensation rate upon your appointment. Please keep in mind that it is inappropriate to attempt to change your compensation rate during a case. The rate on your resume when it is sent to the parties is your compensation rate for that case.
    - For cases managed under the Commercial Expedited procedures, arbitrators are compensated at a regionally established rate. Effective April 1, 2018 this rate ranges from $1050 to $1200 for your entire service on the case, provided that the case stays within the Expedited process.
    - For cases managed under the Construction Fast Track procedures, arbitrators are compensated, effective November 1, 2016, at the nationally established rate of $1250, for your entire service on the case, provided that the case stays within the Fast Track process.
    - For all other cases you are compensated at the rate stated on your panel biography.
  - advise the parties of the necessary deposits and due dates.
    - For longer cases, arrange for deposits to be made over the course of the proceeding rather than all up front.
  - inform the parties of any failure to make the necessary deposits and the potential consequences.
    - Commercial Rule R-57 Remedies for Nonpayment
    - Construction Rule R-56 Remedies for Nonpayment
    - Employment Rule 47 Suspension for Non-Payment
  - advise the arbitrator of amounts on deposit prior to the arbitrator incurring costs and discuss alternatives to suspension for non-payment.
    - Consider stepping down to allow AAA to appoint a replacement arbitrator who is willing to proceed forward without full deposits on hand
  - process requests for payment submitted by the arbitrator.
- The Arbitrator will:
  - complete and return the *Notice of Compensation Arrangements* with the Disclosure Worksheet (Arbitrator's Oath).

- Once you are formally appointed to a case, the AAA will send the parties a letter confirming your appointment and your rate of compensation. Note that the AAA will provide both the *Notice of Appointment* and the *Notice of Compensation Arrangements* to the parties.

- make sure your panel record properly indicates whether payments should be made to you individually (SSN#) or to your firm (EIN#).

- provide the AAA with an estimate of the amount needed as a deposit.

- inform the AAA of any changes in the amount needed on deposit as a result of a change in how the case is proceeding.

- determine whether to proceed if sufficient funds are not on deposit:

  - Note that payments are made from deposits, so if one party has not deposited its share you will not receive payment for that party's portion of your bill until that party has made payment.

  - You should never allow yourself to be in a situation where you suspend the proceedings after the hearings are closed and the award is due as the result of a party's failure to make a deposit.

  - If you go forward as planned, there is no guarantee that we will be able to collect after the case has closed, meaning there is no guarantee you will be paid. The AAA shall, however, make an effort to collect your fee through our normal collections processes managed by our Finance Department.

- submit timely and accurate requests for payment and do so in accordance with the AAA's *Billing Guidelines*.

Financial Do's and Don'ts

- DO

  … provide timely and reasonable estimates for necessary deposits.

  … ask for additional deposits if the existing deposit is running low ***and before incurring costs that are not covered by what is on hand.***

  … submit detailed invoices for time and expenses.

  … plan to submit a final invoice *before* the award is rendered so that the assessment of these costs can be incorporated in the award.

- DON'T

… rely on the AAA to act as a collection agent. If the AAA advises you that deposits have not been made, you should discuss the financial status with the Case Administrator and consider all alternatives to suspension and/or termination of proceedings.

… proceed with the hearings if there are insufficient deposits only to suspend the proceedings later – it is unfair to all the participants to have them incur the expenses associated with going through this process only to potentially not receive a decision.

…wait until the last minute to suspend or terminate a proceeding. This decision should be made no later than 10 days prior to the hearing to avoid having the parties incur unnecessary preparation costs.

… expect one party's deposit to cover a non-paying party's obligation to pay its share of the costs.

Fact Sheet

Billing Guidelines
For Commercial, Construction, and Employment Arbitrators

One of the major objectives of arbitration is to reduce the costs of dispute resolution. Arbitration costs include both the administrative fees of the American Arbitration Association (AAA) and the arbitrator's fees. It is imperative that you, the arbitrators, and we, the AAA, work together to ensure that no one is precluded by cost from using the arbitration process. At the same time, both the AAA and arbitrators deserve to be fairly compensated for their time and services.

The AAA expects arbitrators to bill parties responsibly and ethically. Deviations can lead to removal from the AAA's roster.

The AAA reserves the right to refuse to process for payment arbitrator bills that deviate from these guidelines.

Non-Payment by Parties

Most AAA Rules contain provisions regarding how arbitrators can manage non-payment by parties, and you should be familiar with them so that you can act accordingly.

Every effort will be made to collect arbitrator compensation before the hearing date. If the compensation has not been deposited, you will be given the option not to go forward with the hearing.

Overview

Arbitrators should review their bills for reasonableness relative to the nature and scope of the activity performed prior to submitting them to the AAA.

Arbitrators should keep in mind the need for simplicity in their fee structure, but rates are at the complete discretion of the arbitrator in most of our case types. Additionally, each arbitrator has the complete discretion to accept or not accept any particular appointment. However, arbitrators should not, absent extraordinary circumstances, request increases in their rates during the course of a proceeding. Remember, case administrators consider the rates and fee policies of arbitrators as they develop lists for specific cases. Clients also consider arbitrator rates and fee policies as they review the lists.

All arbitrators serving on AAA cases must adhere to the Code of Ethics for Arbitrators in Commercial Disputes. Canon VII of the Code provides that, when making arrangements for compensation and reimbursement of expenses, arbitrators should "adhere to standards of integrity and fairness." Among those practices the Code identifies as tending to preserve those standards is establishing the basis for compensation prior to accepting appointment to a case. In accordance with the Code and consistent with expectations from parties, we suggest the following guidelines:

Billing Language on your Resume, Bills or Invoices

- Your fees and fee practices must be specified on your AAA Resume so that the Parties and the Staff can easily consider them.

- The language used in describing time billed, fees, and expenses in an invoice or a bill should be sufficiently clear and detailed so that parties can easily understand what they are being billed for. An arbitrator's bill should not summarily state "for services rendered."

- All bills should contain a description of each activity performed with the specific date of service and amount of time spent on each activity. Arbitrators should expect that their invoices will be submitted to the parties.

Per Diem/Hourly Fees

- Your fees should be all inclusive. Per diem fees are expected to include a full day's hearing time (7 hours).

- No billing should be submitted for time spent discussing the case with AAA staff or for written, telephonic, faxe, or overhead such as stamps, local telephone calls, copying of materials, etc.

- If you intend to charge for any of those costs separately from your hourly or per diem fee, you must so state in the fees section of your AAA panel biography and clearly bill for them on your invoices on cases.

Study Time

- Study time must be listed as a separate fee on your panel biography. A detailed billing sheet documenting the specific activity and actual time spent should accompany the fee request on each case on which you serve. We may provide this sheet to the parties in order to support your request for payment.

- The possibility and extent of study time must also be discussed with the case administrator at the time of your appointment or following the first preliminary hearing. Parties have a right to know in advance the approximate amount of your charges, and the AAA needs to know these estimates in order to collect deposits.

Cancellation Fees

- Since most AAA arbitrators are busy practitioners, they do not charge a cancellation fee for postponements of hearing dates or cancellation because of settlement. If you require a cancellation fee, it must be listed as a separate fee on your resume, it should be for unusual circumstances, and it should require no more than 48 hours' notice. Notice of postponements or cancellations may be received from a case administrator by telephone or by e-mail. Any request for postponement or cancellation fees must be accompanied by a statement that you were unable to reschedule or make professional use of the billed time.

Expenses

- In many cases, you should incur no additional expenses, as hearings will be held locally. If you serve as an arbitrator on a case outside your locale, clarify before the hearing that reasonable, necessary air travel, hotel room accommodations and meals will be reimbursed.

- You may be required to submit receipts for your expenses, so please keep these records.

- Entertainment costs and personal expenses are not reimbursable.

Post-Award Activity

- If a request or remand by the court to modify an award is necessitated by an error on your part, you should dispose of the request or remand without additional compensation.

- If a request or remand for modification does not require a great deal of effort, such as the omission of a word in a company name, you should dispose of the request or remand without additional compensation.

- If the case in which a request or remand for modification is one in which you served for a flat fee (as in Construction Fast Track and Consumer), do not charge additional sums to dispose of such requests.

- If a request or remand for modification is not the result of your error or requires significant effort on your part, then it is appropriate to be compensated for such activity. AAA will attempt to collect such compensation in advance, but that will often not be possible. Nonetheless, you should dispose of the request or remand expeditiously, even if such compensation has not been deposited in advance.

Invitations to serve on AAA cases require the execution of a *Notice of Compensation Arrangements* agreement in which Arbitrators must acknowledge that they are willing to comply with the above guidelines.

Revised June 2016

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Arbitrator Ethics, Practice Standards and Disclosures

Introduction

One of the few grounds for the vacatur of an arbitration award is "where there was evident partiality or corruption in the arbitrators, or either of them." A principle goal of every arbitrator is to protect the enforceability of the award; providing complete and timely disclosures is a critical part of this.

The enforceability of an arbitration award can depend to a great extent on the manner in which the arbitrator manages the arbitration process and conducts the hearing. If you conduct a fair and equitable process and proceed in accordance with the agreement of the parties and the applicable rules, you will conform to the standards prescribed by law.

Section 10(a) of the *United States Arbitration Act*, commonly referred to as the *Federal Arbitration Act (FAA),* and state arbitration statutes specify certain statutory grounds upon which courts may vacate an arbitrator's award. These grounds are as follows:

1. where the award was procured by corruption, fraud, or undue means.

2. where there was evident partiality or corruption in the arbitrators or either of them.

3. where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

4. where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

A principal goal of every arbitrator is to protect the enforceability of the award. Please keep this goal, and the grounds for overturning an award, in mind as you deal with the issues presented throughout this workshop.

It is also important to keep in mind that the AAA may incorporate rules or procedures that are different or more stringent than those which might be required under the laws of some states. Other states, however, have particular laws which mandate specific arbitrator disclosure, which may also vary from the general guidance provided in this program.

Disclosure Standards

The AAA requires any person appointed or to be appointed as an arbitrator to disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality. The disclosure standards are found in the AAA's Rules and the Code of Ethics.

Rules:

You shall disclose any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration *or any past or present relationship with the parties or their representatives.* See Commercial Rule R-17, Construction Rule R-19, and Employment Rule 15.

Code of Ethics for Arbitrators in Commercial Disputes – Canon II:

1. Any known direct or indirect financial or personal interest in the outcome of the arbitration;
2. Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality in the eyes of any of the parties. This includes any such relationships involving your families or household members, or your current employers, partners, or professional or business associates;
3. The nature and extent of any prior knowledge you may have about the dispute;
4. Any other matters, relationships, or interest which you are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

This may be a different standard from that which is used in the legal profession regarding conflicts between attorneys and clients.

When making disclosures it is important to remember that what constitutes a conflict must be viewed from the parties' perspective, not yours. For this reason you should always err on the side of making the disclosure. Failure to make a disclosure is one of the grounds for removal from the AAA's Roster of Arbitrators and for vacating an arbitration award.

How to Disclose

The Code of Ethics requires that you make a reasonable effort to inform yourself of any interests or relationships described in the Code or the Rules. What constitutes a "reasonable effort" will vary with every arbitrator and every case.

- Disclosures must be as complete as possible and include a description of the conflict, the entities involved, the time period the conflict existed, and any other information that might be relevant. Specificity is a virtue in making a disclosure.
- Disclosures must be in writing.
- You do not need to disclose confidential information.

Possible subjects of disclosures might include:

- Parties to the case;
- Attorneys or other representatives;
- If there are specific qualifications for the arbitrator set forth in the clause, you should confirm whether you meet those qualifications;
- If you are aware of the time period within which the parties want to hold the hearings and you are not available, you should let the parties know;
- In many cases, the parties will provide you with a Checklist for Conflicts which will help you identify other participants in the case, such as employees of a company or witnesses.

Stock Disclosure Statements

Many arbitrators now prepare a "stock disclosure statement" that they submit with every case. Note, however, that stock disclosures are made in addition to the disclosures that are otherwise required and not as a substitute. A stock disclosure statement might include:

> *Catchall language* – "To the best of my knowledge and after a full conflicts check, other than the above I'm not aware of additional disclosures…"
>
> *I can't possibly remember everyone* language – "I've been a practicing construction attorney in the Dallas area for over 30 years and have probably come into contact in some manner with individuals involved in this dispute but do not affirmatively remember that interaction."
>
> *Wrap-up* – "If the parties or advocates are aware of any contacts related to myself or my firm, they should be raised for further review."
>
> *Social Media*

Another area that has become increasingly problematic is Social Media. Are you required to run a conflicts check for any LinkedIn contacts or Facebook friends?

Other Issues

Ongoing Obligation

The obligation to disclose is ongoing, to the conclusion of the matter or the issuance of the award. You are responsible for providing supplemental disclosures when the need arises. Common instances where a supplemental disclosure might be required include:

1. change of representation;
2. witness lists provided;
3. addition of parties to the case.
4.

See Commercial Rule R-17(a), Construction Rule R-19, and Employment Rule 15.

Prospective Conflicts (Conditional Disclosures)

The disclosure standard extends to prospective conflicts as well. These types of disclosures can present a unique challenge to the parties. If you ask the parties for permission to enter into a relationship that causes a conflict, it can be difficult for the parties to say no. There will always be a lingering concern that you will be biased against them as a result of their refusal to waive the conflict. See Code of Ethics Canon I(C).

Party/Representative Obligation

The Rules extend the obligation to make any necessary disclosures to the parties and the representatives. Failure of a party or a representative to make a known disclosure may result in the waiver of the right to later make a challenge to the arbitrator.

This often arises when a party asserts that an arbitrator has missed a disclosure that should have been made. In this instance, we will contact the arbitrator about the conflict and ask the arbitrator to provide a supplemental disclosure statement addressing the conflict. See Commercial Rule R-17(a).

Prior Law Firms

You will not always be able to access records, especially with prior firms. As discussed earlier, you have a responsibility to make a reasonable effort to make yourself aware of any conflicts. If you decide to provide a stock disclosure statement, consider including a statement about what you haven't researched in addition to the disclosures provided.

As you continue your work as an arbitrator or mediator, you must keep track of your cases so that, as the need arises in the future, you can access information them.

Disclosure of Other Names Used Personally or Professionally

Occasionally, there are arbitrators added to the AAA's Roster who use a different name, rather than their given name, in various settings, for example as a writer or an actor, etc. This raises the issue regarding the obligation of arbitrators serving on the AAA's Roster to disclose or indicate on their panel resume the fact that they have another name, or names, they use in different professional settings. If you use such a pseudonym for any purpose you must disclose or indicate on your panel resume this fact and provide the other name, or names, you use.

Challenge Process

Under the Rules and Code of Ethics, if all parties request that an arbitrator withdraw, then you must do so. If the challenge is not agreed to by all parties, then the AAA will make the decision as to whether to uphold the challenge.

When an objection is received, the AAA will invite any other parties to the case to respond before making a decision. Under normal circumstances, we'll ask for a response within 7 calendar days, but there may be situations where we have to speed up the process.

If no response to the challenge is received, the AAA will frequently uphold the objection and remove the arbitrator.

If a response is received, the AAA will carefully evaluate the challenge and any response received using the standards set forth in the Rules. An arbitrator is subject to disqualification for—

- partiality or lack of independence;
- inability or refusal to perform his or her duties with diligence and in good faith;
- any grounds for disqualification provided by applicable law.

The AAA uses a four-part test to evaluate challenges against these standards. Is the conflict—

- direct?
- recent?
- on-going/continuing?
- substantial?

An arbitrator's representation of a party recent to the time of an arbitration, or service as co-counsel with one of the attorneys in the arbitration, are but two examples of circumstances sufficient to disqualify an arbitrator from serving on a particular case.

From time to time, a party might submit a challenge directly to the arbitrator and ask you to recuse yourself. The rules delegate the authority to remove an arbitrator to the AAA, so you are not expected to make this decision. Simply forward the challenge to the AAA and we will handle it accordingly. In some instances, parties will challenge an arbitrator based on their knowledge of the objection to your continued service. The AAA does not consider having such knowledge in itself as a reason for necessitating removal.

Administrative Review Council

For any case under the Large, Complex Case Procedures, arbitrator challenges are referred to the Administrative Review Council (ARC) for a decision. ARC is composed of current and former AAA executives who review and decide various procedural issues including arbitrator challenges. A common complaint about the AAA's administrative process was the lack of transparency that existed, and ARC is intended to raise the level of parties' confidence in the process. When we get to the final portion of this section, you will play the role of ARC in deciding various challenges that were actually considered by the Council.

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The documents below are from the Modern Furnishings v. Chapman & Associates case used during the *Arbitration Fundamentals and Best Practices for New AAA Arbitrators* course.

Following the documents are the 12 Disclosure Situations from the course accompanied by applicable references, comment, and Learning Points.

DISCLAIMER

There are no single "correct" answers to the disclosure situations presented. The "answers" in this Manual provide guidance in the training environment and do not supersede legal norms, provisions of the rules, codes of ethics, or parties' arbitration agreements. Actual circumstances may differ in real cases and, therefore, may prompt you to make decisions different from those illustrated here.

With respect to arbitrator disclosures, the AAA may incorporate rules or procedures that are more stringent than those which might be required under the laws of some states. Other states, however, have particular laws which mandate specific arbitrator disclosure, which may also vary from the general guidance provided in this manual.

American Arbitration Association
Dispute Resolution Services Worldwide

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box. ☒
There is no additional administrative fee for this service.

Name of Respondent			Name of Representative (if known)		
Chapman & Associates (Pam Chapman)			Alicia Rodriguez		
Address			Name of Firm (if applicable)		
1400 New York Avenue			Young, Quentin & Byrnes LLP		
			Representative's Address		
			700 City Plaza		
City	State	Zip Code	City	State	Zip Code
New York	NY	10014-	New York	NY	10017-
Phone No.		Fax No.	Phone No.		Fax No.
(212) 555-1234		(212) 555-1235	(212) 555-5678		(212) 555-5670
Email Address:			Email Address:		
pchapman@chapman.com			arod@yqb.com		

The named claimant, a party to an arbitration agreement dated 9/23/17, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE

Unpaid fee for the development and design of office furnishing plan and procurement and delivery of office furniture and furnishings.

Dollar Amount of Claim $149,600.00

Other Relief Sought: ☐ Attorneys Fees ☐ Interest ☒ Arbitration Costs ☐ Punitive/ Exemplary ☐ Other _____

Amount Enclosed $ 1,800.00 In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☒ Standard Fee Schedule

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:
Small business owner, interior design professional or attorney with suitable experience.

Hearing locale New York (check one) ☐ Requested by Claimant ☒ Locale provision included in the contract

Estimated time needed for hearings overall:
_____ hours or 1.00 days

Type of Business: Claimant Furnishing Design Studio
Respondent Financial Advisor

Is this a dispute between a business and a consumer? ☐ **Yes** ☒ **No** Does this dispute arise out of an employment relationship? ☐ **Yes** ☒ **No**

If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. ☐ Less than $100,000 ☐ $100,000 - $250,000 ☐ Over $250,000

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative) Date:			Name of Representative		
			Steve Green		
Name of Claimant			Name of Firm (if applicable)		
Modern Furnishings (John Morgan)			Drew, Hudson & Jackson LLP		
Address (to be used in connection with this case)			Representative's Address		
50 West Johnson Street			513 Grand Avenue		
City	State	Zip Code	City	State	Zip Code
New York	NY	10011-	New York	NY	10017-
Phone No.		Fax No.	Phone No.		Fax No.
(212) 555-1111		(212) 555-0002	(212) 555-0001		(212) 555-2222
Email Address:			Email Address:		
johnmorgan@modernfurnishings.com			sgreen@dhj.com		

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.

Before the American Arbitration Association

In the Matter of Arbitration Between

Modern Furnishings
Claimant
– and –
Chapman & Associates
Respondent

COMPLAINT
(DEMAND)

Modern Furnishings entered into a business agreement with Chapman & Associates following extensive consultations between the owners, John Morgan and Pam Chapman.

The agreement is subject to arbitration pursuant to paragraph 18, which reads:

"Any controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration only in the City of New York, State of New York, in accordance with the commercial rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof."

The scope of the work specified in the written agreement called for the following:

- Develop and design a furniture, lighting and finishing plan.
- Procure all furniture and furnishings.
- Coordinate all deliveries and set-up.

Modern Furnishings will show that John Morgan provided consultation during each phase of the design and documented all change orders. We will further prove that before the design of each item was finalized, Pam Chapman viewed sketches or photographs and approved the material to be used. We will also prove that Pam Chapman approved each phase of the project and all change orders.

Pursuant to the arbitration provision in their business agreement, Modern Furnishings files this Demand for Arbitration with the American Arbitration Association and asserts that with all work being completed in accordance with the terms of the signed business agreement that it be paid the amount of $149,600 ($224,600 minus the down payment of $75,000) for services provided in the design of the furniture, lighting and finishing plan for Chapman & Associates and the procurement and delivery of all furniture and furnishings.

Modern Furnishings needs this matter resolved within the next 90 days so that they can secure their anticipated revenue flow, meet payroll and serve ongoing clients. This requires the hearing to be scheduled within the next 60 days. Since the arbitrator has the authority to set the hearing date, Modern Furnishings will ask the arbitrator to schedule a single day of hearing within the next 60 days.

Submitted: MM/DD/YY

Steven Green

Steven Green, Esq.
Drew, Hudson and Jackson LLP

Counsel for Claimant
Modern Furnishings

AMERICAN ARBITRATION ASSOCIATION®

Modern Furnishings

vs

Chapman & Associates

DISPUTES

Any controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration only in the City of New York, State of New York, in accordance with the commercial rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Depositions, if determined by the arbitrator to be necessary, shall be limited to a maximum of two per party and shall be held within 30 days of the making of a request. Each deposition shall be limited to a maximum of three hours duration. The prevailing party may be entitled to an award of reasonable attorneys' fees. The prevailing party shall be awarded pre-judgment interest as allowed by applicable law.

Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

Before the American Arbitration Association

In the Matter of Arbitration Between

Modern Furnishings
Claimant
– and –
Chapman & Associates
Respondent

ANSWER AND COUNTERCLAIM

Now comes Respondent, Chapman & Associates, responding to the Demand for Arbitration filed by Claimant, Modern Furnishings, as follows:

Respondent denies all claims made against it by Claimant and denies that it is responsible for the claim of $149,600 as the design, furniture and furnishings provided by Claimant did not conform to the agreement entered into by the parties.

Claimant failed to deliver elegantly functional furniture; rather they provided unsuitable furniture and a non-utilitarian design that failed to meet the desired outcome of a business atmosphere expressing modern sophistication. Therefore, payment is properly not owed.

Respondent repeatedly voiced complaints throughout each phase of the project and Claimant did not adequately respond. Modern Furnishings failed to deliver functional furniture that met the suitability and utilitarian standards discussed during initial consultations.

Respondent hereby counterclaims in the amount of $75,000 representing the down payment made to Claimant, and for Claimant's failure to effectively perform its duties.

Chapman & Associates sees no way that an arbitration hearing can be conducted within the next 60 days. Pam Chapman will be out of the country for most of the days in the next several months. We prefer a hearing to be scheduled in four to six months. In addition, we believe that the one day of hearing requested by Modern Furnishings is unrealistic. Chapman & Associates will need an additional two days to present its counterclaim.

Respondent further demands the removal of all delivered furnishings.

Respectfully submitted: MM/DD/YY

Alicia Rodriguez

Alicia Rodriguez, Esq.
Young, Quentin & Byrnes LLP

Counsel for Respondent
Chapman & Associates

SITUATION #1

You've been on the AAA's Roster of Arbitrators for nearly a year and this is the first time you have been called to serve on a case. Due to other commitments, the earliest you would be able to schedule the hearing is six months from now. You are anxious to serve. You have heard from others that oftentimes arbitration hearings are not scheduled for six months or more.

CONFLICT: The possibility of not being able to conduct the hearing within the timeframe desired by the parties.

REFERENCE: Canon I.B. (4) of *The Code of Ethics for Arbitrators in Commercial Dispute*s says one should accept appointment as an arbitrator only if fully satisfied

> *…that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.*

If the parties' expectation is to have a hearing date within three months of filing the *Demand for Arbitration,* an arbitrator not available for six months would not be "in accordance with the requirements of the proceeding." Conversely, a hearing date six to nine months from the filing of the demand may well be considered to be within the parties' requirements in a multi-million dollar or multi-party case. Disclosing your time constraints places the decision of determining the necessary time parameters for each case in the hands of the parties.

LEARNING POINTS

1. Speed is an essential element of the arbitration process. When accepting appointment to a case, Canon I.B. (4) of *The Code of Ethics* implies that you have an ethical obligation to ensure a prompt hearing.

2. Once appointed to a case you must be willing to commit the necessary time it will take to fulfill all your duties and responsibilities. The arbitration is not just something you can take care of in your "spare" time.

SITUATION #2

In the early 2000s, you purchased securities through a broker at a firm that later merged with Chapman & Associates. Neither you nor any member of your family has purchased securities through this broker or Chapman & Associates since then.

CONFLICT: Any conflict may be in the "eye of the beholder." The relationship here was indirect and is not current. Therefore you may feel absolutely sure you can serve impartially. However, the parties may have reservations. Information of this nature should be disclosed and will be provided to the parties by the AAA for their review and comment.

REFERENCES: Section R-17(a) of the *Commercial Arbitration Rules*, Section R-19(a) of the *Construction Arbitration Rules*, and Section 15(a) of the *Employment Arbitration Rules and Mediation Procedures* say in part:

> *Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.*
>
> Note: Commercial Rule R-17 and Construction Rule R-19(a) also place a duty on the parties and their representatives to make disclosures.

Canon II.A. of *The Code of Ethics* says:

> *Persons who are requested to serve as arbitrators should, before accepting, disclose:*
>
> 1. *any known direct or indirect financial or personal interest in the outcome of the arbitration;*
>
> 2. *any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any*

individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;

3. *the nature and extent of any prior knowledge they may have of the dispute; and*

4. *any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.*

COMMENT: The concurring opinion of the U.S. Supreme Court in *Commonwealth Coatings Corp. v. Continental Casualty Co.* (393 US 145, 151-152, 1968), said the following, which provides excellent guidance to arbitrators when making disclosures:

> *Arbitrators should "err on the side of disclosure" because "it is better that the relationship be disclosed at the outset when the parties are free to reject the arbitrator or accept him with the knowledge of the relationship." At the same time, it must be recognized that "an arbitrator's business relationships may be diverse indeed, involving more or less remote commercial connections with great numbers of people." Accordingly, an arbitrator "cannot be expected to provide the parties with his complete and unexpurgated business biography," nor is an arbitrator called on to disclose interests or relationships that are merely "trivial."*

When making a disclosure, *specificity is essential*; be sure to disclose **who, what, when, where** and **how.** It's important for the parties to put the disclosure in full context in order to make an informed decision on whether or not to object to your appointment.

LEARNING POINTS

1. If you think you can serve impartially and the relationship that exists or existed is not disqualifying on its face, disclose the information to the AAA. The AAA will then provide the information to the parties for their review and comment.

2. Any doubt as to whether information should be disclosed should be resolved in favor of full disclosure.

3. When making a disclosure be specific as to **who, what, when, where** and **how.**

SITUATION #3

You have received notice that a second law firm is joining the matter as co-counsel for the Respondent. Your daughter is a 2nd-year law student who was hired as a summer intern for that law firm this past summer. Since then, she has continued to do periodic contract-type work for that firm as she continues her law studies.

CONFLICT: Although your relationship with a party here is indirect, there is a direct and current relationship between one of the parties and an immediate family member, thus reasonably creating the possibility of partiality or bias or at least the appearance of bias.

REFERENCE: Canon II.A. (2) of *The Code of Ethics* says an arbitrator should disclose

> *any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts.*

LEARNING POINT

If a family member has a **direct** relationship with one of the parties, it might create an appearance that you may be partial toward that party. In such instances serious consideration should be given to declining the appointment.

SITUATION #4

A partner at a law firm in this proceeding was previously employed as an associate attorney in your firm between February 2001 and July 2004. You were not impressed by this attorney's work and made it clear that you would not allow this attorney to work on your cases.

CONFLICT: In addition to posing a direct conflict, this situation raises the prospect of an existing bias against one of the parties or representatives that might preclude you from providing a fair and impartial hearing.

REFERENCE: Canon I.B.(1) *The Code of Ethics*

LEARNING POINT

If you hold opinions about any party or representative that predispose you to be biased ***against*** that party or representative, to the extent that you could not be impartial, you should consider declining appointment to the case.

SITUATION #5

Contract issues and service agreements are not your specialties. Consequently, you have serious doubts about your ability to justly determine the issues in the case.

CONFLICT: Personal doubts about being able to render a just decision.

REFERENCES: The preamble to *The Code of Ethics* says, *"Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding."* See also Canon I.B.(3) (an arbitrator should accept appointment only if satisfied *"that he or she is competent to serve.")*

According to Domke on Commercial Arbitration, *"Arbitrators in commercial arbitration are often selected for the expertise in a specific trade which enables them to determine a specific dispute more effectively than could have been done by the court."* (Chapter 21-Qualification of Arbitrator)

COMMENT: The AAA does its best to match potential arbitrators to a case based on what it knows about the dispute and the information contained on arbitrators' biographical panel data sheets. Sometimes it is difficult to get a perfect match. It is always the arbitrator's responsibility to decline appointment to a case when he or she feels they lack the requisite subject matter competence to justly determine the issues involved.

LEARNING POINTS

1. If at any time you feel you could not competently and justly determine the issues in a case on which you are invited to serve, you should consider declining the appointment.

2. Any time you feel uncomfortable in your ability to serve as an arbitrator, regardless of the reason, you should decline the appointment. The AAA's Roster of Arbitrators has many skilled arbitrators that can take the appointment. You will likely be selected for future cases for which you have a greater comfort level.

3. Review the arbitration clause carefully. Does the clause contain any qualifications that the arbitrator is required to possess? If so, part of your disclosure should be a statement that you have reviewed the clause and meet the qualifications set forth.

SITUATION #6

Since accepting the appointment, you have resigned as a partner of your law firm and will be working as a Vice President and General Counsel for one of Modern Furnishings' major competitors.

CONFLICT: ***Appearance*** of potential bias.

REFERENCE: Canon II.A. (2) *The Code of Ethics*.

COMMENT: You could accept the appointment and make the disclosure, believing you could be impartial. However, you should consider that, regardless of how you decide the case, your award may be suspect.

If you award in favor of Modern Furnishings, Chapman could reasonably argue you were biased against them, because you were sympathetic to companies in the same business as the company for which you now work.

If you award in favor of Chapman & Associates, Modern Furnishings could argue you were biased in against a competitor of your new company.

LEARNING POINT

Part of your ethical obligation regarding the integrity of the arbitration process is to safeguard the award rather than put the award at risk. Sometimes the best defense is a good offense. If you believe any existing relationship or circumstance would automatically call into question the integrity of your award, you should give serious consideration to declining the appointment.

SITUATION #7

Two years ago you served as an arbitrator on a panel of three arbitrators. A partner at the law firm representing Chapman & Associates was a co-arbitrator. The law firm has 150 lawyers.

CONFLICT: Indirect relationship.

REFERENCE: Canon II.A. (2) of *The Code of Ethics* says in part:

> *Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any **co-arbitrator**, or with any individual whom they have been told will be a witness.*

LEARNING POINT

Keep in mind that a conflict may be in the "eye of the beholder." The relationship here was indirect, and is not current. The arbitrator you served with is not directly involved in this case and you have not had an ongoing relationship with him. Still, a party, in this case Modern Furnishings, may have reservations. Additionally, the manner in which the arbitration was concluded might be of importance to the parties, *i.e.*, awarded, settled or withdrawn, and should be considered while preparing your disclosure. Therefore, information of this nature should be disclosed and will be provided to the parties by the AAA for their review and comment.

SITUATION #8

Approximately 30 years ago, you lived in the same community as one of the parties. While you don't recall ever meeting the party, your then-teenage daughter may have performed some tasks for this party such as watering plants while they were on vacation.

CONFLICT: ***Indirect***. While it isn't direct, continuing, recent, or substantial, this is information that you are aware of and should therefore disclose. Similar to situation #3, this conflict is through a family member.

REFERENCE: Canon II.A. (2), which extends the duty to disclose to family members.

LEARNING POINT

As with so many conflicts, they must be taken from the parties' point of view. An issue that might seem minor or irrelevant at the time of appointment can take on a very different meaning when a Motion to vacate an award is filed. Your ultimate obligation is to protect the integrity of the process and to preserve the finality of the award.

SITUATION #9

You and counsel for the Respondent were previously co-counsel for defendants in another case.

CONFLICT: ***Direct.***

REFERENCE: Canon II.A. (2) of *The Code of Ethics* says in part:

> *Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party* ***or its lawyer****, with any co-arbitrator, or with any individual whom they have been told will be a witness. (Emphasis added)*

LEARNING POINT

There is a lot of information missing from this disclosure. You should take care to make sure that as much information as possible is made available to the parties for consideration.

SITUATION #10

In 2011 and 2013, you served as an arbitrator and entered an award in three AAA arbitration matters in which a law firm in this proceeding represented one of the parties. You were also appointed as the arbitrator in four other cases (three AAA, one non-AAA), but those cases settled or were withdrawn prior to hearing. In addition, you are currently serving as a mediator in a private mediation where this law firm represents one of the parties and have previously served as a mediator in four other mediations in which this law firm previously represented one of the parties.

CONFLICT: This conflict is ***direct, recent and continuing.***

REFERENCE: Commercial Arbitration Rule R-17 (a) and *The Code of Ethics* Canon II.

LEARNING POINT

Unlike situation #9, where there isn't enough information to make a complete disclosure, in this situation there is a wealth of information to disclose. If you begin to accept more appointments to serve as an arbitrator, whether under the auspices of the AAA or not, you need to make sure that you have an effective method for tracking your appointments and keeping that information available.

You also need to consider the ramifications of accepting multiple appointments with the same participants, especially where you will have multiple cases proceeding at the same time. While local counsel might not have any conflict, consider multiple appointments from the perspective of out of town parties or representatives.

SITUATION #11

From the witness list provided, you expect that an expert witness will testify. You knew this witness 10 years ago when she worked for a company not involved in this proceeding. From time to time, you see her at professional meetings and about a year ago, she asked your firm to draft an agreement for your business. You asked a colleague to assist her and it amounted to approximately five hours of work.

CONFLICT: ***Indirect*.**

REFERENCE: Commercial Arbitration Rule R-17(a) and *The Code of Ethics* Canon II.(A).(2).

LEARNING POINT

Pay close attention to witness lists. Your obligation to disclose extends to all participants in the arbitration and is ongoing until the conclusion of the case.

SITUATION #12

An attorney in your firm, but in a different location, represents Modern Furnishings in an administrative matter.

CONFLICT: ***Direct.***

REFERENCE: Commercial Arbitration Rule R-17(a).

LEARNING POINT

There is a lot of information missing from this disclosure, but the main learning point is that you need to make any necessary disclosures about conflicts that exist in relation to your firm, not just yourself.

ARBITRATOR ETHICS, PRACTICE STANDARDS AND DISCLOSURES

ADDITIONAL LEARNING POINTS

1. *The Code of Ethics* does not take the place of or supersede the parties' arbitration agreement, applicable arbitration rules, or laws. It does, however, reflect the AAA's views of the proper conduct of an arbitrator, and parties and the courts similarly look to the *Code* for guidance.

2. The law on the question of what constitutes evident partiality of an arbitrator resulting from a failure to disclose conflicts of interest is heavily litigated, but remains unsettled. As a result, the various situations used as illustrations in this manual might result in successful motions to vacate an arbitration award in one jurisdiction, whereas the same facts could have the opposite outcome in a different jurisdiction. Before serving on an arbitration, it is advisable to carefully review the applicable statutory or judicially created arbitration law in the jurisdiction where the arbitration will be held. In some jurisdictions, for example in California, there may be statutory or ethical provisions that mandate the making of disclosures that might otherwise be overlooked.

3. Making disclosures during a hearing:

   Immediately call a recess and contact the AAA. Give the disclosure information to the AAA. The AAA will then speak to the parties or their representatives (out of your presence). Explain the disclosure you made, listen to the parties' comments, and then decide whether you should remain on the case. If the hearing is not being conducted in an AAA office, this process will likely be conducted over the telephone.

   Avoid giving any party the opportunity to object to your continued service in your presence. Doing so will prevent a dilatory party from attempting to unnecessarily derail the hearing.

   Do not attempt to handle the disclosure process directly with the parties, but instead direct those communications through the AAA as provided for in the applicable AAA rules.

4. *The Code of Ethics* applies to more than just disclosures. The other major topics addressed by the *Code* are:

   - Conducting the Proceedings Fairly & Diligently
   - Making Decisions in a Just, Independent & Deliberate Manner
   - Being Faithful to the Relationship of Trust & Confidentiality Inherent in the Office
   - Advertising
   - Ethical Considerations Relating to Party-Appointed Arbitrators

SAMPLE DISCLOSURE #1
(Poorly Drafted)
Footnotes indicate the various deficiencies.

Via E-mail

Date:

Addressees

Case name

Dear:

I was a sole arbitrator and a panel member on several arbitrations[1] in which attorneys from Firm X[2] [Claimant's counsel] represented a party. I also am currently mediating a case where Firm Y[3] [Respondent's counsel] is appearing before me, and I believe[4] I have done other mediations with them in the past as well.[5] I consider Jane Doe at Firm X to be a friend and see her socially.[6] I am acquainted with several lawyers at Firm Y and attend various bar and other professional association meetings or conferences with them.[7] I have been on two previous panels with one of my fellow panelists in this case.[8] I am active on Facebook and LinkedIn and routinely accept invitations from various practitioners. I also accept and give endorsements regularly.[9]

[1] Identify how many arbitrations, whether any are currently pending, and the years when they took place.

[2] Indicate whether any of Claimant's current counsel from Firm X participated in any of the prior arbitrations.

[3] Are any Firm Y counsel from the arbitration in this mediation?

[4] Vague – need to keep better records so can say for sure or at least for sure within the past X number of years.

[5] Again, identify how many other mediations, when, whether current counsel where lawyers in any of those other mediations.

[6] Be wary of using the term "friend" unless the person truly is a personal friend; identify how often you see them socially, in what circumstances (big parties vs. dinner at your house); and when was the last time you saw them socially.

[7] Identify the lawyers whom you know professionally (unless a large number) and the professional groups through which you know them. If you sit on committees or have given presentations together, say so. If the groups are large, say so. If you don't attend the group's meetings frequently, say so.

[8] While less of a concern than your connections with the parties and their lawyers, identify how many other cases you have had with each panelist, whether they went to hearing and award, and over what time period.

[9] Social media can be a rabbit hole; if you randomly accept connections from almost anyone, you should say that. If you do give endorsements on social media, you should review them to see if any pertain to the lawyers, firms, or parties in the case.

SAMPLE DISCLOSURE #2
(Well Drafted)

Via E-mail

Date:

Addressees

Case name

Dear:

I am returning the Notice of Appointment and Notice of Compensation Arrangements for this matter.

I served as a co-arbitrator in a matter in which { } represented a party about one year ago in which I was appointed [by agreement of the parties from an AAA list] [by the opposing party].....I mediated a case in which the respondent { } appeared as a party five years ago. I serve on a bar association committee which meets once a month of which counsel for plaintiff is also a member and we occasionally attend the same meeting. Etc. { }

I have the following additional disclosures: I am active with various bar associations, have spoken and published extensively and edit a legal publication and so have occasion to interact with many members of the bar. Regarding counsel associated with the firms or parties in this matter, I may be serving or have served on bar association committees with them; I may have been listed as an editor in a publication which published an article by them or had an article or chapter I wrote appear in the same publication in which their contribution appeared; I may have cited them in one of my articles or been cited by them in one of their articles; I may have presented at an educational program at which they also presented; I may be a director of an organization of which they are also a director; I may have met them at bar association functions or professional conferences; they may subscribe to an ADR-related list serve to which I subscribe or are members of one of my www.Linkedin.com groups or be one of my over 700 "connections" on Linkedin, an on-line network in which I accept all invitations to connect sent to me by anyone in the litigation or alternative dispute resolution field whether I know them or not and which is strictly professional in nature. The Law School has a great many adjunct professors and I have no contact with them arising from our respective responsibilities at the law School. My practice is not to make inquiries with respect to these various professional activities as there are so many that it is not possible for me to identify all possible points of overlap in such affiliations and they do not constitute a "relationship which might reasonably affect impartiality or independence in the eyes of any of the parties." I therefore make no disclosures with respect to such affiliations other than with respect to persons directly involved in this matter as to which I have such knowledge based on present recollection without inquiry.

A more comprehensive listing of my activities is found on my website at { }. You are invited to promptly conduct such further review and research online or otherwise and seek response from me to any further inquiry as you deem appropriate.

My spouse is { } at { }. I have not conducted a conflict check at that firm or at the firms of { } or { } with which I was previously associated. I am not made aware of the matters handled at

any of those firms. I am not receiving and will not receive any payments from the firms with which I was associated.

I believe I can render a fair and unbiased decision and act independently in this matter and make these additional statements in the interest of full disclosure. If there is anything known to a party that is relevant in this context, please advise the case administrator as soon as it becomes known.

Sincerely yours,

Arbitrator

SAMPLE DISCLOSURE #3
(Well Drafted)

Via E-mail

Date:

Addressees

Case name

Dear:

I do not know anything about the parties or the project but, as is often the case, my law firm and I had had prior contacts with the attorneys representing the parties. There have been numerous prior matters over the years involving _____ where our firms represented clients who were adverse to one another. There are too many to mention. Last year I served as a mediator in a construction dispute where _____ represented one of the parties. It settled. _____ recently served as an arbitrator in a construction dispute involving one of my clients. It went to award. I do not believe I have ever had a matter directly with _____, but I recall years ago we were separate speakers during a day-long construction seminar sponsored by _____. Approximately three years ago I served as an arbitrator in a construction dispute where one of the parties was represented by _____. _____ and I run into one another at industry events and I understand that one of my partners, _____, has played golf with _____ on one or more occasions.

I know many of the attorneys at _____, including _____, _____ and _____ (all of whom live (or lived) in my town where our sons played sports and/or socialized in grammar and high school). Approximately two years ago, _____ attended an AAA training session for arbitrators where I was one of the instructors. We exchanged pleasantries. Just over a year ago, I represented several condominium owners in a dispute with a sponsor who was represented by _____ and _____ of _____. _____, who I understand recently joined _____, currently represents a party in a construction dispute for which I am the mediator.

_____'s father, _____, is the owner of _____ which is a former client. _____ also live in my town and their son and my younger son played on the same baseball team years ago.

I am confident that none of the foregoing will have any effect on my ability to act as a fair, impartial arbitrator and I look forward to the opportunity to serve the parties. Please be kind enough to forward this e-mail to counsel for the parties.

Attached is my executed Notice of Appointment.

Sincerely yours,

Arbitrator

[As of 1/1/19 but subject to change.]

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re:

NOTICE OF APPOINTMENT

To:

It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social, or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the biographical information that you have provided to the AAA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The Association will call the disclosure to the attention of the parties.

You will not be able to serve until a duly executed Notice of Appointment is received and on file with the Association. Please review the attached *Disclosure Guidelines* and, after conducting a conflicts check, answer the following questions and complete the remainder of this Notice of Appointment:

	Yes	No
1. Do you or your law firm presently represent any person in a proceeding involving any party to the arbitration?	☐	☐
2. Have you represented any person against any party to the arbitration?	☐	☐
3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?	☐	☐
4. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?	☐	☐
5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?	☐	☐
6. Have you, any member of your family, or any close social or business associate ever served as an arbitrator in a proceeding in which any of the identified witnesses or named individual parties gave testimony?	☐	☐
7. Have you, any member of your family, or any close social or business associate been involved in the last five years in a dispute involving the subject matter contained in the case, to which you are assigned?	☐	☐
8. Have you ever served as an expert witness or consultant to any party, attorney, witness, or other arbitrator identified in this case?	☐	☐
9. Have any of the party representatives, law firms, or parties appeared before you in past arbitration cases?	☐	☐

	Yes	No
10. Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration?	☐	☐
11. Have you ever sued or been sued by either party or its representative?	☐	☐
12. Do you or your spouse own stock in any of the companies involved in this arbitration?	☐	☐
13. If there is more than one arbitrator appointed to this case, have you had any professional or social relationships with any of the other arbitrators?	☐	☐
14. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?	☐	☐
15. Are you aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality?	☐	☐

Should the answer to any question be "Yes," or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality, then describe the nature of the potential conflict(s) on an attached page.

Please indicate one of the following:

☐ I have conducted a check for conflicts and have **nothing to disclose**.

☐ I have conducted a check for conflicts and have **made disclosures on an attached sheet.**

THE ARBITRATOR'S OATH

State of
} SS:
County of

I attest that I have reviewed the panel biography which the American Arbitration Association provided to the parties on this case and confirm it is current, accurate and complete.

I attest that I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the American Arbitration Association, *Code of Ethics for Commercial Arbitrators in Commercial Disputes*, the parties' agreement, and applicable law pertaining to arbitrator disclosures.

I further affirm that consistent with the applicable Rules of the American Arbitration Association, the *Code of Ethics for Arbitrators in Commercial Disputes*, the parties' agreement, and applicable law:

- That I am fit to serve on the above-referenced arbitration and able to fully execute my responsibilities during all phases of the case;
- That I will keep confidential all matters relating to the above-referenced arbitration;
- That I will maintain a professional demeanor and appearance of impartiality during all phases of this case;
- That I will endeavor to effectively manage all phases of this case with a commitment to speed, economy and just resolution in a manner consistent with the parties' expectations;
- That I will bill parties responsibly and ethically and will review my bills for reasonableness relative to the nature and scope of the activity performed prior to submitting them to the AAA.

The arbitrator being duly sworn, hereby accepts this appointment.

Dated:_____ Signed: _____

Sworn before me this day of , 20

[As of 1/1/16 but subject to change.]

DISCLOSURE GUIDELINES

for

Arbitrators serving on American Arbitration Association Cases

General

1. The American Arbitration Association Rules and *The Code of Ethics* require you to make full disclosure.

2. Your duty to make disclosures is ongoing throughout all stages of the arbitration. The AAA may prompt you to conduct a subsequent conflict check during key points of the case, but you should conduct such checks and make disclosures on your own initiative whenever new information about the case participants comes to light.

3. Any doubt as to whether or not disclosure needs to be made should be resolved in favor of disclosure. You should not judge the significance of the potential conflict but rather you should make the disclosure and let the parties determine its significance.

4. As a guiding principle, *if a relationship or interest crosses your mind – disclose it.*

5. You must disclose:

   - any circumstance likely to give rise to ***justifiable doubt*** as to your impartiality or independence (*per AAA rules*).
   - any interest or relationship that might create an ***appearance*** of partiality *(*per *The Code of Ethics).*
   - any applicable statutes pertaining to arbitrator disclosures.

Financial

As to any party, attorney, witness and other arbitrator involved in ***this*** case, you must disclose any:

- financial interest that is ***direct*** (existing or past) or ***indirect*** (existing or past).

Relational

You must disclose any ***relationships*** you have with any party, attorney, witness and other arbitrator involved in ***this*** case. This includes relationships with their:

- families or household members;
- current employers;
- partners;
- professional and/or business associates.

How to Disclose

When disclosing, ***specificity*** is extremely important. Provide enough detail in your disclosure so that the parties are fully informed of the potential conflict. Tell us:

- who,
- what,
- when,
- Where,
- how.

Failing to provide a sufficient level of detail will delay the confirmation of your appointment, as well as the progress of the case overall, since the AAA will need to contact you for additional information.

All disclosures must be provided in writing. In the rare situation where a disclosure comes to light at a hearing, you are obligated to excuse yourself from the proceeding and immediately contact the AAA who will facilitate the process for communicating the disclosure to the parties and obtaining their response. Pursuant to the AAA Rules, the AAA shall determine whether or not a challenge raised by a party to an arbitrator's continued service shall be granted or denied.

[As of 1/1/16 but subject to change.]

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re:

Notice of Compensation Arrangements

To:

You have been invited to serve as an arbitrator in the above matter. It is important that you understand the terms of your compensation and the role you play in ensuring that you receive payment for fees and expenses that you may incur during your service. This invitation to serve is based on our assumption that you are willing to comply with the **AAA's *Billing Guidelines for Commercial, Construction* and *Employment Arbitrators***, which is attached to this document and also available in eCenter at www.adr.org. If you expect to assess charges that are not detailed on your AAA resume and referenced below, or if you are a non-AAA arbitrator and such charges are not reflected below, you must notify the AAA prior to accepting your appointment so that the parties can determine whether they still seek your services as an arbitrator.

Your Compensation

This matter is being administered under the _____. As such, you will be compensated at the following rates, per the rate structure indicated on your AAA resume, or if a non-AAA Arbitrator, based upon the information you provided to your Case Manager and shared with the parties:

Hearing:

Study:

Travel:

Cancellation:

Cancellation Period:

Rate Comment:

Your Expenses

On most cases, your expenses should be nominal and will be reimbursed immediately after you submit them. For any single expense over $75.00, please include a receipt with your request for reimbursement.

If you anticipate that you will incur significant expenses, such as airfare or hotel room costs, please advise your Case Manager in advance so that the parties can be asked to make deposits prior to you incurring the expense.

Deposits and Payment

Payment for your compensation is the obligation of the parties and it is understood that the American Arbitration Association has no liability, direct or indirect, for such payment. During the course of the proceeding the Case Manager will ask that you provide an estimate of the amounts needed to cover your fees. Generally this occurs immediately after the preliminary hearing, although on longer or more complex cases it can occur immediately upon appointment or after each series of hearings.

Unless you specify otherwise, the parties are advised that deposits are due 30 days prior to the first hearing. No later than two weeks prior to the hearing, the Case Manager will advise you of the total amount on deposit. Should the parties fail to make deposits in a timely manner, you must determine whether to go forward, suspend or terminate the proceedings until such time as deposits have been made, or per Rule R-57, a party may request that the arbitrator take specific measures relating to a party's non-payment. If you decide to go forward without full deposits, you may not subsequently delay the rendering of the award for lack of payment of your fees. The time to deal with this issue is prior to the commencement of the hearings. Should you decide to suspend the proceedings, your Case Manager can assist you in issuing an appropriate order to the parties.

If you realize that you are spending more time on this matter than you originally estimated, it is your obligation to inform the Case Manager prior to exhausting the current deposit. The Case Manager will then make arrangements with the parties for additional deposits per your instructions.

In order to receive payment, please submit bills promptly. Your bills should be submitted in a format that is presentable to the parties, should detail the dates on which the charges were incurred and must correspond with the terms of compensation outlined herein. Upon receipt, the AAA will release payment from the amounts deposited by the parties. Should there be insufficient funds on deposit, you will not receive payment until the parties have made additional deposits. Further, we will not use one party's deposit to cover another party's obligation without written permission to do so.

In the event your Award is delivered prior to payment by the parties of the agreed upon compensation, the AAA is authorized but not obligated to seek to collect these monies on your behalf by all lawful means to represent you in any action or proceeding for such recovery and to file a claim in any bankruptcy or insolvency proceeding for such monies. The AAA may prosecute and receive any recovery on behalf of the undersigned and has full authority to compromise or settle such claims as may be, in its discretion, appropriate. However, under no circumstances whatsoever will the AAA be liable for any failure to collect any or all the monies due. The AAA is authorized to subtract a reasonable amount for collection and attorney's fees.

Failure to Disclose and Forfeiting Compensation

As an arbitrator in this matter, you have an ongoing obligation to disclose any direct or indirect relationship with the case participants. Your failure to make disclosures in a timely manner would be a serious transgression and may be grounds for your removal as arbitrator from this case and/or from the AAA's Roster of Neutrals. Should this occur, you may be required to forfeit the compensation for the time you spent on this matter after you should have made such disclosures.

If you are willing to serve on this matter per the compensation terms detailed above, please complete and sign the following section and return it, along with your Notice of Appointment, to your Case Manager.

##########

ARBITRATOR MUST COMPLETE THE FOLLOWING SECTION

Compensation payments, and the corresponding IRS reporting, will be made to either to you individually (attributed to your Social Security Number) or to your employer (attributed to the Employer Identification Number), based on the preference you indicated and as recorded in your panel record. If you are unsure of your current payment preference, you may contact your Case Manager or the AAA Department of Neutrals' Services. Promptly inform the AAA if this information is incorrect or changes during the case, or if an address correction is necessary.

If the AAA does not have the payee's tax information on record, we must withhold 31% of compensation payments, as required by the IRS. Reimbursements of expenses are not subject to withholding and are not reported to the IRS.

I am willing to accept appointment on this matter under the compensation terms detailed above.

Signed: _____ Date: _____

[As of 1/1/16 but subject to change.]

AMERICAN ARBITRATION ASSOCIATION

CALIFORNIA STATUTORY ISSUES

DISCLOSURE AND OBJECTION PROCEDURES

Disclosures

Upon the proposed appointment of a neutral arbitrator, pursuant to the California Code of Civil Procedure (§§ 1281.85, 1281.9, 1281.91, & 1281.95) and the Ethical Standards for Neutral Arbitrators in Contractual Arbitration:

> the proposed arbitrator shall make appropriate disclosures to the parties, generally encompassing all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, and the disclosure of interests, relationships or affiliations that may constitute conflicts of interest.

There is a California version of the Notice of Appointment that incorporates the necessary questions to assist arbitrators in making all appropriate disclosures. Under the statute, the arbitrator must make all necessary disclosures to the parties within ten (10) calendar days of service of notice of the proposed appointment as neutral arbitrator. To ensure that the case manager has enough time to process the disclosure statement, the document should be returned by the arbitrator within seven (7) calendar days from the date of the invitation. The period to make disclosures runs from the date of the AAA invitation of the arbitrator to serve.

It is the responsibility of the arbitrator to ensure that a complete disclosure statement is made, and reliance on the AAA's form may not be sufficient.

> **Note: The section below regarding disqualification based on the disclosure statement (California Code of Civil Procedure § 1281.91) does <u>not</u> apply to party appointed neutral or non-neutral arbitrators.**

Upon transmittal of the disclosure statement to the parties, the parties have fifteen (15) calendar days within which to file a notice of disqualification. Pursuant to the statute, the notice of disqualification must be based on the disclosure statement. If any party to the case objects to the appointment of the proposed neutral arbitrator within fifteen (15) calendar days based on a disclosure made, that arbitrator must be removed. There is no materiality standard with regards to the disclosure. Standard AAA practices for review of disclosures do not apply. Any objection to a disclosure made is sufficient under the statute to warrant removal, regardless of how remote the conflict may be.

Upon receipt of a statutory notice of disqualification, the AAA case manager will acknowledge receipt of the notice of disqualification, inform the parties that the arbitrator is disqualified and that a new arbitrator will be appointed. AAA will invite the other parties to the case to submit comments to the notice of disqualification, which will be made a part of the administrative file.

All notices of disqualification will be reviewed by an AAA supervisor and/or ARC (Administrative Review Council) to determine whether the objection is statutory. There may be objections submitted within the fifteen (15)-day time period that are not statutory, *e.g.*, an objection to an arbitrator because of a change in the rate of compensation, or because a party is making a blanket objection to any arbitrator appointed by the AAA. In these instances, removal of an arbitrator is not automatic, and comments will be requested

from the other parties to the case before the AAA makes a determination as to whether to remove or reaffirm.

Note that California statutory disclosure requirements specifically exclude cases arising from collective bargaining agreements.

Supplemental Disclosures

Pursuant to California Code of Civil Procedure § 1281.91(c) except as provided in subdivision (d) of the statute [See Requests for Recusal Section Below], the statute does not apply to supplemental disclosures made **after** a hearing of any contested issue of fact relating to the merits of the claim or **after** any ruling by the arbitrator regarding any contested matter. Therefore, how a supplemental disclosure is addressed depends on when it is made.

Supplemental disclosure made prior to a hearing of any contested issue of fact relating to the merits of the claim or before any ruling by the arbitrator regarding any contested matter:

When an arbitrator makes a statutory supplemental disclosure prior to a hearing of any contested issue of fact relating to the merits of the claim or before any ruling by the arbitrator regarding any contested matter and/or when a party discovers that the arbitrator failed to make a statutory disclosure prior to a hearing of any contested issue of fact relating to the merits of the claim or before any ruling by the arbitrator regarding any contested matter, the disclosure should be treated the same as if it were an initial disclosure under the statute.

Supplemental disclosure made after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter:

When an arbitrator makes a statutory supplemental disclosure after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter and/or when a party discovers that the arbitrator failed to make a statutory disclosure after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter, the parties are given fifteen (15) days to review any supplemental disclosures and make any objections. If an objection is received to a supplemental disclosure, the case manager will immediately request comments from the other parties. The process outlined above regarding automatic removal does not apply to supplemental disclosures made after a hearing of any contested issue of fact or after any ruling regarding any contested matter. In all instances, the supplemental disclosure, objection, and any response received must be reviewed by a member of AAA management. In these instances, although the standard AAA practices of review will apply, there are other statutory considerations, namely§ 1281.91(d), that must be taken into account. In these instances, members of management will be in touch with the appropriate divisional VP or Director to discuss the circumstances surrounding the supplemental disclosure.

Requests for Recusal

§ 1281.91(d) provides that: If any ground specified in Section 170.1 exists [grounds to disqualify a judge], a neutral arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the arbitration proceeding. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or their respective representatives.

Pursuant to §1281.91(d), a party may make a direct request to an arbitrator for recusal if any ground specified in §170.1 exists. §170 et sec outlines the process and grounds for the disqualification of judges.

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Preparing for and Conducting the Preliminary Hearing

Serving as an arbitrator under the auspices of the AAA is a privilege and we expect you to uphold the Association's values and vision throughout the arbitration process by delivering your best service each and every time - built on integrity, committed to innovation and embracing the highest standards of client service in every action.

The Preliminary Hearing is the most important first step in successfully managing an efficient arbitration. This is often the first time counsel and party representatives will "meet" you. It is therefore, before anything else, very important that you deliver an effective opening statement that establishes your authority, sets the tone of the proceedings and encourages everyone to participate responsibly so that the tenets of AAA arbitration are realized. Come prepared, come focused and come resolved to put counsel on the most efficient footing from the start.

The look and feel of every preliminary hearing can be different. Prior to the scheduled meeting time, sometimes counsel will have agreed to a scheduling order in its entirety or with only a few outstanding items that need your attention. Other times counsel will want you to work on and complete a schedule during this conference and still other times, it might be best to conduct a brief telephonic hearing to address any outstanding issues and then direct counsel to complete the schedule within a specified timeframe without the arbitrator's involvement. That said, arbitrators should never "rubber stamp" an order produced by counsel even if it has been agreed to. As the arbitrator you should ask questions, challenge timeframes, curb discovery where appropriate, etc. It is the job of the arbitrator to help counsel produce a schedule that anticipates problems, minimizes cost and delay and crafts a process that does not mimic litigation.

Despite some arguments to the contrary, the cost of arbitration, in general terms, is also something that could and perhaps should be addressed during the preliminary hearing. A candid conversation about arbitrator compensation, the cost of discovery, of what one decision versus another may mean, etc., can go a long way in driving the overall efficiency of an arbitration. By proactively addressing cost at the outset, an arbitrator will demonstrate their personal interest (as well as AAA's) in delivering a meaningful product for counsels' clients.

- A good practice tip is to develop an opening statement that attempts to meet these general expectations and "try it out" on your fellow colleagues. Recognizing that there is no perfect "mousetrap," your opening statement may need to be more detailed in some cases and less in others; however, it should never leave counsel thinking they made a mistake in your selection.

- **Preliminary Issues**

There are a number of procedural decisions that an arbitrator may be asked to rule on, including the arbitrability of the claim, the locale for the hearings, or the consolidation or joinder of additional parties or cases.

Arbitrability

1. Issues and/or claims frequently arise in arbitration that one or the other party deems not to be subject to arbitration, either because one party alleges that they never agreed to submit their dispute to arbitration or because an agreement to arbitrate does not cover the dispute (substantive arbitrability). Alternatively, other parties may argue that some condition precedent to arbitration has not been complied with (procedural arbitrability). Such issues are mostly raised in the early stages of a proceeding, but not necessarily so, and are referred to as "issues of arbitrability."

2. In *First Options v. Kaplan*, 115 S.Ct. 1920 (1995), the U.S. Supreme Court held that any dispute as to the arbitrability of a matter shall be decided by a court, unless the parties have agreed that an arbitrator will make that determination by clearly and explicitly stating so in their contract.

   Section R-7 of the *Commercial Arbitration Rules*, Section R-9 of the *Construction Arbitration Rules* and Rule 6 of the *Employment Arbitration Rules* include language that a number of courts have interpreted as providing such explicit authority.

3. Section R-7 of the *Commercial Arbitration Rules*, Section R-9 of the *Construction Arbitration Rules*, and Rule 6 of the *Employment Arbitration Rules* provide an arbitrator the authority to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of an arbitration agreement. Rulings on jurisdictional challenges should generally be made as a preliminary matter but could also be part of the final award. Additionally, Rule R-7 (a) in the *Commercial Arbitration Rules* also provides the arbitrator the ability to rule on the arbitrability of ***any*** claim or counterclaim submitted in the arbitration process.

4. Section R-4(c) of the Commercial Arbitration Rules specifically reserves for the arbitrator the authority to determine whether a condition precedent has been met. There is no express grant of this authority in any other rule set.

Locale

Arbitrators may also need to rule on the locale for the hearings. If there is a dispute regarding locale, the AAA will make an initial determination regarding locale and reserve a final determination for the arbitrator once appointed.

If the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, the locale shall be that specified in the arbitration agreement.

The Commercial Rules allow for an arbitrator to find that applicable law requires a different locale, even if the locale is specified in the contract (Commercial Rule R-11(b)). This exception does not exist in the Construction Rules.

If the clause is silent, the Construction Rules default to the city nearest to the site of the project in dispute, subject to the power of the arbitrator to finally determine the locale (Construction Rule R-12(a)).

The Employment Rule on locale is very broad (Employment Rule 10).

Rules may also include time constraints, so it is important to review the appropriate rule on locale as soon as a locale issue is raised.

Consolidation and Joinder

Section R-7 of the *Construction Arbitration Rules* provides the AAA the authority to directly appoint an arbitrator for the purpose of deciding whether related arbitrations should be consolidated or joined and if so to provide a fair process for doing so. There is no counterpart for this provision in the commercial or employment rules.

- **Case Tracks**

The Commercial and Construction Rules contemplate different administrative "tracks" depending on the size of the claim in dispute and the number of participants. The smaller the amount of the claim and the fewer participants, the more streamlined the process.

To illustrate how case filings are split between the tracks, you can provide these statistics from 2019 case filings:

Rules	Expedited/Fast Track	Large Complex	Regular
Commercial Arbitration Rules	33.13%	16.72%	50.15%
Construction Industry Arbitration Rules	36.88%	16.15%	46.97%
Grand Total	**34.07%**	**16.57%**	**49.36%**

As the participants prepare for the preliminary hearing exercise, they should understand that the vast majority of their case assignments will come from the Regular and Expedited/Fast Tracks and you should encourage them to pay close attention to those provisions.

- ***Expedited and Fast Track***

These Procedures are included in both the Commercial Rules (E-1 through E-10) and the Construction Rules (F-1 through F-14) and apply to two-party cases where the claim amount does not exceed $75,000 (Commercial) or $100,000 (Construction). Some of the relevant points include:

- *Limited discovery* – The rules contemplate the exchange of exhibits, and the Construction Rules direct the exchange of witness lists. No other discovery is expressly permitted under these rules.

- *Time frames for completion* – Under the Commercial Rules, the hearing should be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment (Rule E-7). The Construction Rules require that the hearing shall be closed no later than 45 days after the date of the preliminary telephone conference.

- *Length of hearing* – Hearings should not exceed one day, but the arbitrator may schedule an additional hearing if necessary. Arbitrators should refer to the rules for time standards that apply to additional days of hearing.

- *Compensation* – Arbitrators are compensated at a flat rate for the case, payable at 50% for cases that conclude after the preliminary hearing but before an evidentiary hearing.

- ***Documents Only***

Where no party's claim exceeds $25,000, exclusive of interest, attorneys' fees and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary.

See Commercial Rule E-6, Construction Rules D-1 through D-4, Employment Rule 35, which provide that parties may agree to waive oral hearings, otherwise the arbitrator shall specify a "fair and equitable procedure."

The documents only procedures allow for a conference call between the parties.

- ***Regular Track***

These are the standard Rules without any exceptions or changes. Provisions to be aware of under the regular track procedures include:

Dispositive Motions – These are now expressly permitted under each of the major rule sets (Commercial, Construction and Employment), but the standard to consider dispositive motions may be different under each of the sets of rules.

Electronic Discovery – Commercial Rule R-22(iv) and Construction Rule R-24(iv) address an arbitrator's authority to control the process for electronic discovery.

Issues surrounding the production of electronically stored information (ESI) continue to grow in number and complexity. As such, it is incumbent on all AAA arbitrators to possess sufficient knowledge in this area to effectively guide parties and their counsel through this increasingly expensive aspect of dispute resolution. To aid participants in litigation and, by extension arbitration, The Sedona Conference developed a set of fourteen core principles and best practice recommendations for addressing the production of electronic information. *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production,* as they are officially known, reflect the evolving views on electronic discovery that have taken place over the past decade. The fourteen succinct statements embody a reasonable and balanced approach to the treatment of electronically stored information in adjudicative processes. Familiarizing yourself with *The Sedona Principles* will help you better assist parties in arbitration with their electronic discovery needs. The essence of the Principles may be captured as follows:

> *There is a duty to preserve electronically stored information, but requests for such should be made with proportionality in mind. All parties should confer regarding preservation, production, and scope expressing their requests clearly. The obligation to preserve requires a reasonable good faith effort. Responding parties are in the best position to evaluate the appropriateness of requests. The requesting party has the burden of proof regarding allegations of inadequacy as to preservation and production. Production should be active data. Deleted data should only be produced if shown to be relevant. Procedures protecting privilege must be followed. Data sampling methods are permitted*

and unless otherwise agreed the data should be provided in ordinarily maintained data format. Reasonable costs must be kept in mind and sanctions should be considered only if it can be shown that there was a clear breach of the duty to preserve.

A copy of *The Sedona Principles* can be found at:
https://thesedonaconference.org/sites/default/files/publications/The%20Sedona%20Principles%20Third%20Edition.19TSCJ1.pdf

- ***Large, Complex Case Procedures***

The LCC procedures apply to Commercial Rules cases where a claim is at least $500,000 and Construction Rules cases where a claim is at least $1,000,000.

- *Panels* – Commercial Rule L-2(a) reads "Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. With the exception in paragraph (b) below, if the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least $1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than $1,000,000, then one arbitrator shall hear and determine the case." Construction Rule L-3(a) reads, "Large, Complex Construction Cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree, three arbitrators shall hear the case."

- Discovery – The LCC procedures expressly permit discovery for both Commercial and Construction cases. Commercial Rule L-3 references the "P" procedures and incorporate the discovery outlined under Rule P-2. Construction Rule L-4(d) permits the parties to conduct such discovery as may be agreed to by all parties.

    - Balanced against these rules allowing discovery, the LCC procedures also require that the arbitrator take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy, and cost-effective resolution of an LCC dispute.

    - The LCC procedures also permit an arbitrator to order depositions, but only in limited circumstances.

- **Mediation**

The most recent versions of the Commercial and Construction Rules now include a mediation requirement. The expectation is that the parties will attempt mediation for all cases where a claim or counterclaim exceeds $75,000 unless a party opts out of this rule. The arbitrator can inquire as to whether the parties have met this requirement and if not, when and how the requirement will be met.

Additionally, the Code of Ethics Canon IV states that "it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes." Encouraging mediation, without exerting pressure, can be done in your preliminary hearing and subsequent order by drafting language such as – "Mediation and Judicial Settlement Conference Services are available from the AAA. There is no additional filing fee to initiate either service. The parties shall mediate their dispute by _____ pursuant to the AAA's Commercial Mediation Procedures, or as otherwise agreed

upon by the parties, in accordance with Rule R-9, or shall notify the arbitrator by this date that a mediation will not take place."

Note that the Rules expressly forbid a serving arbitrator from acting as a mediator unless agreed to by the parties.

- **Disclosures**

Arbitrators need to pay close attention to their disclosure requirement as the case proceeds. After initial disclosures have been made, arbitrators have a continuing obligation to make new disclosures as they arise. Pay attention to new counsel, names appearing on witness lists, or new parties that may be added to a case.

- **Payment of Deposits**

Remind the parties that the deposits for arbitrator compensation are due no later than 30 days prior to the hearing date.

- **Closing**

This doesn't cover everything. There are a number of topics that we haven't touched on, but these are the ones the AAA considers important. Make sure you read the rules before you take on any case.

AMERICAN ARBITRATION ASSOCIATION®

PRELIMINARY HEARING CHECKLIST
[SUGGESTED]

The Commercial Rules effective October 1, 2013 provide greater clarification and structure on how and what to potentially cover during the preliminary hearing. Below, you will see as noted in Rule P-2 a detailed checklist of items that you may wish to consider covering during the preliminary hearing.

While the list is extensive, you as an arbitrator should take care to structure the preliminary hearing in a manner that fits the needs of the parties involved. There may be times when all the items may need to be covered and other times when you as an arbitrator will need to determine (based on the parties and your discussions with the AAA) which items to include or exclude from the preliminary hearing.

P-1. General

(a) In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case.

(b) Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive and more expeditious.

P-2. Checklist

(a) The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:

(i) the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;

(ii) whether all necessary or appropriate parties are included in the arbitration;

(iii) whether a party will seek a more detailed statement of claims, counterclaims or defenses;

(iv) whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;

(v) which

(a) arbitration rules;

(b) procedural law;

(c) substantive law governs the arbitration;

(vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation:

(a) any preconditions that must be satisfied before proceeding with the arbitration;

(b) whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;

(c) consolidation of the claims or counterclaims with another arbitration; or

(d) bifurcation of the proceeding.

(vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;

(viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;

(ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;

(x) whether any measures are required to protect confidential information;

(xi) whether the parties intend to present evidence from expert witnesses and, if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;

(xii) whether, according to a schedule set by the arbitrator, the parties will:

(a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;

(b) exchange and pre-mark documents that each party intends to submit; and

(c) exchange pre-hearing submissions, including exhibits;

(xiii) the date, time and place of the arbitration hearing;

(xiv) whether, at the arbitration hearing:

(a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;

(b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;

(xv) whether any procedure needs to be established for the issuance of subpoenas;

(xvi) the identification of any ongoing, related litigation or arbitration;

(xvii) whether post-hearing submissions will be filed;

(xviii) the form of the arbitration award; and

(xix) any other matter the arbitrator considers appropriate or a party wishes to raise.

(b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

BRIEFS

LEARNING POINTS

1. Pre-hearing briefs are usually a luxury and may only be needed on extremely large cases or ones with complex issues. Some arbitrators find concise (five pages or less) position papers useful. However, you should remember that whatever you require translates into additional time and costs to the parties. In part, parties evaluate their satisfaction with the arbitration process and their arbitrator with measures that include speed and economy. If a pre-hearing brief will ultimately save time and money then it should be considered. If it seems as though it will not assist in this area, then you should not ask for it.

2. If briefs are to be filed, you should set a firm date for their filing and exchange. Briefs are to be filed with the AAA for transmittal to the arbitrator(s). Setting page limits may be appropriate in helping to contain costs and time.

EXCHANGE OF INFORMATION

LEARNING POINTS

1. Under the AAA's *Commercial* and *Construction Arbitration Rules*, there is no formal discovery. However, Section R-22(b) of the *Commercial Rules* gives the arbitrator the discretion and authority to effectively manage the information exchange process. Section R-24(b) of the *Construction Rules* provides for the parties' exchange of exhibits at least seven (7) calendar days prior to the hearing, and R-24(d) says, "There shall be no other discovery, except as indicated herein, unless so ordered by the arbitrator in exceptional cases."

   Section 9 of the *Employment Arbitration Rules* grants employment arbitrators the authority to "order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration."

2. Under all three sets of rules, arbitrators have the authority to direct the production of documents and other information and to set the schedule and manner for the exchange of these items.

   NOTE: When setting deadlines, by which information is to be exchanged and/or filed, it is important for deadlines be clear and unambiguous. Examples of clear deadlines would be: "Received by the AAA no later than 5:00 p.m., August 25th." or "Postmarked by December 12th."

   Also, if reference is made to "X" number of days, be sure to specify whether they are "calendar" days or "business" days.

3. To the greatest extent possible, avoid turning arbitration into litigation with full-blown discovery. Remember that parties' satisfaction with the arbitration process and the arbitrator is often measured by the time and expense of the process. Many sign arbitration provisions to avoid lengthy and costly court discovery processes. Exchange of information should be appropriate for the specific case.

4. You should inform the parties that they are required to cooperate in committing to, conducting and completing an exchange of information concerning their documents and witnesses.

5. If they do not agree to exchange particular information, you should hear the reason why. After hearing the parties' arguments, ask yourself the following questions before making a ruling:

    a) Is the requested documentation relevant and essential to the case?
    b) Are the requested documents so voluminous as to make production at the hearing unwieldy?
    c) Should the documents be produced before the hearing in the interest of fairness and efficiency?
    d) Are the requested documents proprietary, confidential and/or subject to principles of legal privilege? If so, it may be useful to raise the issue of the parties entering into a confidentiality agreement.

6. When the information to be exchanged has been specified, you should set the date and method for the exchange.

7. While you do not have the authority to hold a party in contempt, most parties will be reluctant to antagonize you by refusing to obey your directive. Where your request is reasonable, no court will be inclined to disturb it. *Commercial Rule* R-23 provides greater clarification and authority on your enforcement powers as it relates to Rules R-21 and R-22 of the *Commercial Rules*. Additionally, *Commercial Rule* R-58 provides the arbitrator various sanction authority during the arbitration process.

    It should be noted that you should refrain from issuing blanket punitive orders or sanctions without giving the party(s) who are in non-compliance an opportunity to be heard on the issue before a making a ruling. (See Commercial Rule R-58.)

REFERENCES:

Commercial Arbitration Rules R-22 Pre-Hearing Exchange and Production of Information

Commercial Arbitration Rules R-23 Enforcement Powers of the Arbitrator

Commercial Arbitration Rules R-58 Sanctions

Construction Arbitration Rules R-24 Exchange of Information

Employment Arbitration Rules Rule 9 Discovery

EXHIBITS

LEARNING POINTS

1. Directing the parties to arrange and organize their exhibits in an orderly manner is one of the arbitrator's best techniques for ensuring an efficient hearing.

2. A well-proven manner of exhibit presentation is the use of exhibit notebooks in which all exhibits are marked and indexed.

3. Exhibits should be pre-marked and a joint set of exhibits used whenever possible.

4. Under the *Commercial* and *Construction Arbitration Rules*, there is greater flexibility for alternative methods in which information may be presented during the arbitration hearing, *i.e.*, by video conference or telephonically.

5. The parties may also agree to waive oral hearings in any case or adopt various components of the *Commercial Arbitration Rules Expedited Procedure* Rule E-6.

REFERENCES:

Commercial Arbitration Rules R-32 Conduct of Proceedings in addition to E-6

Construction Arbitration Rules R-32 Conduct of Proceedings in addition to D-1 through D-4

Employment Arbitration Rules Rule 28 Order of Proceedings

SCHEDULING CONFLICT

LEARNING POINTS

1. After getting the parties' estimates on the number of days they think are needed and listening to whatever scheduling conflicts they may have, make a decision on the total number of days and set the dates on the schedule where they will be least objectionable, recognizing there will be times not everyone will be happy. Speed and economy should be considered in addition to the issues brought forth by the parties in determining when the hearing will be held. Announce that any request to change the schedule once it is set must be for good cause only.

2. The evidentiary hearing should, ideally, be scheduled for a finite number of consecutive days. Scheduling consecutive days will result in the case being heard in fewer days than

if scheduled on "a day here and a day there" basis and will likely result in cost savings. You may want to begin the discussion on scheduling by expressing the importance of these considerations to the parties.

3. This is also a good place to advise the parties of the daily schedule that will be followed during the evidentiary hearing. For example, the day(s) will begin at 9:00 a.m. and go until 5:00 p.m. with no more than one hour for lunch and breaks limited to 10 minutes.

4. Once you've set the date(s) for the hearing, remain firm! Postpone and reschedule only when extraordinary circumstances require it.

REFERENCES:

Commercial Arbitration Rules R-22 Preliminary Hearing, and Section R-24 Date, Time and Place of Hearing

Construction Arbitration Rules R-23 Preliminary Management Hearing, and Section R-13 Date, Time and Place of Hearing

Employment Arbitration Rules Rule 8 Arbitration Management Conference, and Rule 11 Date and Time of Hearing

STENOGRAPHIC RECORD

LEARNING POINTS

A court reporter is not routinely present in AAA arbitrations. A stenographic record is not required, as courts will generally not review the merits of an arbitration award. If a party wants a court reporter, it must make the arrangements directly with a reporter and bear the cost. The transcript will not be considered an official record of the proceedings unless so designated by the arbitrator. The arbitrator is authorized to resolve disputes pertaining to the cost of the stenographer which may be subject to final allocation in the final award.

REFERENCES:

Commercial Arbitration Rules R-28 Stenographic Record

Construction Arbitration Rules R-28 Stenographic Record

Employment Arbitration Rules Rule 20 Stenographic Record

STIPULATION OF UNCONTESTED FACTS

LEARNING POINTS

1. Stipulations to facts (and other issues) are beneficial in at least two ways: (1) they aid in expediting the hearing, and (2) they often improve the parties' relationship. Once parties realize that agreements on some items are possible, they might explore additional agreements that may ultimately settle the dispute.

2. However, some parties and arbitrators consider efforts towards stipulating uncontested facts to be unproductive and/or unnecessarily costly. Sensitivity to this concern should be considered. It may be beneficial to ask if the parties believe there are certain documents that are not in contention and that all agree are accurate and complete. This may include the parties' contract, invoices and payments, etc. Obtaining the parties' stipulations to these documents may streamline the preparation of exhibits and save time and cost for the parties.

UNPAID AAA ADMINISTRATIVE FEE

LEARNING POINTS

1. Although nonpayment of AAA fees is a rare issue to come before an arbitrator, know that you have the authority to suspend the administration of the case and have it placed in abeyance if circumstances, in your opinion, so warrant. The arbitrator has the ability to bar a claim/counterclaim from being presented at the request of one of the parties due to non-payment after allowing all parties to be heard on the issue. The arbitrator cannot prohibit or preclude a party from defending against a claim and/or counterclaim.

2. The AAA does everything in its power to collect all administrative fees and expenses from the parties prior to any hearing, preliminary or evidentiary. Occasionally, and for a variety of reasons, some parties may be temporarily delinquent with payments or simply refuse to pay.

3. When in doubt about the proper filing and payment of a claim, contact the AAA. The AAA will provide you with the pertinent background on the situation. Being so briefed, you will be in a better position to decide what to do.

4. The Commercial and Construction Rules have been amended to expand the arbitrator's options for addressing non-payment.

5. If, prior to conducting the preliminary hearing, you feel there is information that you would like the parties to provide to you or if there are components of the preliminary hearing that you would like to discuss with counsel and try to get their agreement, you should ask the AAA staff member assigned to your case to coordinate this for you. This may assist the parties in preparing for the preliminary hearing. An example might be to instruct the parties to review P-2 of the Commercial Rules and inform the AAA Staff as to which items they would like to address (either by joint submission or by individual submissions to the AAA) during the preliminary hearing.

REFERENCES:

Commercial Arbitration Rules R-57 Remedies for Nonpayment

Construction Arbitration Rules R-56 Remedies for Nonpayment

Employment Arbitration Rules Rule 47 Suspension for Nonpayment

WITNESS LISTS

LEARNING POINTS

1. Thoughtful selection and coordination of witnesses greatly enhance the efficient conduct of the hearing. Advanced filing of witness lists also helps arbitrators identify potential disclosures that, if not discovered prior to the hearing, could prove disruptive. Be sure to review witness lists immediately upon receipt so that you can identify and report any supplemental disclosures that need to be made.

2. There are a number of ways to receive witness testimony in addition to live, in-person testimony with direct and cross-examination. For example, testimony can be entered by declaration or affidavit. Witnesses can be examined individually or in a panel of witnesses. The preliminary hearing provides an opportunity to explore with counsel the various means by which testimony may be presented in a manner that is both timely and economical.

REFERENCES:

Commercial Arbitration Rules R-22 Pre-Hearing Exchange and Production of Information; R-32 Conduct of Proceedings; R-34 Evidence by Affidavit and Post-hearing Filing of Documents and Other Evidence

Construction Arbitration Rules R-24 Exchange of Information; R-32 Conduct of Proceedings; R-34 Evidence by Affidavit and Post-hearing Filing of Documents and Other Evidence

Employment Arbitration Rules, Rule 8 Arbitration Management Conference; Rule 28 Order of Proceedings; Rule 30 Evidence; Rule 9 Discovery

Sample Preliminary Hearing Scheduling Order

To: Steven Green, Esq.
Drew, Hudson and Jackson LLP
513 Grand Avenue
New York, NY 10017

Alicia Rodriguez, Esq.141
Young, Quentin and Byrnes LLP
700 City Plaza
New York, NY 10017

From: The Arbitrator

Re: **Re: 13-181-00499-06; Modern Furnishings v. Chapman & Associates**
Report of Preliminary Hearing and Scheduling Order

This will confirm the arrangements made at the preliminary hearing Pursuant to the Commercial Arbitration Rules of the American Arbitration Association held this date in the above matter. Attending the preliminary hearing via phone conferencing were Steven Green, Esq., representing Claimant; John Morgan, principal owner of Modern Furnishings; Alicia Rodriguez, Esq., representing the Respondent; Pam Chapman, senior partner of Chapman & Associates; and Mary Vernon, AAA Manager of ADR Services.

By agreement of the parties and Order of the Arbitrator, the following is now in effect.

1. **Applicable Law**: The _____ (State or Federal) arbitration statute/act will apply in the Arbitration and _____(State) law will be applied substantively to the arbitration.

2. **Parties:** All the necessary or appropriate parties are included in the arbitration.

3. **Claim/Counterclaim:** Pursuant to the direction of the Arbitrator, all parties shall amend/specify claims and/or counterclaims by _____. Responses, if any, are due by _____.

4. **Additional Preliminary Matters:** Any other preliminary matters not otherwise provided for herein shall be raised by the parties by _____.

5. **Dispositive Motions:** One of the Parties has indicated its desire to file a dispositive motion. In the event that either Party desires to file a dispositive motion, it may file and serve an opening letter on or before _____, 201_, not to exceed three pages in length stating the reasons it believes that a dispositive motion should be allowed by the Arbitrator. The opposing Party may file and serve its letter in opposition, not to exceed three pages in length, on or before _____, 201_. The Arbitrator will rule on the Parties' letter submissions on or before _____, 201_. If allowed, dispositive motions will be due 20 days after the Arbitrator's ruling allowing them, with responses due ___ days after the filing of the dispositive motion.

6. **Motions:** Pursuant to R-33 of the Commercial Rules or R-34 of the Construction Rules**,** motions may not be filed without the permission of the Arbitrator. Application to file motions shall be filed with the AAA and the Arbitrator, by letter or email not to exceed ___ pages; describing 1) the motion the Party wishes to file, 2) the factual and legal basis for the motion, and 3) the reasons why the motion needs to be filed and how it will expedite resolution of the case or otherwise benefit the Parties.

The submission shall contain a certification that the requesting Party has in good faith conferred with the opposing Party about the proposed motion prior to any Party requesting that a Motion be filed. The certification shall state whether the relief sought by the motion has been agreed to by the Parties or will be opposed. If no conference has occurred, the reason why must be stated. An opposing party may submit a responsive letter, not to exceed ___ pages, within ___ days of its receipt of a letter requesting a motion. Parties are advised that it is unlikely that dispositive motions which require resolution of disputed facts, without a hearing, will be granted. All other applications or requests for advice or direction from the Arbitrator may be made informally by email or joint telephone conference. Formal motion procedure is not required, although it is allowed if the parties wish. Any request for permission to file a dispositive motion shall be made not later than _____.

7. **Hearing:** A Final Hearing in this matter will commence before the Arbitrator at _____ on _____ at _____. The parties estimate that this case will require _____day(s) of hearing time, inclusive of arguments. Approximate number of attendees at the hearing:_____. This is a firm setting and will not be changed or continued absent exceptional circumstances, upon a showing of good cause.

8. **Additional Pre-hearing/Status Conference**: An additional pre-hearing or status conference call is scheduled for _____ at _____ am/pm before the Arbitrator. The parties shall confer regarding a proposed agenda and shall submit a proposed agenda for the call no later than _____. If no agenda is provided, the call will be cancelled. This call may also be cancelled upon the mutual agreement of the parties.

9. **Exchange of Information/Discovery**:

    a. Written Discovery:

        i. Requests shall be exchanged by _____. Each Party may serve no more than _____ requests for production of documents and no more than ____ interrogatories.

        ii. Answers to discovery requests are due within ___ days of receipt of the requests.

    b. Depositions to be completed by _____.

        i. _____ hours of total deposition time or _____ number of depositions.

        ii. No deposition shall exceed _ hours in length.

        iii. With respect to all depositions, there shall be no speaking objections, or interference with the ability of counsel to elicit testimony from a witness, subject to privilege objections and instructions.

    c. Discovery cutoff is _____.

        i. Please be advised that late-filed motions to compel discovery or discovery disputes are insufficient to cause a postponement of the Final Hearing.

d. Electronic Discovery:

i. Clawback agreements shall be in place for all parties to allow for the retrieval of inadvertently disclosed attorney-client privileged documents.

ii. If the cost of collection of any of the electronically stored data presents an unreasonable cost for the producing party because the data is not readily accessible and the parties cannot reach an agreement on the handling of the cost, the arbitrator will decide if cost sharing or cost shifting is appropriate.

iii. If any party has documents that are confidential, the arbitrator will issue a protective order upon the receipt of a stipulation from the parties for such an order. If the parties cannot agree on the terms, the attached sample Stipulation for Protective Order may be used.

iv. The parties' agreement regarding electronic discovery will then be memorialized in an ESI case management order to be submitted in draft to the Arbitrator on or before _____. If the parties cannot come to agreement regarding all salient issues concerning electronic discovery not covered by this order, they may raise the remaining issues to the Arbitrator by motion, to be filed within 10 days of the meet and confer in accordance with the deadlines below.

10. Confidentiality: A party may make a request to the Arbitrator for any measures required to protect confidential information.

11. Cybersecurity/Privacy: Having reviewed the AAA-ICDR Best Practices Guide for Maintaining Cybersecurity and Privacy and discussing what specific precautions might be required with regard to cybersecurity, privacy, and data protection in order to ensure an appropriate level of security for this case, the following measures shall be implemented:

[describe cybersecurity/privacy measures]

12. Subpoenas:

a. Subpoenas to secure the appearance of non-party witnesses or documents will be issued by the Arbitrator. The Party requesting the subpoena shall disclose the subpoena to and shall confer with all other Parties prior to requesting its issuance and shall indicate if any Party opposes the issuance. If any Party objects to issuance of the subpoena or the content of any subpoena, such objection shall be presented to the Arbitrator no more than ____ business days after issuance is requested, unless a shorter time is ordered by the Arbitrator. Subpoenas related to discovery shall be submitted to the Arbitrator on or before _____. Subpoenas for the attendance of witnesses at the hearing shall be submitted no later than _____.

b. Pursuant to agreement of the parties, for cases involving an arbitration panel, the chair of the panel, and in his/her absence, any other panel member may issue subpoena(s) and rule on discovery.

13. Witness Disclosures:

a. Claimant shall file a disclosure of all witnesses reasonably expected to be called by Claimant(s) by_____.

b. Respondent shall file a disclosure of all witnesses reasonable expected to be called by Respondent(s) by _____.

c. On or before _____, the parties shall file and serve their initial expert witness reports. Expert reports shall set forth each expert's opinions and the reasons for them. The substance of each expert's direct testimony must fairly and reasonably be addressed in the expert's report. There shall be no additional discovery of experts, except on good cause shown to the Arbitrator.

14. Exhibits: The parties shall exchange copies of all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at hearing not later than _____.

a. The Association does not require a copy of the exhibits for its file.

b. Each party shall bring sufficient copies to the hearing for opposing parties, the Arbitrator, and the witness.

c. Each proposed exhibit shall be pre-marked for identification using the following designations:

Party	Exhibit #	To Exhibit #
Claimant	C1	C___
Respondent	R1	R___

d. The parties shall attempt to agree upon and submit a jointly prepared consolidated and comprehensive set of joint exhibits.

i. Joint Exhibits shall be numbered sequentially with the prefix J (J-1, J-2, J-3, etc.).

15. Arbitration Hold: Counsel for the Parties are directed to inform their clients that the Arbitrators have ordered an arbitration hold which applies to [describe scope of hold], and that the clients should take steps to prevent the destruction of all documents, both paper and electronic. If any party has an automatic document deletion/destruction program in place that system should be overridden until the case is completed.

16. Stipulation of Uncontested Facts: The parties shall file a stipulation of uncontested facts by **_____**.

17. Pre-Hearing Briefs: On or before _____, each party may serve and file a pre-hearing brief on all significant disputed issues, setting forth briefly the party's position and the supporting arguments and authorities.

a. Briefs may be in summary form, including the use of bullet points rather than extensive text.

b. The Arbitrator requests that briefs not exceed ___ double-spaced pages, excluding copies of any authorities that the parties may submit at the same time. The parties are invited to highlight any authorities as they deem appropriate.

18. Stenographic Record: If both parties desire a stenographic record of the hearing, the parties will arrange between themselves the presence of a court reporter. The cost of the court reporter will be

divided evenly between the parties. Pursuant to Rules, if the parties are not in agreement, the requesting party or parties shall pay the cost of the court reporter and record.

19. Award:

a. Form of Award:

i. Standard/Reasoned or as required by the parties' arbitration clause.

ii. Pursuant to the Rules, the award shall be made by the Arbitrator no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statement and proofs to the Arbitrator.

iii. Confirm if the arbitration agreement provides for the awarding of attorneys' fees.

20. Mediation/Judicial Settlement Conference Services:

a. Mediation and Judicial Settlement Conference Services are available from the AAA. There is no additional filing fee to initiate either service.

b. The parties shall mediate their dispute by _____ pursuant to the AAA's Commercial Mediation Procedures, or as otherwise agreed upon by the parties, in accordance with the Rules.

21. Communication *(a. and b. are alternative paragraphs):*

a. Any and all documents to be filed with or submitted to the Arbitrator outside the hearing shall be provided to the AAA for transmittal to the Arbitrator. Copies of said documents shall also be sent to the opposing party(s). There shall be no direct oral or written communication between the parties and the Arbitrator, except at oral hearings.

b. The parties agree to participate in Direct Exchange. Provided there is no ex parte communication with the Arbitrator, the parties may communicate directly with the Arbitrator by submitting documents to the Arbitrator and also sending copies to the other party(s) and originals to the AAA (except for hearing exhibits and discovery documents). Email submission of documents and email requests for action by the Arbitrator are allowed, provided that the AAA and all parties also receive copies of all of these. For the convenience of the parties, the following are the email addresses to be used:

i. (Email Addresses)

There shall be no direct oral or written communication between the parties and the Arbitrator except as contemplated by this Order. Any communication to the Arbitrator shall be copied to the AAA.

22. Orders: Upon agreement of the Arbitrator(s), orders of the Panel of Arbitrator(s) may be signed by the Panel Chair, _____, alone on behalf of the entire panel and shall be effective as if signed by all three panel members.

23. Disclosures of the Arbitrator: Each counsel and Party has a continuing obligation to protect the integrity of the arbitration proceeding by promptly providing to the Arbitrator the information

necessary to allow him/her to comply with his/her ongoing duties of disclosure pursuant to the *Code of Ethics for Arbitrators in Commercial Disputes* and the American Arbitration Association. Counsel, for themselves and for each of their clients, acknowledge the continuing obligation to supplement the identification of potential fact and expert witnesses, consulting experts, counsel participation and representation in any capacity, and any other individual or entity interested in the outcome of the arbitration. Any issues concerning disqualification of the Arbitrator shall be raised promptly with the AAA.

24. File Destruction: The Arbitrator will destroy his/her files related to this matter _____ days after the filing of the Award unless otherwise notified by the parties.

25. Deadline Enforcement: All deadlines stated herein will be strictly enforced and adhered to in order to avoid unnecessary delay and to ensure an expeditious and fair resolution of this matter. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

Dated: _____

Arbitrator Signature: _____

Table of Deadlines

#	Action	Deadline
1	Parties' disclosures (paralleling Federal Rules of Civil Procedure 26(a)(1) initial disclosures if appropriate)	
2	Claimant's Initial Request for Documents (if needed)	
3	Respondent's initial request for Documents (if needed)	
4	Claimant's initial disclosure of potential witnesses (not needed if using Rule 26(a)(a) form disclosures)	
5	Respondent's initial disclosure of potential witnesses (not needed if using Rule 26(a)(a) form disclosures)	
6	For Panel disclosure purposes, identification of any related parties, or witnesses	
7	Claimant's experts designations and reports	
8	Respondent's experts designations and reports	
9	Parties' rebuttal experts designations and reports	
10	Motions regarding any unresolved discovery disputes	
11	Claimant's list of witnesses reasonably intended to be called	
12	Respondent's list of witnesses reasonably intended to be called	
13	Completion of all discovery	
14	If permitted by the Panel, deadline for the filing of dispositive motions	
15	Parties' exchange of proposed exhibits	
16	Requests for the issuance of third-party subpoenas	
17	Requests for witness subpoenas for hearing	
18	Parties' completion of combined single set of exhibit books	
19	Parties exchange of demonstrative exhibits	
20	Filing of pre-hearing statements, any stipulations and core exhibits for prehearing Panel review	
21	Dates for pre-hearing status conference(s) (telephonic)	

22	Hearing dates / delivery of exhibits	
23	Filing of pre-hearing briefs (if any)	
24	Anticipated deadline for issuance of final award	

Between the Preliminary Hearing and the Evidentiary Hearing

Below are the seven scenarios for this topic from the *Arbitration Fundamentals and Best Practices for New AAA Arbitrators* course.

The scenarios are accompanied by the applicable Learning Points and references.

1. Party Amends Claim

Two weeks before hearings commence, Modern Furnishings files an Amended Demand increasing its claim amount to $400,000. Respondent objects to Claimant's increasing its claim.

Discussion Question:

Should the arbitrator allow Claimant's amended claim?

If yes, state why? If no, state why not?

LEARNING POINTS

1. The filing requirements must be met before a claim may be accepted by the arbitrator. If the change of claim amount results in an increase in the administrative fee, the arbitrator should confirm with the AAA that the fee has been paid.

2. The rules allow a party to increase or decrease its claim amount prior to the close of the hearing or by the date established by the arbitrator. It is a good practice to include a deadline for filing amended claims in the Preliminary Hearing Scheduling Order.

REFERENCES:

Commercial Arbitration Rules R-6 Changes of Claim

Construction Arbitration Rules R-6 Changes of Claim or Counterclaim

Employment Arbitration Rules Rule 5 Changes of Claim

2. New Representative Appears for a Party

On the date the parties were to file disclosure of witnesses, a new co-counsel appeared for Chapman & Associates. You recognize the new co-counsel as someone you worked with in a different law firm 20 years ago. You also recognize one of the names on Chapman's witness list as a consultant you have used in the past.

Discussion Questions:

(1) How should the arbitrator respond to the appearance of co-counsel?

(2) How should the arbitrator respond to recognizing the name on Chapman's witness list?

LEARNING POINTS

1. The arbitrator has an ongoing obligation to make disclosures during the pendency of the case. The arbitrator should be careful to review all witness lists and appearance of new counsel in order to check for conflicts which should be disclosed.

2. The arbitrator should notify the AAA of any new disclosures in writing so that the AAA may present the disclosures to the parties.

REFERENCES:

Commercial Arbitration Rules R-17 Disclosure

Commercial Arbitration Rules R-26 Representation

Construction Arbitration Rules R-19, R-27

Employment Arbitration Rules Rule 15, Rule 19

3. Party Files a Dispositive Motion

Thirty days following the Preliminary Hearing, Chapman & Associates files a Motion for Summary Judgment seeking to dismiss Claimant's claims. Chapman gave no earlier indication that this motion would be forthcoming.

Discussion Questions:

(1) Can the arbitrator accept and consider dispositive motions?

(2) How could the filing of an unexpected motion have been avoided?

LEARNING POINTS

1. The rules permit arbitrators to allow the filing of dispositive motions (Commercial Rule R-33). Parties, however, should seek leave to file such motions before investing the time and expense in preparing them. Under the Commercial Rules, a party seeking permission to file a dispositive motion must convince the arbitrator that the motion is likely to succeed and dispose of or narrow the issues in the case.

2. In order to avoid surprise motions, the arbitrator should include on the Preliminary Hearing agenda whether there are any threshold or dispositive issues [see Commercial Rule P-2(vi)] that can efficiently be decided without considering the entire case. A deadline should be established in the Preliminary Hearing Scheduling Order for raising such issues.

REFERENCES:

Commercial Arbitration Rules R-33 Dispositive Motions

Construction Arbitration Rules R-34 Dispositive Motions

Employment Arbitration Rules Rule 27 Dispositive Motions

4. Party Requests Postponement of Hearings

Modern Furnishings makes a request for postponement of the upcoming hearing dates, but seems to be evasive about the reasons for the request. Chapman & Associates vigorously objects to any postponement of the hearing citing lack of reason, lack of party agreement and indicating this is just another delay tactic that Modern Furnishings is using to further damage their client.

Discussion Questions:

What should the arbitrator do?

LEARNING POINTS

1. Under the AAA Commercial Rules and AAA Construction Rules an arbitrator may postpone any hearing upon request of a party for good cause shown, upon the agreement of the parties, or upon the arbitrator's own initiative.

2. The AAA Employment Rules provide that an arbitrator may postpone at the request of a party for good cause shown or upon the arbitrator's own initiative but must postpone upon the mutual agreement of the parties.

3. Note Section 10(a) of *The Federal Arbitration Act* and Section 12 (a) of *The Uniform Arbitration Act* and Section 23(a) of the *Revised Uniform Arbitration Act* specify certain statutory grounds upon which courts may vacate an arbitrator's award. One of the grounds is when an arbitrator is guilty of misconduct, upon sufficient cause shown, by refusing to postpone the hearing.

REFERENCES:

Commercial Arbitration Rules R-30 Postponements

Construction Arbitration Rules R-31 Postponements of Hearings

Employment Arbitration Rules Rule 24 Postponements

5. Discovery Dispute Arises

Assume for the purpose of this scenario that the contract between the parties is silent regarding discovery. One representative argues that full-blown discovery will be their only means of representing their client to the best extent possible due to the other side's complete control over information. The other side argues that limited discovery will be sufficient for both sides and cost effective for their client, adding that fishing expeditions cost both sides time and money.

Discussion Questions:

(1) What should be the general philosophy regarding discovery in arbitration?

(2) What are your options to resolve discovery disputes under the Rules?

(3) How may the contract's silence influence your views on discovery for a case?

LEARNING POINTS

1. To the greatest extent possible, avoid turning arbitration into litigation with full-blown discovery. Remember that parties' satisfaction with the arbitration process and the arbitrator is often measured by the time and expense of the process. Many sign arbitration provisions to avoid lengthy and costly court discovery processes. Exchange of information should be appropriate for the specific case.

2. Section 9 of the *Employment Arbitration Rules* grants employment arbitrators the authority to "order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration."

3. Under the AAA's Commercial Rules and AAA's Construction Rules, there is no formal discovery, but the Rules anticipate that discovery, if it takes place, will be limited and not interfere with the expedited and cost-effective attributes of the arbitration process. The Rules also, however, grant the arbitrator the discretion, authority and enforcement power to effectively manage the information exchange process. The Preliminary Hearing Procedures in these rules suggest the areas that should be addressed with the parties prior to and during the preliminary hearing conference. This section also provides for a discussion on the exchange of information stored on electronic media.

4. When the information to be exchanged has been specified, you should set the date and method for the exchange. This is typically confirmed in the first scheduling order and followed up with any subsequent orders on discovery that are made throughout the life of the case.

5. If they do not agree to exchange particular information, you should hear the reason why. After hearing the parties' arguments, ask yourself the following questions before making a ruling:

    a) Is the requested documentation relevant and essential to the case?
    b) Are the requested documents so voluminous as to make production at the hearing unwieldy?
    c) Should the documents be produced before the hearing in the interest of fairness and efficiency?
    d) Are the requested documents proprietary, confidential and/or subject to principles of legal privilege? If so, it may be useful to raise the issue of the parties entering into a confidentiality agreement.

REFERENCES:

Commercial Arbitration Rules R-22, R-23, P-2 and L-3

Construction Arbitration Rules R-25, P-2, L-2 and L-4

Employment Arbitration Rules Rule 9 Discovery

6. Party Requests Arbitrator Issue a Subpoena

Two weeks after the preliminary hearing you receive an email requesting your signature on a subpoena from Modern Furnishings. Although the AAA staff is copied on the email, you don't see that Chapman & Associates received a copy of the email.

Discussion Questions:

(1) Should Chapman & Associates have been provided an opportunity to see the subpoena? What subpoena power do you have?

(2) For additional discussion – Would it make a difference if this was a subpoena for production of documents prior to the hearing?

LEARNING POINTS

1. An arbitrator's authority to issue subpoenas has generally been interpreted to mean production of documents or attendance of witnesses at the hearing. However, the law on the subject of discovery is not uniform among the courts.

2. The AAA Construction Rules provide for the subpoena request to be submitted simultaneously to the other parties in the arbitration and the arbitrator. Although not specifically referenced in other AAA Rules, this is also the current policy and expected subpoena process for all other types of cases as well.

REFERENCES:

Commercial Arbitration Rules R-34(d) Evidence

Construction Arbitration Rules R-35(d) Evidence

Employment Arbitration Rules Rule 30 Evidence

7. AAA Advises That All Deposits Have Not Been Paid

You are notified by the AAA staff that there is an outstanding balance due on the parties' deposits for compensating you through the hearing, study and writing the award. You are aware of the Remedies for Nonpayment rule, but you have not received a request to act from either party.

Discussion Questions:

(1) Do you act on your own initiative and take steps related to a party's non-payment of fees, such as limiting a party's ability to assert or pursue their claim?

(2) What options can you consider?

LEARNING POINTS

1. If you have been contacted by the AAA staff regarding nonpayment of fees it almost certainly means the AAA has contacted the paying party to gauge their interest in paying the balance and they have declined. At this point, it is in the jurisdiction of the arbitrator to take action. Look to the specific rules of your case to explore the options you may have. Under the AAA Commercial Rules and AAA Construction Rules there are remedies and possible sanctions that can be levied against a non-complying party. Under the AAA Employment Rules an arbitrator may need to explore the options of either suspension or termination of proceedings. An arbitrator should consult with the AAA staff to confirm what actions have been taken and work together for resolution of the issue.

2. Remember to always include at the preliminary hearing a gentle reminder that deposits for arbitrator compensation are due 30 days prior to the hearing date.

REFERENCES:

Commercial Arbitration Rules R-57 Remedies for Nonpayment

Construction Arbitration Rules R-59 Remedies for Nonpayment

Employment Arbitration Rules Rule 47 Suspension for Nonpayment

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Managing Evidentiary Hearing Issues

Below are the 13 video vignettes for this topic from the *Arbitration Fundamentals and Best Practices for New AAA Arbitrators* course.

The scenarios are accompanied by the applicable Learning Points and references.

SCENE 1 – REQUEST FOR POSTPONEMENT

Respondent's Attorney: Madame Arbitrator, we just learned that our key witness has fallen ill and had to be hospitalized. The witness was going to testify on the issue of "unsuitability" – the cornerstone of our case. Under the circumstances, I'd like to request that we postpone this hearing until he is physically able to join these proceedings.

Claimant's Attorney: Objection. Chapman & Associates has tried to delay this hearing on several occasions. And we can understand that the illness of a witness is beyond Chapman's control, but justice demands that my client receive a timely hearing. I respectfully request that we proceed without further delay.

QUESTIONS:

What is your authority regarding the granting of postponements?

How would you handle this situation?

How is this request different from the first postponement request prior to the commencement of the hearings?

ANSWERS:

Under the *Commercial* and *Construction Arbitration Rules*, there is broad arbitral discretion to postpone or adjourn arbitration hearings. An award may be subject to attack in court, however, if the arbitrator refused to postpone a hearing upon a showing of "good cause." Nonetheless, this does not mean that all, or even most, postponement requests should be granted.

In the situation presented here, if the Respondent's request is granted, it might create a hardship on the Claimant, who has all witnesses ready and is anxious to proceed. On the other hand, should the arbitrator deny the request, the Respondent is left with a dilemma - the absent witness.

You should consider the merits of each party's argument for or against the postponement request before making a decision. Several of the factors to be considered are:

- Does the reason for the request satisfy what would be considered "good cause"? Is it a true emergency, *i.e.*,

could the party have foreseen the problem and made alternative arrangements in order to proceed as scheduled?

- Is the absent witness and/or evidence essential at the hearing? While arbitrators should not second-guess a party's case, they should be reasonably assured that the missing witness or evidence is relevant or material to a party's presentation at the hearing before granting a postponement. In addition, alternatives to postponement should be considered. For instance, would an affidavit be appropriate? Could the witness appear by telephone? Could a continuance be scheduled for the portion of the case involving this witness?

- The Claimant's argument: Will a postponement really be prejudicial? If so, how? Have witnesses been flown across the country or are they local? Will further delay serve to aggravate the alleged damages of this party?

- If the postponement request is granted, when will the parties be able to schedule again? Next week? Next month? Several months?

- When the first request for postponement was requested and addressed, could you have taken steps to avoid and/or structure what constitutes grounds for potential subsequent postponement requests?

The problem presented in the video cannot be answered from the limited information provided. The factors above should be considered before reaching a conclusion.

It is important to note, however, that the parties are expected to make every effort to be present and prepared at a scheduled hearing, and *the party seeking a postponement has the burden of showing good cause for its request.* **Arbitrators have a similar duty to ensure that they will be available on the date set for a hearing.**

LEARNING POINTS

1. Arbitrators should do everything in their power to see that, once scheduled, the hearing is conducted as originally planned. Arbitrators have the authority to grant or deny postponements and adjournments. However, remember that postponements and adjournments are the primary cause of delay in commercial arbitration cases and the chief frustration of arbitrators and parties. It is therefore important to inquire as to the reasons for a postponement even when there is a mutual request.

2. Under the *Commercial* and *Construction Arbitration Rules* and many state statutes, arbitrators have broad discretion regarding postponement requests.

3. *The Uniform Arbitration Act*, the *Federal Arbitration Act*, and many state statutes specifically provide for *vacatur* of an award based on arbitrator misconduct for failure to postpone where good cause existed.

4. Factors to be considered by the arbitrator in exercising this discretion include:

    a. the reason for the postponement request-the "good cause" test;
    b. the need for the witness and/or documentation at the hearing;
    c. the effect of postponement on both parties;
    d. when a new date can be set; and
    e. possible alternative solutions.

5. Under the *Employment Arbitration Rules*, the arbitrator's power to grant postponements is identical to that under the *Commercial* and *Construction Arbitration Rules*, except that the arbitrator MUST grant any mutual request of the parties to postpone the hearing.

REFERENCES:

Commercial Arbitration Rules R-30 Postponements

Construction Arbitration Rules R-31 Postponement of Hearings

Employment Arbitration Rules Rule 24 (2) Postponements

The Uniform Arbitration Act § 5(a) and 12(a)(4*); The U.S. Arbitration Act* § 10(a)(3)

SCENE 2 – WITNESS RECOGNIZES ARBITRATOR

Rod Barton, Claimant's Witness: Hi, good to see you. *(Looking at the arbitrator)* Hey, I know you. Didn't we meet at my brother-in-law's party last month? How you doin'?

QUESTIONS:

What would you do if a witness recognized you while you were serving as arbitrator?

What's the proper procedure?

ANSWERS:

Immediately call a recess and contact the AAA. Your AAA case contact is clearly the best person to assist in matters such as these. Give the disclosure information to your AAA case contact. The AAA will then speak to the parties or their representatives (out of your presence), explain the disclosure you made, listen to the parties' comments, and then decide whether you should remain on the case. This process will almost always be conducted over the telephone.

LEARNING POINTS

1. Avoid giving any party the opportunity to object to your continued service in your presence. Doing so will prevent a dilatory party from attempting to unnecessarily derail the hearing.

2. The arbitrator's duty to disclose potential conflicts of interest is ongoing throughout all stages of the arbitration from initial appointment to rendering the award. All disclosures, regardless of when they are made, need to be put in writing and transmitted to the AAA so they can be made part of the case file.

3. Do not try to handle the disclosure and challenge process yourself, since doing so may magnify any perceived problems with the disclosure. The AAA's various rules provide the AAA with the authority to rule on motions to disqualify an arbitrator.

REFERENCES:

Commercial Arbitration Rules R-17 Disclosure and R-18 Disqualification of Arbitrator

Construction Arbitration Rules R-19 Disclosure and R-20 Disqualification of Arbitrator

Employment Arbitration Rules, Rule 15 Disclosure and Rule 16 Disqualification of Arbitrator

The Code of Ethics, Canon II.A

SCENE 3 – RAMBLING TESTIMONY

Claimant's Attorney: You testified earlier that you were at the planning meetings between John Morgan and Pam Chapman.

Rod Barton: Yeah, I was at those meetings. And they were pretty good, I guess.

Claimant's Attorney: Can you tell us… did they discuss the selection of furnishings? Were decisions made, or… any comments made that you can share with us?

Rod Barton: Well, they showed all these photographs to Ms. Chapman. *Tons*, really. And she really did look through all of them. We just sat around, looking at this picture and that, and their people were trying to be patient. But sometimes, these decorators, they can be a little intimidating, ya know? Well, I know, cause my wife and I are currently redecorating our living room, and once you start looking at fabrics, you can go crazy. I mean, what is "damask," anyway? And, hey, *(looking around as if to get a second opinion)* have you ever heard of okra… or ocher…? Anyway, I think it's some sort of yellow. These Modern Furnishings people were nice and all, but they were showing these photos like they wanted an answer right then and there. Frankly, it felt like they were a little "hoity-toity." *(Aside)* Not that there's anything wrong with that… it's just that I'm not a big fan of decorators. You know, with all I went through with my wife and all, you know… back at my house? ….

Respondent's Attorney: Excuse me…

Rod: …the whole fiasco with the living room …

Respondent's Attorney: *Excuse me?!* While I do hate to object, this kind of unfocused, rambling testimony really shouldn't be allowed. I know this isn't a court proceeding, and formal rules of evidence don't apply, but there are limits. Madame Arbitrator, please direct the witness to be concise and stick to the point.

QUESTIONS: Do you have the authority to curtail rambling testimony?

What action should you take?

ANSWERS:

The AAA's *Commercial Arbitration Rules* (R-34) (a) state that "…conformity to legal rules of evidence shall not be necessary." It is therefore understood that parties are entitled to present any evidence material and relevant to the controversy. There are times, however, when you should put an end to "rambling" testimony, regardless of whether an objection is raised by another party. Rambling testimony serves no useful purpose and needlessly prolongs the hearing.

Rules of evidence in litigation essentially serve the purpose of preventing the jury from hearing or considering prejudicial or unreliable testimony and evidence. Because arbitrators are selected for their technical knowledge or substantive expertise, they are able to recognize what is unreliable or irrelevant and either disregard it or give it such weight as it deserves.

In this example, it would be very appropriate for you to direct the claimant's attorney to ask focused questions of the witness.

LEARNING POINTS

1. Speed is a primary goal of arbitration. As to repetitious evidence, arbitrators have the authority to direct the parties' witnesses to present their testimony as concisely as possible.

2. Rambling testimony should be discouraged or severely curtailed. Directing an attorney to ask focused questions of the witness will help accomplish this.

3. Arbitrators have the authority to determine the admissibility of the evidence submitted.

REFERENCES:

Commercial Arbitration Rules R-32 Conduct of Proceedings and R-34 Evidence

Construction Arbitration Rules R-32 Conduct of Proceedings and Section R-33 Evidence

Employment Arbitration Rules Rule 28 Order of Proceedings and Section 30 Evidence

SCENE 4 – OBTAINING TESTIMONY

Claimant's Attorney: I now call Diane Reilly, principal designer for Modern Furnishings. Ms. Reilly is a world-renowned designer and winner of many industry awards. She is also Vice President of the Interior Design Association of New York, she is a well-respected…

Respondent's Attorney: *(Interrupting)* Madame Arbitrator, we all know who Diane Reilly is. May we please just move on?

Claimant's Attorney: Ms. Reilly, we understand that there were several consultation meetings between John Morgan and Pam Chapman. You were there during these meetings, correct?

Diane Reilly: Yes, I was.

Claimant's Attorney: And while you were at these meetings, was there ever a time when Ms. Chapman disagreed to a design plan, or disagreed with any of the proposed furnishings?

Diane Reilly: She didn't appear to, no.

Claimant's Attorney: OK, so you're saying that Ms. Chapman, in every discussion, approved both the furnishings and the design?

Diane Reilly: Yes, absolutely.

Claimant's Attorney: And since she never voiced her disapproval, isn't it unreasonable to say that Modern Furnishings didn't perform to her expectations?

Respondent's Attorney: *(angry)* I object. This questioning is not only off topic, but he is clearly leading his witness.

QUESTIONS: Is this line of questioning appropriate during an arbitration hearing?

What would be your ruling to this objection?

SCENE 5 – INTRODUCING EVIDENCE AND DUPLICATIVE EVIDENCE

Claimant's Attorney: *(In front of the attorney are several piles of documents … as he speaks, he picks up a document from each pile)* As you know, Chapman & Associates claims that my client, Modern Furnishings, failed to design an appropriate workspace for them. However, I have here in front of me several documents which not only demonstrate the quality of the furnishings and design, but also signed approvals of those designs. We believe that this evidence proves that Modern Furnishings does, in fact, deserve payment in full.

(He slaps down each document as he speaks.) This first document contains Pam Chapman's signature approving the original design…This second document contains Pam Chapman's signature approving the first change order…This third document contains Ms. Chapman's signature approving the second change order and approving several furniture pieces.

This document has her signature approving her own office furniture; here's her signature approving the lobby wall hangings. And here's her signature again…

Respondent's Attorney: Are we going to go through an unending pile of documents now? I really think we can cut to the chase, here. If Mr. Green has a point to make, please direct him to make it quickly, and let's move on.

Claimant's Attorney: Madame Arbitrator, opposing counsel has no right to tell me how to present our case. We are simply attempting to establish a pattern of approval of our work by Ms. Chapman. Please direct Ms. Rodriguez to be patient and allow me to present my case.

QUESTIONS: What case management issues are raised here?

What actions would you take?

ANSWERS: Scenes4 and 5 raise the following issues:

- Manner of obtaining testimony
- Manner of introducing documentary evidence

- Time management
- The attorney's role
- The decorum of an evidentiary hearing

Receiving testimony from a witness is one of the most important parts of an evidentiary hearing. The effectiveness of the advocate is in part, based upon the advocate's ability to ask proper questions in the right manner and to anticipate what responses will flow from the witness. An effective advocate obtains testimony the way a good director stages a scene. The arbitrator must properly judge when questioning is on point and whether the advocate has effectively made their case.

Entering documentary evidence can be one of the more time consuming parts of an arbitration hearing and sometimes a party may believe that it is necessary to "hammer the point home" by bringing and exhibiting as much evidence as possible on a specific issue.

However, it is important that you as the arbitrator effectively manage the volume of evidence and the manner in which it is introduced or offered. Efficient time management of hearings is one of the most important responsibilities of an arbitrator.

This vignette raises the question that, if documents are allowed to be presented in this manner, "Should it really take the attorney so much time to introduce four documents?" The answer is, "No." There will likely be one or more witnesses called to testify as to the significance of the documents. It may speed things up to suspend the documents' introduction here and have them introduced at the time they are testified to by the witnesses. In any event, the attorney should be directed to speed things up.

This vignette also highlights the attorney's role in the process. It appears that what the attorney is attempting to do is lay the foundation for the evidence. This is a legitimate part of the attorney's job. However, an attorney should not drift off into presenting actual testimony or argument about the documents. If this were to happen, opposing counsel would likely object. In situations like this, you should advise the attorney that you prefer to hear testimony from witnesses who are familiar with the documents or subject matter.

Some arbitrators believe that attorneys should not be allowed to introduce documents at a hearing without a witness. It can be argued that the attorney is not laying a foundation, because no witness with knowledge of the provenance of the

documents being proffered is involved. Other arbitrators believe that arbitration should provide a more relaxed atmosphere for the admission of evidence and therefore will allow the admission of documents in this manner.

LEARNING POINTS

Arbitrators have a duty to ensure that the hearing proceeds expeditiously while still affording each party a full and fair opportunity to present its evidence.

Arbitrators have the authority to direct the parties to present evidence in the most efficient manner possible. Getting the parties to present their cases efficiently requires arbitrators to clearly communicate to the parties' representatives – in advance of the hearing whenever possible – what their expectations are for an efficient hearing.

Arbitrators can and should address how the admissibility of documents during the preliminary hearing is to occur once the hearing commences. Getting the parties to agree on this procedure and reminding them of it prior to the commencement of the hearings should streamline this process.

REFERENCES:

Commercial Arbitration Rules R-32 Conduct of Proceedings

Construction Arbitration Rules R-32 Conduct of Proceedings

Employment Arbitration Rules Rule 28 Order of Proceedings and Section 30 Evidence

The Uniform Arbitration Act § 5

SCENE 6 – WITNESS NOT ON ANY WITNESS LIST

Claimant's Attorney: We now call Peter Tatum to testify.

Respondent's Attorney: Objection! According to the pre-hearing order, we're supposed to exchange witness lists. Who's Mr. Tatum? He's not on our list, and as a result, we're not prepared for this witness. Allowing him to testify gives Modern Furnishings an unfair advantage.

Claimant's Attorney: May I remind everyone that one of the reasons we're in arbitration is to get away from the constraints of courtroom procedures. Isn't arbitration supposed to be less formal than a courtroom? By calling this witness, we simply want you, Madame Arbitrator, to have all the information you need to make an informed decision.

QUESTION: Should you allow the witness to testify?

ANSWER: Both parties make good points here. Chapman is correct in saying that Modern Furnishings' action is potentially prejudicial. Chapman is correct in pointing out that arbitration is less formal than litigation. Your job is to make sure that the hearing process is fair and equitable.

The reason why Modern Furnishings did not disclose this witness is not stated in the video. As the arbitrator, you should find this out before deciding what to do. If you are convinced that this witness has something relevant and material to say, let him testify. If it appears that Chapman might be prejudiced by this surprise testimony, you should give Chapman additional time to prepare and respond.

LEARNING POINTS

1. It is the duty of arbitrators to ensure that each party receives a fair hearing. All rulings and decisions should be made with this duty in mind.

2. To ensure the binding effect of the award, arbitrators are well-advised to bend over backwards to admit any testimony that may be relevant. At times you may need to allow last-minute or surprise testimony if it can be demonstrated that it has some remote

relevance to the case. However, the arbitrator should effectively manage the process throughout in order to eliminate or minimize surprise testimony. However, if there appears to be willful non-compliance from the party(s) based on previous orders that were issued, under *Commercial Rule R-23 (d),* you may exclude evidence and other submissions.

REFERENCES:

Commercial Arbitration Rules R-34 Evidence and R-35 Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence;

Commercial Arbitration Rules R-23(d) Enforcement Powers of the Arbitrator

Construction Arbitration Rules R-33 Evidence

Employment Arbitration Rules Rule 30 Evidence

The Uniform Arbitration Act § 12(a)(4); *The U.S. Arbitration Act* § 10(c)

SCENE 7 – HEARSAY TESTIMONY

Claimant's Attorney: Have you ever been to the building where Chapman & Associates is located?

Mary Washington: Yes, I go there for lunch sometimes.

Claimant's Attorney: Have you ever seen or talked to any Chapman employees while at this restaurant?

Mary Washington: Yes, I have. We generally sit in the same section, and I've met a few of them before. About a month ago, there was a group of Chapman people sitting at the table across from me, and I started talking with one of them. Miguel Gonzales.

Claimant's Attorney: And is there something you'd like to share with us about this conversation?

Mary Washington: Well, we started talking, and Miguel was telling me how they just redid their offices. Everything brand new. And then he said how Pam Chapman was going around saying that… even though people seemed to like their new offices… that Ms. Chapman didn't really care for it, and was bragging how she hadn't paid for it yet, and that she never intended to.

Respondent's Attorney: I'm sorry, but this is ridiculous! This testimony is clearly hearsay. How can we be sure that Ms. Chapman ever made such a statement? And besides, this testimony should be coming from Mr. Gonzales, not someone he met at LUNCH!

Claimant's Attorney: This isn't a court proceeding! The rules of evidence don't apply! I know this is hearsay, but Mr. Gonzales no longer works for Chapman and has relocated, and this was the only way I could get this evidence in.

QUESTIONS: What is hearsay evidence? How should it be handled?

ANSWERS: As previously noted, the formal rules of evidence may not necessarily apply in arbitration. The hearsay rule is applicable when a witness contends that his or her testimony is being offered as the truthful statements of a third person. This type of testimony is excluded in litigation under the theory that the person actually making the statement is not

there to be cross-examined to determine the truth of what was actually said. The arbitrator must ultimately determine whether the probative value of this evidence outweighs the hearsay manner in which it was obtained.

One of the few grounds for vacating an arbitration award is finding that an arbitrator failed to hear relevant evidence presented by the party. Therefore, for some arbitrators, the real issue with regard to hearsay evidence goes more to its relevance than its admissibility. If you determine the testimony is relevant then allow it. After hearing it, it's up to you to determine its weight. If you determine that the hearsay testimony is not relevant, then you may consider excluding it.

LEARNING POINTS

1. Arbitrators have the authority to determine the admissibility, relevance and materiality of all testimony offered.

2. Arbitrators also have broad discretion in determining what weight they will give to evidence and testimony.

REFERENCES:

Commercial Arbitration Rules R-34 Evidence and R-35 Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

Construction Arbitration Rules R-33 Evidence

Employment Arbitration Rules Rule 30 Evidence

The Uniform Arbitration Act § 5(b) and 12(a)(4); *The U.S. Arbitration Act* § 10(c)

SCENE 8 –MANAGING EMOTIONS *(Continuation of the Previous Scene)*

Claimant's Attorney: Ms. Washington, you got the impression from Mr. Gonzales that Pam Chapman was pleased with all the compliments she was receiving about her office design, did you not? And yet, she was gloating about how she wasn't going to pay for all these furnishings?

Respondent's Attorney: Objection! He's leading his witness again. This has got to STOP!

Claimant's Attorney: Don't tell me how to examine my witnesses. I'm getting a little sick and tired of your constant objections!

Respondent's Attorney: Learn how to examine your witnesses, or I'm going to object every time you open your mouth.

QUESTIONS: Do you have authority over the parties' conduct?

What action would you take?

ANSWERS: There are times when the parties no longer want to dispute the issues-they want to dispute each other instead! Although this benefits no one, the parties are often too close to the matter to recognize this fact. It is, therefore, up to you to maintain order. This is usually not too difficult to accomplish. After all, the parties want to please you. If they are told that their behavior is time-consuming and counterproductive, they will generally regain their composure.

Remind the parties that hostile behavior serves no useful purpose. Declare a recess to give the parties time to cool off. If a witness (not a party or its representative) is the cause of the hostility, consider sequestration.

LEARNING POINTS

1. It is the duty of arbitrators to ensure that arbitration hearings are conducted in an orderly and dignified fashion. Tempers may flair, hostility may run deep, but arbitrators are in charge and should be secure in their position to provide the parties with an orderly hearing.

2. Arbitrators should clearly convey to the parties at the outset of the hearing the behavioral guidelines to be followed.

REFERENCES:

Commercial Arbitration Rules R-34 Evidence

Construction Arbitration Rules R-33 Evidence

Employment Arbitration Rules 30 Evidence

Code of Ethics, Canon I(F) and Canon IV(A)

SCENE 9 – SCHEDULING ADDITIONAL HEARINGS & TIME MANAGEMENT

Respondent's Attorney: We originally set aside two days for this hearing. However, we've been at this all day and tomorrow claimant will still be presenting his case. We may not have time to present ours tomorrow. So, we would like to request an additional day or two to present our testimony. Seeing that my client will be overseas for the next six weeks, I'd also like to request that we reconvene in two months.

Claimant's Attorney: Two months! That's completely unacceptable. Delaying these hearings could affect my client's business. Besides, the arbitrators' Code of Ethics clearly states that you're obliged to conduct these proceedings in a timely manner. We insist that we reschedule in the next two weeks so we can get these hearings over with.

QUESTION: How can situations like these be prevented through better time management techniques?

LEARNING POINTS

Time Management

1. The preliminary hearing memorandum should clearly state the time when the hearing will begin and the time the hearing day is scheduled to end. Reinforce to the parties throughout the hearing the importance of keeping to the schedule and respecting their time commitments, regardless of how many pressing calls they may want to return between breaks and before the hearing begins each day. Discourage parties and/or counsel from arriving late in the morning, after breaks or lunch, and requesting to cut the day short.

2. Discourage unprepared or repetitive testimony and/or cross-examination. You may consider giving each party a total set amount of time and make it clear that they are using up that time whether they are doing direct, cross, conferring with a client or fighting about an objection to testimony or an exhibit. In this way, one party can never use up all of the time allocated for the hearing, nor can an opposing party consume some of the other party's time by a rambling cross-examination. It is always best to obtain parties' agreement when setting time limitations, but not always necessary, especially if the parties are contentious and cannot agree to procedural matters. If there is no agreement, it may be prudent to provide an explanation of your determination on time limitations.

3. Discourage out-of-control cross-examination. The arbitrator should not hesitate to interject in an objective and neutral manner when cross-examination appears to have been sufficient or seems to be going on indefinitely. You can also use a chess-clock time-keeping procedure to control the amount of time each party has to present their case and cross-examine witnesses. Once again, it is best to obtain parties' agreement when utilizing this approach.

4. Provide in the preliminary hearing memorandum that, if the hearing is behind schedule, days may be lengthened (with pro-rata increase in time to each party).

5. Provide in the preliminary hearing memorandum that all counsel will reserve a set number of days immediately following the scheduled days set for the hearing if additional time is determined to be needed.

Breaks Between Sets of Hearing Days

1. Some factors to consider:

   - Whether there is a transcript. Having a transcript accurately preserves testimony and helps refresh memory if the break between hearings is lengthy.
   - The need to have the hearings as close to one another as possible.
   - The ability of the parties to be present or have an alternative representative.
   - The need to conclude the case, balanced against the need to be fair.
   - Whether the continuance may be prejudicial to either party.
   - The need to schedule enough time to finish the case.
   - The willingness (or necessity) of counsel to meet during the hiatus to flush out early or late-arising problems and to deal with them.

2. If there is to be an extended break in the hearing schedule, prepare an order setting up the ground rules for the resumption of the hearing, clearly delineating how you will proceed.

SCENE 10 – NON-PAYMENT OF ARBITRATOR'S FEE

Mary Vernon:

Ms. Johnson, this is Mary Vernon with the American Arbitration Association. I'm fine thanks, and you? Good, good …

Now, Ms. Johnson, I'm calling about the additional hearing days you've scheduled in the Modern Furnishings case. I've been trying my best to get the parties to make additional deposits, you know, to compensate you for the extra time. Unfortunately, it looks like we're not going to get the money deposited before the scheduled hearing days. There is only enough money on deposit to pay you for one of the two days you've scheduled. That also means there's no money to pay you for any added "study time." Since the hearings are only a few days away, you will need to make some decisions. So… I'm calling to see what you'd like to do…

QUESTIONS:

What are the arbitrator's options?

What do you think the arbitrator should do and why?

How/Is this scenario different than the non-payment of arbitrator deposits prior to the commencement of the hearing?

ANSWERS:

There are various remedies that are available in this scenario, which generally follow the Remedies for Non-Payment Rule (*Commercial Rule R-57*). Once the AAA had made initial inquiries of the paying party as to whether it will remit payment, the party(s) have the ability to raise this matter to the arbitrator consistent with the aforementioned rule. Subject to a determination by the arbitrator, if the matter is still unresolved (or unable to be resolved by the arbitrator due to the claims/counterclaims or lack thereof), the arbitrator can progress to more decisive measures.

One additional remedy is that the arbitrator has the authority to suspend a hearing for non-payment of fees. Although it is standard procedure for the AAA to contact the party that has made payment in an attempt to have them cover the fee of the opposing party, the arbitrator should ask if this has been done without inquiring which party has paid and which has

not. Communication between the arbitrator and the AAA is crucial.

If the arbitrator determines to go forward with the hearing, he/she must never later decide to withhold a final written award.

LEARNING POINTS

1. When there is not enough money on deposit to pay the arbitrator for the remaining hearing days and/or "study time," the arbitrator has the following options:

   - Proceed knowing that the funds are not there to pay him or her.
   - Address a request from the paying party(s) to modify the process and/or not allow the pursuit of a properly filed claim/counterclaim. (This does not, however, allow the arbitrator to preclude a party from defending against a claim and/or counterclaim due to non-payment of fees.)
   - Suspend the proceedings until such time as funds have been paid or terminate the proceedings.
   - Ask the AAA to call opposing counsel and see whether they may be willing to pay what is currently due in order for the matter to proceed (although generally the AAA has already taken this step prior to calling the arbitrator).

2. It is not possible to reconcile an arbitrator's obligation to conduct the arbitration promptly and his or her decision to suspend the proceedings for lack of payment. But as a practical matter, the parties have agreed to pay the necessary fees to arbitrate the matter under the AAA rules and they should abide by their agreement. A decision to proceed allows the arbitrator to allocate the fees and expenses in the final, enforceable award, and thus recovery can be obtained, assuming the availability of assets.

REFERENCES:

Commercial Arbitration Rules R-57 Remedies for Nonpayment

Construction Arbitration Rules R- 56 Remedies for Non-Payment

Employment Arbitration Rules Rule 47 Suspension for Non-Payment

SCENE 11 – VOLUMINOUS EVIDENCE

Day Three of the Hearing

Respondent's Attorney: We have here five reports from five different interior design consultants, all of which document industry standards in modern office design. As you'll see, these reports clearly show that Modern Furnishings did not meet industry standards when they designed the Chapman offices.

Claimant's Attorney: Excuse me, but Chapman has had every opportunity to produce actual witnesses to address these issues. Now they hand us these mounds of papers? We don't have time – and I would presume, Madame Arbitrator, that you don't have time – to wade through all this to see if there's anything relevant here. We object to this evidence.

QUESTIONS: What authority do you have over the parties' presentations?

What action would you take?

ANSWERS: It's been noted throughout these vignettes that arbitrators generally accept most evidence, giving it only such weight as they deem necessary. This is done to safeguard the final award from *vacatur* on the ground that the arbitrator refused to receive relevant and material evidence.

Does this mean, therefore, that you must accept all evidence, regardless of the form in which it is presented? The answer is an emphatic, **"NO!"**

Remember, it is one of your responsibilities to see that the matter is concluded as promptly as circumstances reasonably permit. Time is money. It would certainly prolong the proceeding if you were required to wade through reams of paper to ascertain its relevance. In fact, a party could hope to mislead you by entering voluminous records and reports, which in reality amount to very little.

The solution, therefore, is to instruct Chapman to summarize the evidence, attaching charts and graphs if necessary or to call a witness that can quickly give testimony as to the

significance of the reports. The various reports could then be supplied as back-up material. Modern Furnishings would then be given an opportunity to reply to the summary or cross-examine the witness.

LEARNING POINT

Arbitrators should use their discretion to conduct hearings with a view toward expediting the resolution of disputes. To that end, arbitrators can direct that evidence be submitted in such form as to ensure efficient and cogent presentations by the parties.

REFERENCES:

Commercial Arbitration Rules R-32 Conduct of Proceedings

Construction Arbitration Rules R-32 Conduct of Proceedings

Employment Arbitration Rules Rule 28 Order of Proceedings

The Uniform Arbitration Act §12(a)(4); *The U.S. Arbitration Act* § 10(c)

Code of Ethics, Canon IV. A. and B

SCENE 12 – WRITTEN NOTE AS EVIDENCE

Respondent's Attorney: I'd like to submit this hand-written note *(holding the note)* from a Mr. Robert Melvin. Mr. Melvin builds the furniture that Modern Furnishings designs. In this note, Mr. Melvin questions whether or not he can actually build the furniture they ordered, based on the specs they gave him.

Claimant's Attorney: Objection! This "*note*" isn't evidence! If Chapman wants to use the testimony of Mr. Melvin, then I'd appreciate the opportunity to cross-examine him. I can't cross-examine a piece of paper!

QUESTIONS: Should the evidence be admitted? Why? Why not?

ANSWERS: As the arbitrator, you have broad discretion over the admissibility of evidence. Although not an exhaustive list, the following factors may be considered when you are deciding admissibility issues:

- Relevancy and materiality
- Objections to the evidence by other parties
- Credibility of the person offering the evidence
- The circumstances from which the evidence arose
- Other evidence and/or testimony that supports or discredits it

Taking all of these factors into consideration will help you make a sound decision. Should you conclude that you will allow the evidence, it is completely up to you to decide the amount of weight it should be given.

LEARNING POINT

Based on their experience and expertise, arbitrators are deemed to be able to receive whatever evidence they consider to be relevant and give it such weight as they believe it deserves. Since the formal rules of evidence do not generally apply in arbitration, arbitrators have broad discretion to admit or exclude any evidence the parties wish to present.

REFERENCES:

Commercial Arbitration Rules R-32 Conduct of Proceedings; and R-34 Evidence

Construction Arbitration Rules R-32 Conduct of Proceedings; Section R-33 Evidence

Employment Arbitration Rules, Rule 30 Evidence

SCENE 13 – POST-HEARING BRIEFS

Respondent's Attorney: At this time, I'd like to ask for permission to file post-hearing briefs. Given the number of issues and facts involved in this case, I ask that we be allowed to submit these briefs three weeks from today.

Claimant's Attorney: With all due respect, do we really need briefs? The arbitrator has all the facts… has ample evidence and… has heard all the relevant testimony. Preparing post-hearing briefs will be costly for my client, and would delay the award by three weeks.

We object to filing a post-hearing brief, and ask that you declare the hearing closed as of today.

QUESTION: Are you required to accept briefs?

ANSWER: Arbitrators are ***not required*** to accept post-hearing briefs. The rare exception, however, would be if the parties' arbitration agreement gave the parties the right to file such briefs. In these instances, the arbitrator would have no choice but to accept the briefs. The issue of post-hearing briefs can and perhaps should be discussed at the preliminary hearing when other related case management discussion occurs.

Ultimately, whether post-hearing briefs are necessary is up to you. If you believe briefs are not necessary you may explain that the evidence and testimony submitted at the hearing are sufficient and that allowing time for the filing of briefs will delay the award and add to the parties' costs.

If briefs will unduly delay the award, it is important that you find out whether any of the parties might be prejudiced by such a delay. If one party insists on filing a brief, as in this vignette, it would probably be advisable to allow it as long as the award will not be unduly delayed to the prejudice of the other party. The objecting party should, of course, be afforded an equal opportunity to prepare and submit a brief or a reply statement.

Finally, if briefs are allowed, the hearing is not declared closed until the due date for the filing of the final briefs.

This procedure is self-executing in that neither the arbitrator nor the AAA has the discretion to alter the due date unless the parties specifically agree, in writing, to an extension. Further, arbitrators should consider a page limitation on post-hearing briefs that are provided.

LEARNING POINTS

1. Arbitrators have the authority to determine whether or not briefs will be allowed. They may also request briefs on their own initiative. Keep in mind, however, that briefs are frequently unnecessary and can cause unnecessary delays in issuing awards and impose additional costs on the parties. For these reasons, they should be used with discretion.

2. The hearing is closed on the due date for the filing of the final briefs.

3. The arbitrator may receive post-hearing briefs either simultaneously or first from one party, allowing the other party an opportunity to reply.

4. Arbitrators may specify a page limit on briefs and are encouraged to do so.

5. Arbitrators may also determine when the briefs are due so as not to cause any extraordinary delays.

REFERENCES:

Commercial Arbitration Rules R-39 Closing of Hearing

Construction Arbitration Rules R-37 Closing of Hearing

Employment Arbitration Rules 33 Closing of Hearing

Managing Post-Hearing Issues

Below are the 12 scenarios for this topic from the *Arbitration Fundamentals and Best Practices for New AAA Arbitrators* course.

The scenarios are accompanied by the applicable Learning Points and references.

1. Request to Leave Hearing Open

At the conclusion of the oral hearing, the arbitrator, at the request of the parties, gave seven days to file briefs. Reply briefs were not discussed. Upon receipt of the briefs the arbitrator will declare the hearing closed.

Two days after the conclusion of the hearing, Chapman & Associates' attorney advises the arbitrator that preparing the brief will take longer than seven days, due to "health" issues, but she cannot say how much longer and requests that the hearing remain open until the brief can be completed.

Workshop Discussion Items:

(1) Discuss whether the arbitrator should leave the hearing open until Chapman's attorney can get the information filed.

(2) Suppose that when Chapman's brief is filed, it is accompanied by an affidavit, which was not expected, from an individual who was not a witness at the hearing. What action should the arbitrator take?

(3) Discuss what you think the arbitrator should do if, at the close of the hearing, she realizes that it will not be possible to render the award within the time limit established by the rules or the parties' agreement.

LEARNING POINTS

1. The hearing should never be left open "indefinitely." Without the arbitrator's setting a firm deadline for receipt of the information, this scenario provides the possibility that the Respondent's attorney could be in the "driver's seat," effectively closing the hearing whenever she chose to file her closing brief. It is particularly important to memorialize the closing of the hearing. The AAA should be informed immediately of this issue, so that a record of the close of the hearing can be formalized and sent to all parties.

2. When accepting unexpected post-hearing documents from one party, an arbitrator must allow the other party or parties the opportunity to respond. The scenario points out the need for clarity in determining the reason(s) the hearing is being held open (*e.g.*, only for final briefs, no other documents or evidence will be accepted).

3. If an arbitrator concludes that he/she cannot render the award within the time limit established by the rules or the parties' agreement, the arbitrator should bring this to the attention of the AAA who can discuss this with the parties. If the AAA receives their approval, it will be noted in the case file and communicated to the arbitrator.

REFERENCES:

Commercial Arbitration Rules R-39 Closing of Hearing

Construction Arbitration Rules R-40 Closing of Hearing

Employment Arbitration Rules Rule 33 Closing of Hearing

2. The Paper Chase

The briefs are filed with the arbitrator and exchanged between the parties. (Remember, reply briefs were not discussed at the conclusion of the hearing.) Modern Furnishings files a reply brief. Chapman & Associates files a counter-reply in response to Modern Furnishings' reply. Modern Furnishings counters with another reply. Chapman & Associates reciprocates. And so it goes…

Workshop Discussion Items:

(1) Discuss how the arbitrator should deal with this "paper chase."

(2) Discuss how this situation could have been avoided.

LEARNING POINTS

1. When an unexpected blizzard of briefs comes in, the arbitrator might first decide if there is any question raised and/or not answered by the first set of briefs. If not, the arbitrator could take the position that the additional briefs were not authorized and therefore will not be read and considered. If there are lingering questions, the arbitrator could read the briefs in the hope they will shed some light on those issues.

2. Unexpected reply briefs can be avoided by addressing the possibility of reply briefs at the preliminary hearing or the end of the evidentiary hearing. A good practice is telling the parties what issues would be helpful to be addressed in the briefs, establishing page limits (including footnotes or directing there be no footnotes) and specifying whether to attach copies of all cited cases and whether the briefs are to be simultaneously exchanged with or without an opportunity to reply.

3. Recognize that "briefs" mean different things to different people. Some will brief the statutory and common law at issue; others will take the opportunity to make closing arguments. A good practice is to specify to the parties what you want to see in any "brief."

3. Claim Amount Increased in Brief

Modern Furnishings' brief states a claim amount significantly higher than the amount stated in its *Demand for Arbitration* or the amount presented at the hearing.

Workshop Discussion Items:

(1) Discuss what the arbitrator might do.

(2) Discuss how this situation could have been avoided.

LEARNING POINTS

1. Increasing a claim amount via a post-hearing brief is an action subject to R-6 of the *Commercial Arbitration Rules* (Changes of Claim). Depending on the evidence presented at the hearing, the arbitrator may reopen the hearing, allow the other side to respond and rule on whether the revised claim will be accepted. If accepted, the arbitrator would need to give the other side the opportunity to respond and mount a defense. It is quite possible that all this could be done via correspondence, although an additional oral hearing may be necessary.

2. Complicated hearings may involve numerous issues with dollar amounts that vary during the course of the hearing. Therefore, arbitrators should require parties to specify their claims early on and update them continuously as circumstances warrant. Requiring the attorneys and clients to do their homework on damages both early on and on an ongoing basis can eliminate last-minute or post-hearing squabbling over the amount of the parties' claims. A comprehensive "scheduling order" that spells out these kinds of requirements (damages, adding additional claims or changing claims, etc.) goes a long way toward eliminating the kind of problem presented in this scenario.

4. Importance of Arbitrator's Notes

Modern Furnishings' brief makes reference to Chapman & Associates' conceding a point at the hearing related to the issue of "unsuitability" raised by Chapman in its counterclaim. The arbitrator's notes do not reflect Chapman & Associates' conceding the point and Chapman & Associates' brief is unclear as to whether it conceded the point. Whether Chapman & Associates conceded the point is a crucial item.

Workshop Discussion Item:

Discuss what you think the arbitrator should do.

LEARNING POINTS

1. The arbitrator could re-open the hearing for the purposes of holding a conference call with the parties and ask Chapman & Associates' counsel if in fact the point was conceded.

2. This scenario highlights the importance of the arbitrator's notes. Arbitrators must keep good notes that can be relied upon. Some arbitrators keep separate sheets of paper during the hearing that reflect the parties' stipulations and reflect the arbitrator's orders. These sheets are kept separate from notes of witness testimony and facilitate finding the decisions and/or stipulations later if questions arise.

3. In addition to the arbitrator's notes, a court reporter's transcript can prove to be very valuable in lengthy, complicated hearings. This being said, while an arbitrator may suggest – even encourage – a transcript, it is ultimately up to the parties to decide whether they want to incur the expense of a reporter and transcript.

REFERENCES:

Commercial Arbitration Rules R-28 Stenographic Record

Construction Arbitration Rules R-29 Stenographic Record

Employment Arbitration Rules Rule 20 Stenographic Record

5. Should Interest Be Awarded?

The contract between the parties provides for pre-judgment interest on the award to the prevailing party. Neither party mentioned this provision during the arbitration hearing, nor did they mention it in their post-hearing briefs. The arbitrator is aware of the provision from reading the contract. Should the arbitrator award the interest?

Workshop Discussion Item:

Discuss whether the arbitrator should award the interest.

LEARNING POINTS

1. Section R-47(d) of the *Commercial Rules* and Section R-48(d) of the *Construction Rules* provide that *"arbitrators may include: (a) interest at such rate and from such date as the arbitrators may deem appropriate…"* The *Employment Rules* are silent as to interest.

2. If the parties' contract provides for a specific form of relief, but neither party raises the relief as part of its claim, the arbitrator would generally have the authority to award the contractual relief. The best practice in such situations would be for the arbitrator to raise the issue by saying something like, "Is either party asking for an award of interest? If so, I will entertain it at this time."

3. When it comes to awarding interest there is almost always an issue as to what law will apply to determine the proper rate of interest. By engaging the parties in a dialogue (either oral or written) on a narrow point, the arbitrator would have the benefit of the parties' points of view and would avoid doing something in the award that may be inconsistent with what both parties thought should happen.

6. Awarding Amounts Greater Than Relief Sought

The rules say that "the arbitrator may grant any remedy or relief that is just and equitable and within the scope of the agreement of the parties." Suppose that, after reviewing all the evidence and testimony, the arbitrator is convinced it would be "just and equitable" to award Modern Furnishings an amount greater than it requested during the hearing and asked for in its brief.

Workshop Discussion Item:

Discuss whether you think an arbitrator, under certain circumstances, can award an amount greater than a party's claim.

LEARNING POINTS

1. It is generally held that if an arbitrator awards an amount greater than what a party requested, the arbitrator is exceeding his or her authority and subjects the award to possible *vacatur*.

2. If an arbitrator feels that a greater award amount is warranted, the arbitrator might consider reopening the hearing for the purpose of re-evaluating damages and see if the party, on its own initiative, moves to increase the amount of its claim. If an increase was filed, the arbitrator would have to grant the other side time to respond and mount a defense.

7. Attorneys' Fees

Assume in the Modern Furnishings v. Chapman & Associates case that the arbitration provision is silent on the issue of attorneys' fees. However, both parties initially asked for attorneys' fees as part of their respective claims. In a post-hearing brief, Modern Furnishings forcefully argues for attorneys' fees and cites supporting law and authority. In its reply brief Chapman & Associates drops its claim for attorneys' fees and argues that the law and authority cited by the Claimant do not support such an award.

Workshop Discussion Items:

(1) Discuss the circumstances under which arbitrators may award attorneys' fees.

(2) Discuss the factors in general that should be considered when having to decide between two contrary legal positions.

LEARNING POINTS

1. Awarding Attorneys' Fees

Section R-47 of the *Commercial Arbitration Rules* and Section R-48 of the Construction Rules say, *"The award of the arbitrator(s) may include: … (d)ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or in their arbitration agreement."* Section 39 of the Employment Rules says, in part, "The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with applicable law."

If requested by all parties at the conclusion of the hearing to award attorneys' fees, the arbitrator would do well to have the stipulation reduced to writing and signed by all the parties.

Recognize there is a wide disparity in the law between jurisdictions on allowing attorneys' fees. Attorney arbitrators outside of their normal jurisdictions as well as non-attorney arbitrators may consider suggesting a brief on this issue by the parties.

2. Deciding Between Contrary Legal Positions

- When opposing counsel argue that the law supports two entirely different outcomes, the arbitrator(s) may have to decide between contrary legal positions. If the parties attach to their briefs copies of all cases cited, they will have been less likely to yield to the temptation to inaccurately state the holding in a case in the hope that the arbitrator would fail to take the time to check the cite. A review of the cited cases may assist the arbitrator in determining how the parties came to claim that the law supports opposite outcomes. Sometimes the cases cited by one party will be from courts of another jurisdiction, or will be older or from lower courts and may have been partly or totally overruled by more recent cases or cases from the next rank up in the appellate chain.

- If there is not an easy answer, it may be appropriate for the arbitrator to review the facts of the cases cited by both parties to determine which case has facts that offer the best guidance for the appropriate way to apply the law to the facts of the case.

- Parties empower arbitrators to make tough decisions and to use their best analysis in doing so. In addition to the above, arbitrators may also consider the reasonableness of the parties' positions, what is just and fair, and plain common sense.

8. Disposition of Arbitrator's Notes

While having dinner with two friends who are also AAA panelists, the arbitrator says she is going to destroy her entire arbitration file, including notes, the day she transmits the signed award to the AAA. One of her arbitrator friends cautions that would not be wise and says she needs to keep her file intact, including personal notes, for at least six months. The other friend weighs in by disagreeing with the other two and steadfastly maintains that arbitrators, in general, can destroy everything but copies of the pleadings, their notes, and the award and must keep these items on file for at least a year.

Workshop Discussion Items:

(1) Discuss what you think the arbitrator should do with her notes after the conclusion of a case.

(2) Suppose all the arbitrator's notes were made, in ink, directly on original exhibits that were provided at the hearing. After the award is issued the parties request that all the original exhibits be returned to them. Should the arbitrator return the exhibits, notes and all?

LEARNING POINTS

1. Disposition of Arbitrator's Notes

   A good rule of thumb is that arbitrators may consider keeping their arbitration notes and files intact up to the time the parties have for asking for a clarification or modification of the award. According to some statutes, this is usually 20 to 30 days from the date of the transmittal of the award. See also the following rules references for information on the arbitrator's authority to modify an award: *Commercial Rules* R-50, *Construction Rules* R-48, *Employment Rules* Section 40.

   If disposed of thereafter, the notes and file should be destroyed (*i.e.*, shredded), not recycled for scratch paper, etc.

2. Notations on Original Exhibits

   Arbitrators should never make notes on original exhibits since original exhibits are likely to be returned to the parties. In the event that an arbitrator did make some notes on original exhibits, or any other documents or materials to be returned to the parties, the notes should be redacted before the items are sent back to the parties.

9. Additional Arbitrator Compensation

After the hearings have been closed and during deliberations, the arbitrator discovers that, due to the significant amount of documents to be reviewed, there has not been enough money collected to compensate her for all of the study time necessary to determine an award.

Workshop Discussion Items:

(1) Discuss whether the arbitrator should request additional compensation at this time.

(2) Discuss practical ways in which this situation could have been avoided.

LEARNING POINTS

1. After the hearings have been closed it is more difficult to go back to the parties for additional arbitrator compensation, even though the parties themselves may have created the issue. In this scenario, the arbitrator may be perceived as "holding the award hostage" until more money is forwarded. Holding up an award once the hearing is closed is inappropriate. In this circumstance the arbitrator may want to consider whether he or she should forego charging additional study time for the extra work involved.

2. The arbitrator should get a feel for post-hearing study time issues during the hearing and project the additional hours needed prior to closing the hearing. It should become apparent before the close of hearing whether the arbitrator will need to review a substantial volume of materials.

3. The arbitrator should stay in contact with the AAA regarding the amount of collected arbitrator compensation. Should more be needed, the arbitrator should in a timely manner request that the AAA forward an additional billing to the parties. However, be mindful of complaints by parties concerning the cost of the arbitration process and recognize that the vast majority of this cost is arbitrator compensation. Only you can fairly assess whether additional billing of the parties is necessary and fair.

REFERENCES:

Commercial Arbitration Rules R-57 Remedies for Nonpayment

Construction Arbitration Rules R-59 Remedies for Nonpayment

Employment Arbitration Rules Rule 47 Suspension for Nonpayment

10. *Ex Parte* Telephone Contact With A Party

The arbitrator's notes reflect that the parties, during the hearing, stipulated to a certain item being awarded to the Respondent. In the final award, the arbitrator failed to award the item to the Respondent. Upon receiving the award, the Respondent's attorney makes *ex parte* telephone contact with the arbitrator to point out the oversight and request an amended award. The arbitrator acknowledges the oversight and agrees that the item should have been included in the award.

Workshop Discussion Item:

Discuss the arbitrator's actions and what appropriate steps should be taken at this point.

LEARNING POINTS

1. After issuing their awards, arbitrators should not entertain any phone calls, e-mails, letters, faxes, or other communications from the parties or their representatives.

2. Any communication received should be forwarded immediately to the AAA staff person handling the matter.

11. Arbitrator Subpoenaed to Testify

Two months after rendering the award in the Modern Furnishings v. Chapman & Associates case, the arbitrator, as a speaker at a continuing legal education seminar, discusses her impressions of the arbitration. The arbitrator specifically shared with the audience information about the attorneys' case presentations and what she found to be both effective and ineffective. Unknown to the arbitrator, the attorney for the losing party was in the audience. Three weeks later the arbitrator receives a subpoena to testify in court regarding motions filed by the parties to vacate/confirm the award.

Workshop Discussion Items:

(1) Discuss whether the arbitrator's presentation at the seminar was appropriate. If so, why? If not, why not?

(2) Discuss how the arbitrator should respond to the subpoena.

(3) Suppose that four months after issuing the award in a case, the arbitrator is approached at a social function by one of the parties or party's attorney who casually asks the arbitrator to explain the reasons for her award. Assume the award itself contained no reasons or finding of fact.

LEARNING POINTS

1. Arbitrators must be very careful not to violate the applicable rules, ethical obligations, and party expectations regarding confidentiality and should be very discreet about discussing any information from any case over which they presided. Sections R-25 of the *Commercial Rules* and R-26 of the *Construction Rules* provide that the "arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary." Section 23 of the *Employment Rules* says, "The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary." Similarly, Canon VI of *The Code of Ethics for Arbitrators in Commercial Disputes* provides that the "arbitrator should keep confidential all matters relating to the arbitration proceedings and decision."

   Under Section 12(b) of *The Uniform Arbitration Act*, parties have 90 days to file a motion to vacate an award. Many state arbitration statutes have similar provisions. Under Section 12 of the *Federal Arbitration Act*, parties have

three months to do so. However, under Section 9 of the FAA, a party wishing to confirm an arbitration award has up to one year to file a motion to confirm.

2. If asked to provide a post-award affidavit, or if subpoenaed for a post-award deposition or to appear at a hearing to vacate or confirm an award, arbitrators should notify the AAA immediately and NOT respond or communicate directly with the requesting party. The AAA, in consultation with its Legal Department, will review the matter.

3. To remain in fidelity to the confidentiality provisions of *The Code of Ethics* (Canon VI), arbitrators should not discuss with anyone their thought processes regarding awards and should definitely not do so within one year of issuing an award.

AAA Policy on Representation of Arbitrators and Mediators

If an AAA arbitrator or mediator has been named in a legal proceeding arising out of an arbitration or mediation administered by the AAA, or if he or she is subpoenaed to testify, be deposed, or produce documents, he or she should notify the case manager or the AAA's legal department immediately. The Legal Department will evaluate the matter and, at the AAA's sole discretion, provide legal assistance and representation. However, in no event does the AAA insure or indemnify arbitrators and mediators on our rosters.

The AAA does not provide representation to members of the AAA's rosters for litigation-related matters that arise out of cases that are not administered by the AAA, or on cases where the AAA's only role was to provide a list or to appoint an arbitrator.

12. Duty To Disclose – Continuing Obligation

Six months after rendering the award, the arbitrator (a partner in a large firm) discovers that one of the firm's satellite offices was doing work during the time of the arbitration for the party in whose favor the award was rendered. The award has been satisfied.

Workshop Discussion Items:

(1) Discuss whether the arbitrator should disclose this information. If so, why? If not, why not?

(2) If the arbitrator does choose to disclose the information, discuss how the disclosure should be made.

LEARNING POINTS

1. There is no clear answer to this scenario. The admonition here is to be extremely thorough in your search for potential conflicts of interest.

2. If the arbitrator chooses to disclose the information, he or she should contact the AAA. The AAA will handle the logistics of notifying the parties.

REFERENCES:

Commercial Arbitration Rules R-17 (a) Disclosure

Construction Arbitration Rules R-19(a) Disclosure

Employment Arbitration Rules Rule 15(a) Disclosure

The Arbitration Award

PREPARING FOR AND WRITING THE AWARD

Three Tests of a Good Award

An arbitration award should have three chief characteristics:

- It should be clear and definite, leaving no doubt as to what the parties must do to comply;
- It should decide every issue submitted in the arbitration;
- It should not rule on anything outside the scope of the arbitrator's authority.

Time of Award

Generally, under AAA rules, your award will be due no later than 30 days from the date the hearing is declared closed. The parties' arbitration agreement may alter the 30-day rule.

Under the *Commercial Expedited Procedures* and *Construction Fast Track Procedures*, the award is due 14 days from the date the hearing is closed.

Getting the award into its final format is a joint effort between the AAA and the arbitrator. Via e-mail, the AAA can provide the necessary award format that includes the appropriate preamble and an accurate "fee paragraph" that details each party's obligations as they relate to paying for costs incurred during the proceeding. The arbitrator can then insert the fee paragraph into the body of the decision, review the completed document and, if satisfied, email it to the AAA for reviewing and minor proofing prior to the arbitrator's signing it. Once signed by the arbitrator, the award is transmitted to the parties by the AAA. Alternatively, the arbitrator can e-mail the body of the text to the AAA. The AAA would then insert it into the boilerplate award format and return it for signature.

We must provide the parties with the award no later than the due date. To facilitate this, the arbitrator should submit his/her final bills as well as the assessment of costs as soon as possible after the close of proceedings – and even prior to completing the body of the decision – so the AAA can calculate and produce the fee paragraph for inclusion in the award. When it comes to producing the final award document, the arbitrator should be available to review, print and sign the document when it is received via e-mail, and then return it promptly to the AAA for delivery to the parties. Only in extremely rare circumstances should the award be transmitted directly from the arbitrator to the parties.

With the widespread availability of e-mail and scanning, we are able to get an award into its final format in a short period of time. However, to avoid a last-minute crisis in issuing a timely award, you should plan to work with the AAA to finalize the award prior to the due date. On sole arbitrator cases, the preparation and mailing time averages two business days or three calendar

days. On three arbitrator cases, this usually averages four business days or seven calendar days. Therefore, you should ideally have your decision to the AAA by:

- **Day 11** – *at the latest* – of the 14-day period on Fast Track/Expedited cases,
- **Day 27** – *at the latest* – of the 30-day period on sole arbitrator cases, and
- **Day 23** – *at the latest* – on three arbitrator cases.

The AAA will be in contact with you regarding the status of your award prior to these dates. Please be sure to communicate any expected delays to the AAA immediately when an issue arises so that appropriate steps can be taken, including potentially requesting the agreement of the parties for a short extension of the award due date arising from unforeseen circumstances.

Scope of Award

Commercial Rules R-47 and *Construction Rules* R-48:

> *The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.*

Employment Rules, Section 39 (d):

> *The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorneys' fees and costs, in accordance with applicable law.*

The scope of arbitration awards commonly takes the form of monetary compensatory damages plus ordinary fees. You may be directed by express language in the parties' contract to structure an unusual remedy such as:

- liquidated, consequential or punitive damages;
- attorneys' fees;
- interim relief;
- specific performance;

You have discretionary power to award such relief where appropriate.

Arbitrators would exceed their authority if they

- award more money to a party than the party claimed or more than any claim/counterclaim that has been properly filed in accordance with the applicable rules;
- made an award on items or matters not submitted to arbitration;
- make an award to a person/entity not a party to the arbitration.

Do not retain jurisdiction in the award.
Some arbitrators will occasionally insert a statement in their awards saying they are retaining jurisdiction, but they fail to explicitly state the reason for doing so and the period of time

jurisdiction is to be retained. Retaining your jurisdiction by including such a provision in an award is generally not a good idea, because parties in arbitration are seeking finality.

Form of Award

Generally speaking, your award:

- must be in writing and signed by you. In the case of three arbitrators, the award must be signed by a majority of the arbitrators.
- must have foundation in reason and fact and in some logical way be derived from the wording and purpose of the parties' arbitration agreement.
- should not be a compromise unless the parties' evidence and testimony clearly call for this result.
- should consider the parties' expectations of cost and length of the award. When composing a reasoned award, arbitrators should approach the parties prior to the evidentiary hearings on their expectations for the award. Is the procedural timeline necessary for the award? History or detailed background essential to the integrity of the award or is the rationale of your understanding of the evidence most important? Cost may be a factor that parties have high on their list of priorities.
- must be final, clear and definite in its terms. It must not leave any doubt as to what the parties are to do to comply with your decision. All acts necessary to fix the rights or obligations of the parties must be spelled out on the face of the award.
- must decide all issues. You must decide and dispose of **ALL** issues, claims and counterclaims submitted by the parties.
- must only direct the parties to do what is possible.
- should be stated in terms that are separable. When more than one item is to be decided, your award should be distinct as to each. Each item or issue should be separately decided so that if any part of the award is subject to correction or modification, the balance of the award may remain as rendered.
- must include your final apportionment or allocation against the parties of your compensation and expenses and the administrative fees and expenses of the AAA. These fees are calculated by the AAA after you have provided how these fees are to be borne (*e.g.*, by Claimant, by Respondent, as incurred, or any other logical apportionment pursuant to the applicable rules).

Reasoned Awards

In Commercial cases – reasoned awards must be requested in writing by all parties before the arbitrator is appointed.

In Construction cases – a breakdown of the award is required; a written explanation of the award must be requested by the conclusion of the first preliminary management hearing. In LCC cases a reasoned awarded is required unless waived by all parties.

In Employment cases – arbitrators must provide, in writing, their reasons for the award unless the parties agree otherwise.

An arbitrator may also exercise his or her discretion to provide a reasoned award. However, doing so over the objection of one party can be perilous as it provides a detailed summation that may be used in a court proceeding attempting to vacate the award. Although it may be unlikely that the reasoned award will lead to *vacatur*, the court proceedings involved in an attempt to vacate the award adds time and cost to the arbitration process and threatens the finality of the process. It is for this reason that many arbitrators choose not to provide a reasoned award unless all parties are in agreement.

It is always important to be clear and precise when writing a reasoned award, and it is especially crucial to do so when providing one at your own discretion or with the objection of one party.

What is a reasoned award?

A reasoned award can be whatever the parties to a particular arbitration agree it will be. It could be anything from a simple explanation to formal findings of fact and conclusions of law. For guidance you should always do the following:

- Look at the parties' arbitration agreement.
- Check the rules and procedures under which the arbitration is being conducted.
- Check with the AAA to see if they know the parties' expectations regarding the award's form.
- When in doubt, ask the parties.

Consideration of the following elements will help you prepare a reasoned award if you are required (or inclined) to provide one:

- Identify the components of each party's claim.
- Identify the party's position on each claim component.
- Identify your decision on each item claimed and the basis for it by law and/or fact.

The Body of the Award

While each part of an award is important, the body is the most crucial, because it contains the actual disposition of all issues, questions and claims submitted to arbitration and, in the case of reasoned awards, the arbitrator's analysis and conclusions. For these reasons, the body of an award – especially a reasoned award – must be clear, comprehensive, definitive and well-organized. Whether brief or detailed, the body of a reasoned award will generally have the five following elements:

1. opening;
2. summary of issues, questions, claims and defenses;
3. statement of facts;

4. discussion, analysis and application of relevant facts (and law if necessary);
5. disposition of issues, questions, claims and defenses.

These five elements appear in the body of a reasoned award in the above order, but the AAA acknowledges that this suggested order is not the only acceptable way to proceed.

When using this model consider the following:

The **opening** paragraph should contain the following information:

- identification of the parties (specifying a self-represented party when applicable);
- description of the type of case;
- relief sought;
- principal issues presented.

Following the opening paragraph, the next element in a reasoned award is the **summary of issues**, **questions, claims and defenses**. This summary sets the stage for all that follows. It lets the parties know where you are going and how you plan to get there. Depending on the nature of the case, the summary can be fairly brief, fairly long, or anywhere in between. It usually contains statements related to the following items:

- the parties' positions;
- the types of relief requested;
- the parties' defenses and responses;
- collateral issues such as issues of arbitrability and various motions.

The next element of a reasoned award is the statement of facts. Like any good story, the **statement of facts** should include the "who," "what," "when," "where" and "how" and have a beginning, middle and end.

The ***beginning*** should discuss the background of the case (*i.e.,* a chronological explanation of the events leading up to the parties' dispute and a discussion of pre-hearing and evidentiary hearing rulings that were important in shaping your decision).

The ***middle*** of the statement of facts is the point where you create, from all the bits and pieces of evidence, an organized, logical, thorough and persuasive narrative that supports your ultimate disposition of the case (and legal conclusions if applicable).

The ***end*** brings closure to the story, but does not reveal your final disposition or legal conclusions. The ending to a statement of facts should leave the reader saying, "Ok, it is clear to me what happened and why. But what does it all mean?"

To answer this question you will next provide the parties with your analysis and application of the relevant facts (and law if applicable).

Providing the parties with your **analysis** and application of the relevant facts will require you to develop one or more reasons that are based on the evidence along with the applicable burden and standard of proof.

If legal issues are involved your analysis will also address applicable case authority and applicable statutory authority.

The final element in the body of a reasoned award is the **disposition** of the issues, questions and claims.

Your disposition should clearly, precisely, and concisely state the relief granted or denied for each issue, question, or claim advanced by each of the parties. Failing to address each of these may result in your being asked to clarify the award at a later date.

Modification of Award

Have you been notified by the AAA that parties have requested a modification of the award based on an error you might have made? Look to each set of rules for guidance on what you may consider as an error and timeframes in which this can be addressed.

Commercial Rules R-50 and *Employment Rules* R-40:

> *Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.*

Construction Rules R-51:

> *(a) Within 20 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.*
>
> *(b) If the modification request is made by a party, the other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.*
>
> *(c) If applicable law provides a different procedural time frame, that procedure shall be followed.*

Please note that an arbitrator should always look to his or her jurisdiction to ascertain whether a different procedural time frame should be followed under the applicable law. Although not specifically referenced in the Commercial Rules or the Employment Rules, this is a good rule of thumb to follow.

Grounds For Vacating An Award

Section 10(a) of *The United States Arbitration Act* and Section 12 (a) of *The Uniform Arbitration Act* specify certain statutory grounds upon which courts may vacate an arbitrator's award. These grounds are as follows:

- where the award was procured by corruption, fraud, or undue means.
- where there was evident partiality or corruption in the arbitrators or either of them.
- where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
- where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

In addition to the *United States Arbitration Act* (also called the *Federal Arbitration Act*), the other primary sources that establish statutory grounds for vacating arbitration awards are the various state arbitration statutes.

State arbitration statutes are generally adopted from *The Uniform Arbitration Act*, which was enacted in 1955 by the National Conference of Commissioners on Uniform State Law and most recently revised in August, 2000.

The enforceability of an award depends to a great extent on the manner in which the arbitrators manage the arbitration process and conduct the hearing. If you conduct a fair and equitable process and proceed in accordance with the agreement of the parties and the applicable rules, you will conform to the standards prescribed by law.

Common Law Grounds for Vacating Awards

While the grounds for vacating an arbitration award have historically been statutorily based, recent case law has added "common law" grounds to the statutory list. Such judicially-created grounds are very narrowly applied. Examples of common law grounds for *vacatur* in some, but not all, states are:

- manifest disregard of the law (or facts)
- arbitrary and capricious or irrational awards
- awards that violate public policy

Although the current practice of the courts is to construe these non-statutory grounds very narrowly (thus limiting their impact), it is still important for arbitrators to know they exist and know what they mean.

<u>Manifest Disregard of the Law</u>
Various courts have tried their hand at defining "manifest disregard of the law." One definition provides that manifest disregard is established "when there has been a 'knowing, willful, or deliberate' refusal to follow a 'well established, explicit and clearly applicable' rule of law."

Another court has held that manifest disregard exists "when arbitrators deliberately ignore what they have determined to be the applicable law and legal result in the case." The U.S. Supreme Court has yet to rule definitively on the viability of the manifest disregard of the law doctrine.

Arbitrary and Capricious or Irrational

Some courts have said that an award is arbitrary and capricious or irrational if "a ground for the arbitrator's decision cannot be inferred from the facts in the case." See *Brown vs. Rauscher Pierce Refsnes, Inc.* 994 F.2d 775, 781 (11th Cir. 1993) and *Ainsworth vs. Skurnick* 960 F.2d 939, 941 (11th Cir. 1992).

Violation of Public Policy

In 1987, the U.S. Supreme Court held that courts can decline to enforce an arbitrator's award where enforcement "would violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" *United Paper Workers' International Union, AFL-CIO v. Misco, Inc.* 484 U.S. 29, 43, 108 S. Ct. 364 (1987). See also *Eastern Associated Coal Corp. v. United Mine Workers of America* 531 U.S. 57 (2000).

Award Drafting Checklist

Date Hearings Declared Closed: _____ Date Award is Due: _____

1	**Did you review the arbitration agreement and any other applicable contract provisions prior to preparing the award?**	❑ Yes ❑ No
2	**Does the Award reflect the correct tribunal?** [e.g., Commercial Arbitration Tribunal, Construction Arbitration Tribunal, Employment Arbitration Tribunal, etc.]	❑ Yes ❑ No
3	**Are the parties' names and case number accurate?** [If any party's name has changed during the course of the case, you need to include an explanation in the award.]	❑ Yes ❑ No
4	**Is the preamble language in the correct format?** [e.g., standard preamble, ex parte preamble, submission to arbitration preamble, etc.]	❑ Yes ❑ No
5	**Is the contract date (or date of the submission to arbitration) correct and included in the preamble?**	❑ Yes ❑ No
6	**Are names of counsel and any self-represented parties identified in the preamble?**	❑ Yes ❑ No ❑ NA
7	**Is this an Interim Award?** • If yes, have you clearly identified the award as such? ❑ Yes ❑ No • Include schedule of dates. • Include correct award preamble.	❑ Yes ❑ No
8	**Have any references to specific AAA staff been removed?**	❑ Yes ❑ No ❑ NA
9	**Have all claims been addressed in the Award?** • Are increased claim amounts not previously submitted to the AAA, if any, explained in the award? ❑ Yes ❑ No ❑ NA • Are counterclaims, if any, explained in the Award? ❑ Yes ❑ No ❑ NA	❑ Yes ❑ No
10	**Have you reviewed the <u>contract/agreement</u> for terms that could impact the form of Award?** o Commercial Regular/Expedited/LCC – Standard – If you are providing a reasoned Award, did the parties request one in writing? ❑ Yes ❑ No ❑ NA o Construction Regular/Fast Track – "Concise Written Breakdown" – If you are not providing a concise written breakdown, did the parties agree in writing? ❑ Yes ❑ No ❑ NA o Construction L-5 LCC – Reasoned	❑ Yes ❑ No

	– If you are not providing a reasoned Award, did the parties agree in writing? ❑ Yes ❑ No ❑ NA o Employment – "Reasons for Award" – If not providing reasons in the Award, did parties agree in writing? ❑ Yes ❑ No ❑ NA o Consumer – 'Concise Written Reasons' – If you are not providing a concise written reasons, did the parties agree in writing? ❑ Yes ❑ No ❑ NA	
11	**For <u>Employment</u> and <u>Consumer</u> cases, have you verified the Award complies with the Costs of Arbitration section in the rules?** [i.e., Fees are not subject to reallocation unless criteria under this section has been met and you have provided sufficient detail.]	❑ Yes ❑ No ❑ NA
12	**Does your Award contain non-monetary/specific performance?** o If yes, include the following as appropriate: – If you will retain jurisdiction, specify the date your jurisdiction will end. – Include schedule of dates related to any and all of your remaining actions.	❑ Yes ❑ No ❑ NA
13	**Does state law require you to include a closing paragraph in the Award?** – If required, include the appropriate affirmation/notarization.	❑ Yes ❑ No
14	**For Panel Awards, have all signatures and/or counterparts been secured?** – Majority of signatures required if specified by applicable rules.	❑ Yes ❑ No ❑ NA
15	**Have you included any form of interest in the award?** – If yes, are your calculations correct? ❑ Yes ❑ No	❑ Yes ❑ No
16	**Have you included an award of Attorney's Fees?** – If yes, is the fee information correct? ❑ Yes ❑ No	❑ Yes ❑ No
17	**Have you assessed arbitrator fees and expenses per the parties' arbitration agreement/contract?** – If yes, are the calculations correct? ❑ Yes ❑ No	❑ Yes ❑ No ❑ NA
18	**Have you assessed the administrative fees and expenses of the AAA per the parties' arbitration agreement/contract?** – If yes, are the calculations correct? ❑ Yes ❑ No	❑ Yes ❑ No ❑ NA
19	**Have you proofread your Award?** – Have you proofread it again? ❑ Yes ❑ No	❑ Yes ❑ No

SAMPLE AWARD

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Re: Modern Furnishings
Claimant
– and –
Chapman & Associates
Respondent

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties dated September 23, 2017 and having been duly sworn and having duly heard the proofs and allegations of the parties hereby, AWARD, as follows:

In this case, Modern Furnishings ("Modern") contracted to design a furniture, lighting and finishing plan for Chapman & Associates ("Chapman"). Further, Modern was to manufacture, procure and deliver all furniture and furnishings pursuant to this plan. Modern argues that it complied with its contractual obligations and is seeking payment of the contract balance of $149,600 ($224,600 full contractual amount less a previously made down payment of $75,000).

Chapman claims the furniture and furnishings as delivered by Modern did not conform to the contract. Further, Chapman claims that Modern was negligent in the design of both the furniture plan and the lighting plan for the Chapman offices. Chapman seeks the relief from the contractual balance of $149,600 and the return of the $75,000 down payment it made under the contract.

Chapman's counterclaim and causes of action sound in both breach of contract (nonconforming furniture) and in tort (negligent design). The evidence (involving expert testimony both in furniture design and electrical design) revealed that Modern met the standard of care relative to both the design of the furniture and the lighting plan. Therefore, I deny Chapman's tort liability counterclaim.

As to the breach of contract counterclaims, Chapman argues that the furniture provided was unsuitable for its use and against the contractually required standard of "elegantly functional furniture." The thrust of the testimony from the Chapman side was that the furniture did not meet its expectations of modern sophistication, as was required by the contract. Essentially, Chapman did not like the final product delivered by Modern. There was, naturally, conflicting testimony as to whether the furniture was suitable for this application. The contract clearly required Modern to deliver functional furniture expressing modern sophistication. Although reasonable minds can differ, the great weight of the evidence favored Chapman in this regard.

Unlike the purchase and sale of existing, tangible goods, which are known quantities, contracts dealing with concepts of art, product creations or other types of aesthetic work often are problematic. This dispute points out the inherent difficulty of designing and creating "from scratch" for the ultimate approval of a customer.

While evidence was presented that Chapman both reviewed and approved certain design aspects of the furniture, this does not excuse Modern from delivering the end product called for in the contract. As such, I find Modern breached the contract and I deny their claim for contract proceeds, although I do allow them credit for certain goods and services provided, as more particularly described below.

The evidence did show that Modern's initial consultation and design fee of $30,000 was appropriate and Chapman did get the benefit of these services. Likewise, I find the $4,000 itemized for office lighting, $2,000 for hallway and conference room lighting, and $600 for door hardware were also a benefit to Chapman. I therefore subtract the sum of $36,600 from the $75,000 down payment Chapman made to come to a net award to Chapman of $38,400.

For the foregoing reasons, I award as follows:

1. Modern Furnishing's claim for contract proceeds is hereby DENIED.

2. Chapman's counterclaim for the tort of negligent design is hereby DENIED.

3. Chapman's counterclaim for breach of contract is hereby GRANTED.

4. Modern Furnishings ("Modern") shall pay to Chapman & Associates ("Chapman") the sum of $38,400.00 on Chapman's counterclaim.

5. Chapman shall allow Modern to remove and take into Modern's ownership and possession the following items previously supplied by Modern:

    - Two (2) conference room tables
    - Art Work
    - Four (4) office desks and chairs
    - One (1) Hallway mirror
    - Eight (8) office cubicles with partitions, desks, chairs and cabinets
    - Additional furnishings

    The removal of the above listed items shall take place within thirty (30) days from the date of this award and on the same date Modern pays the monetary award stated herein to Chapman, and not before.

6. The administrative fees of the American Arbitration Association totaling $4,550.00 and the compensation of the arbitrator totaling $3,500.00 shall be borne by Modern. Therefore, Modern shall reimburse Chapman the sum of $3,375.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Chapman.

7. The above sums are to be paid on or before thirty (30) days from the date of this Award. Post-judgment interest of six percent (6%) shall begin to accrue if payment is not made within thirty (30) days of the final date of this Award. The arbitrator will retain jurisdiction until the terms of the Award have been met.

8. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims and counterclaims not expressly granted herein are hereby denied.

SIGNED: _____ DATED: _____

Given the AAA's position as the world's oldest and largest ADR organization, there is always tremendous interest in AAA/ICDR awards data. To streamline accuracy in collecting and sharing award-related information, the AAA requires arbitrators to complete – and return to the AAA with each issued Commercial, Construction, Employment, Consumer, and *Pro Se* award – the Award Checklist shown below. **Our goal is a 100% return rate.** The PDF form captures the following information: claims and counterclaims asserted and awarded; attorney's fees, interest and administrative costs awarded; prevailing party (if any). Your case manager will be able to assist with any questions you may have about the form or filling it out.

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

AAA/ICDR AWARD CHECKLIST

This form is not the award in this case. Its sole purpose is to collect case data in a consolidated and consistent format.

AAA/ICDR Case Number:

PARTIES

Claimant(s)	Respondent(s)
1:	1:
2:	2:
3:	3:

CLAIMS ASSERTED and HEARD

Total monetary claims asserted:	Total monetary counterclaims asserted:
Total monetary claims awarded:	Total monetary counterclaims awarded:
Were undetermined claims asserted? ☐ Yes ☐ No	Were undetermined counterclaims asserted? ☐ Yes ☐ No
Were undetermined claims awarded? ☐ Yes ☐ No ☐ N/A	Were undetermined counterclaims awarded? ☐ Yes ☐ No ☐ N/A
Were non-monetary claims asserted? ☐ Yes ☐ No	Were non-monetary counterclaims asserted? ☐ Yes ☐ No
Were non-monetary claims awarded? ☐ Yes ☐ No ☐ N/A	Were non-monetary counterclaims awarded? ☐ Yes ☐ No ☐ N/A

COSTS and INTEREST

Attorney's fees awarded to Claimant(s):	Attorney's fees awarded to Respondent(s):
Interest awarded to Claimant(s):	Interest awarded to Respondent(s):
Arbitrator's fees, expenses and AAA administrative fees awarded to Claimant(s):	Arbitrator's fees, expenses and AAA administrative fees awarded to Respondent(s):

PREVAILING PARTY

☐ Specific party or parties prevailed — please identify:

1:

2:

3:

☐ There was no prevailing party

ADDITIONAL INFORMATION

Using the space below or by attaching additional pages, please provide any information about the claims heard in this matter that cannot be accommodated by the above categorization.

Completed by:	Date:

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What's Next?

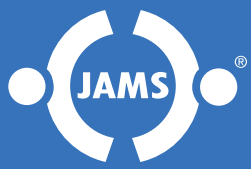
Now that you have completed your initial training, there are a number of things you should consider doing to promote yourself as an AAA arbitrator along with the services of the AAA. The following list is illustrative, but not exhaustive.

- Take online version of ADS 01 – Award Writing *(if not already done so).*
- Browse AAA's list of on-demand recorded webinars *(www.aaau.org/courses/self-paced).*
- Add "Panelist - American Arbitration Association National Roster of Arbitrators" or "Arbitrator – American Arbitration Association" to your professional CV.
- Review and update your AAA panel bio to reflect material expertise and experience in light of the information learned during this two-day training.
- Begin maintaining conflicts database (if not doing so already).
- Consider making yourself available for appointment on AAA Consumer cases.
- To enhance your connection with the AAA, contact the regional vice president who managed your application process to (i) let them know you completed this training, (ii) provide feedback about the training to the VP, and (iii) have the VP address any unanswered or new questions you have. Also use this opportunity to discuss the other items below.
- Propose a topic for an article in the AAA's flagship publication the *Dispute Resolution Journal*.
- Propose a topic for a webinar. Contact AAAEducation@adr.org.
- Promote AAA services (e.g., if contacted directly for appointment, refer case to AAA and we'll expedite initiation and offer fee reduction)
- Promote your affiliation with the AAA (e.g., using the AAA's Panel Logo, adding reference to AAA to published articles, etc.)
- After completing your first two arbitration cases, please drop us an email at AAAEducation@adr.org letting us know which parts of this training were the most and least helpful.

JAMS Employment Arbitration Rules & Procedures

Effective June 1, 2021

Local Solutions. Global Reach.®



JAMS Employment Arbitration Rules & Procedures

Founded in 1979, JAMS is the largest private provider of alternative dispute resolution (ADR) services worldwide. Our neutrals resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS mediators and arbitrators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct. Whether they are conducting in-person, remote or hybrid hearings, JAMS neutrals are adept at managing the resolution process.

Effective June 1, 2021, these updated Rules reflect the latest developments in arbitration. They make explicit the arbitrator's full authority to conduct hearings in person, virtually or in a combined form, and with participants in more than one geographic location. They also update electronic filing processes to coordinate with **JAMS Access**, our secure, online case management platform.

Summary of Revisions to the Employment Rules

Scan this code with your smartphone for a complete list of all changes.

Additional Employment Arbitration Resources

JAMS Employment Arbitration Minimum Standards

Scan for our policy on the use of arbitration for resolving employment-related disputes.

Sample Employment Contract Clauses

Scan for guidance on drafting an employment dispute resolution program and contract clause language.

JAMS Employment Practice Group

Scan to learn more about our experienced employment neutrals.

Virtual & Hybrid ADR

Scan to learn about our concierge-level client services, including **Virtual ADR Moderators** and **premium technology**.

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RULE 1
Scope of Rules

(a) The JAMS Employment Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, the disputes or claims are employment-related, unless other Rules are prescribed.

(b) The Parties shall be deemed to have made these Rules a part of their Arbitration Agreement ("Agreement") whenever they have provided for Arbitration by JAMS under its Employment Rules or for Arbitration by JAMS without specifying any particular JAMS Rules and the disputes or claims meet the criteria of the first paragraph of this Rule.

(c) The authority and duties of JAMS as prescribed in the Agreement of the Parties and in these Rules shall be carried out by the JAMS National Arbitration Committee ("NAC") or the office of JAMS General Counsel or their designees.

(d) JAMS may, in its discretion, assign the administration of an Arbitration to any of its Resolution Centers.

(e) The term "Party" as used in these Rules includes Parties to the Arbitration and their counsel or representatives.

(f) "Electronic filing" (e-filing) means the electronic transmission of documents to JAMS for the purpose of filing via the Internet. "Electronic service" (e-service) means the electronic transmission of documents to a party, attorney or representative under these Rules.

RULE 2
Party Self-Determination

(a) The Parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with the applicable law and JAMS policies (including, without limitation, the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness and Rules 15(i), 30 and 31). The Parties shall promptly notify JAMS of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules.

(b) When an Arbitration Agreement provides that the Arbitration will be non-administered or administered by an entity other than JAMS and/or conducted in accordance with rules other than JAMS Rules, the Parties may agree to modify that Agreement to provide that the Arbitration will be administered by JAMS and/or conducted in accordance with JAMS Rules.

RULE 3
Amendment of Rules

JAMS may amend these Rules without notice. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

RULE 4
Conflict with Law

If any of these Rules, or modification of these Rules agreed to by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern over the Rule in conflict, and no other Rule will be affected.

RULE 5
Commencing an Arbitration

(a) The Arbitration is deemed commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute Arbitration Agreement fully executed by all Parties specifying JAMS administration or use of any JAMS Rules; or

(ii) A pre-dispute written contractual provision requiring the Parties to arbitrate the employment dispute or claim and specifying JAMS administration or use of any JAMS Rules or that the Parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all Parties to participate in an Arbitration administered by JAMS or conducted pursuant to any JAMS Rules; or

(iv) The Respondent's failure to timely object to JAMS administration, where the Parties' Arbitration Agreement does not specify JAMS administration or JAMS Rules; or

(v) A copy of a court order compelling Arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the Claimant has provided JAMS with contact information for all Parties together with evidence that the Demand for Arbitration has been served on all Parties.

(c) If a Party that is obligated to arbitrate in accordance with subparagraph (a) of this Rule fails to agree to participate in the Arbitration process, JAMS shall confirm in writing that Party's failure to respond or participate, and, pursuant to Rule 19, the Arbitrator, once appointed, shall schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the Arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirement, such as the statute of limitations; any contractual limitations period; or any claims notice requirement. The term "commencement," as used in this Rule, is intended only to pertain to the operation of this and other Rules (such as Rules 3, 13(a), 17(a) and 31(a)).

RULE 6
Preliminary and Administrative Matters

(a) JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

(b) If no Arbitrator has yet been appointed, at the request of a Party and in the absence of Party agreement, JAMS may determine the location of the Hearing, subject to Arbitrator review. In determining the location of the Hearing, such factors as the subject matter of the dispute, the convenience of the Parties and witnesses, and the relative resources of the Parties shall be considered, but in no event will the Hearing be scheduled in a location that precludes attendance by the Employee.

(c) If, at any time, any Party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. JAMS may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed, and the Arbitrator may allocate the non-paying Party's share of such costs, in accordance with Rules 24(f) and 31(c). An administrative suspension shall toll any other time limits contained in these Rules or the Parties' Agreement.

(d) JAMS does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within thirty (30) calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing, and JAMS reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for thirty (30) calendar days following the conclusion of the Arbitration.

(e) Unless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations in the following instances:

(i) If a Party files more than one Arbitration with JAMS, JAMS may consolidate two or more of the Arbitrations into a single Arbitration.

(ii) Where a Demand or Demands for Arbitration is or are submitted naming Parties already involved in another Arbitration or Arbitrations pending under these Rules, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

(iii) Where a Demand or Demands for Arbitration is or are submitted naming parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed.

When rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations.

Unless applicable law provides otherwise, where JAMS decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site of the Arbitration.

(f) Where a third party seeks to participate in an Arbitration already pending under these Rules or where a Party to an Arbitration under these Rules seeks to compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

RULE 7
Number and Neutrality of Arbitrators; Appointment and Authority of Chairperson

(a) The Arbitration shall be conducted by one neutral Arbitrator, unless all Parties agree otherwise. In these Rules, the term "Arbitrator" shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.

(b) In cases involving more than one Arbitrator, the Parties shall agree on, or, in the absence of agreement, JAMS shall designate, the Chairperson of the Arbitration Panel. If the Parties and the Arbitrators agree, a single member of the Arbitration Panel may, acting alone, decide discovery and procedural matters, including the conduct of hearings to receive documents and testimony from third parties who have been subpoenaed, in advance of the Arbitration Hearing, to produce documents.

(c) Where the Parties have agreed that each Party is to name one Arbitrator, the Arbitrators so named shall be neutral and independent of the appointing Party, unless the Parties have agreed that they shall be non-neutral.

RULE 8
Service

(a JAMS or the Arbitrator may at any time require electronic filing and service of documents in an Arbitration, including through the JAMS Electronic Filing System. If JAMS or the Arbitrator requires electronic filing and service, the Parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of documents and notifications. Any document filed via the JAMS Electronic Filing System shall be considered as filed when the transmission to the JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date.

(b) Every document filed with the JAMS Electronic Filing System shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to the JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney.

(c) Delivery of e-service documents through the JAMS Electronic Filing System shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the JAMS Electronic Filing System. E-service shall be deemed complete when the Party initiating e-service or JAMS completes the transmission of the electronic document(s) to the JAMS Electronic Filing System for e-filing and/or e-service.

(d) If an electronic filing and/or service via the JAMS Electronic Filing System does not occur due to technical error in the transmission of the document, the Arbitrator or JAMS may, for good cause shown, permit the document to be filed and/or served nunc pro tunc to the date it was first attempted to be transmitted electronically. In such cases a Party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) For documents that are not filed electronically, service by a Party under these Rules is effected by providing one signed copy of the document to each Party and two copies in the case of a sole Arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document.

(f) In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by U.S. mail, three (3) calendar days shall be added to the prescribed period. If the last day for the performance of any act that is required by these rules to be performed within a specific time

falls on a Saturday, Sunday or other legal holiday, the period is extended to and includes the next day that is not a holiday.

RULE 9
Notice of Claims

(a) Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties, unless the Arbitrator determines that no Party has been unfairly prejudiced by such lack of formal notice or all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

(b) Claimant's notice of claims is the Demand for Arbitration referenced in Rule 5. It shall include a statement of the remedies sought. The Demand for Arbitration may attach and incorporate a copy of a Complaint previously filed with a court. In the latter case, Claimant may accompany the Complaint with a copy of any Answer to that Complaint filed by any Respondent.

(c) Within fourteen (14) calendar days of service of the notice of claim, a Respondent may submit to JAMS and serve on other Parties a response and a statement of any affirmative defenses, including jurisdictional challenges, or counterclaims it may have. JAMS may grant reasonable extensions of time to file a response or counterclaim prior to the appointment of the Arbitrator.

(d) Within fourteen (14) calendar days of service of a counterclaim, a Claimant may submit to JAMS and serve on other Parties a response to such counterclaim and any affirmative defenses, including jurisdictional challenges, it may have.

(e) Any claim or counterclaim to which no response has been served will be deemed denied.

(f) Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability.

RULE 10
Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third Party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with JAMS and served on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted, except with the Arbitrator's approval. A Party may request a hearing on this issue. Each Party has the right to respond to any new or amended claim in accordance with Rule 9(c) or (d).

RULE 11
Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. Unless the relevant law requires otherwise, the Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or sua sponte, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may only be altered in accordance with Rules 22(i) or 24.

RULE 12
Representation

(a) The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case Manager and the other Parties of the name, address, telephone number and

email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

(b) Changes in Representation. A Party shall give prompt written notice to the Case Manager and the other Parties of any change in its representation, including the name, address, telephone number and email address of the new representative. Such notice shall state that the written consent of the former representative, if any, and of the new representative, has been obtained and shall state the effective date of the new representation.

(c) The Arbitrator may withhold approval of any intended change or addition to a Party's legal representative(s) where such change or addition could compromise the ability of the Arbitrator to continue to serve, the composition of the Panel in the case of a tripartite Arbitration or the finality of any Award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Arbitrator shall have regard to the circumstances, including the general principle that a Party may be represented by a legal representative chosen by that Party, the stage that the Arbitration has reached, the potential prejudice resulting from the possible disqualification of the Arbitrator, the efficiency resulting from maintaining the composition of the Panel (as constituted throughout the Arbitration), the views of the other Party or Parties to the Arbitration and any likely wasted costs or loss of time resulting from such change or addition.

RULE 13
Withdrawal from Arbitration

(a) No Party may terminate or withdraw from an Arbitration after the issuance of the Commencement Letter (see Rule 5), except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

RULE 14
Ex Parte Communications

(a) No Party may have any ex parte communication with a neutral Arbitrator, except as provided in section (b) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means as long as copies are simultaneously forwarded to the JAMS Case Manager and the other Parties.

(b) A Party may have ex parte communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts, as well as in connection with the selection of the Chairperson of the arbitral panel.

(c) The Parties may agree to permit more extensive ex parte communication between a Party and a non-neutral Arbitrator. More extensive communications with a non-neutral Arbitrator may also be permitted by applicable law and rules of ethics.

RULE 15
Arbitrator Selection, Disclosures and Replacement

(a) Unless the Arbitrator has been previously selected by agreement of the Parties, JAMS may attempt to facilitate agreement among the Parties regarding selection of the Arbitrator.

(b) If the Parties do not agree on an Arbitrator, JAMS shall send the Parties a list of at least five (5) Arbitrator candidates in the case of a sole Arbitrator and at least ten (10) Arbitrator candidates in the case of a tripartite panel. JAMS shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. JAMS may add names to or replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice pursuant to subparagraph (c) below.

(c) Within seven (7) calendar days of service upon the Parties of the list of names, each Party may strike two (2) names in the case of a sole Arbitrator and three (3) names in the case of a tripartite panel, and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. JAMS may grant a reasonable extension of the time to strike and rank the Arbitrator candidates to any Party without the consent of the other Parties.

(d) If this process does not yield an Arbitrator or a complete panel, JAMS shall designate the sole Arbitrator or as many

members of the tripartite panel as are necessary to complete the panel.

(e) If a Party fails to respond to a list of Arbitrator candidates within seven (7) calendar days after its service, or fails to respond according to the instructions provided by JAMS, JAMS shall deem that Party to have accepted all of the Arbitrator candidates.

(f) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of the Arbitrator selection process. JAMS shall determine whether the interests between entities or individuals are adverse for purposes of Arbitrator selection, considering such factors as whether they are represented by the same attorney and whether they are presenting joint or separate positions at the Arbitration.

(g) If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators. JAMS will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.

(h) Any disclosures regarding the selected Arbitrator shall be made as required by law or within ten (10) calendar days from the date of appointment. Such disclosures may be provided in electronic format, provided that JAMS will produce a hard copy to any Party that requests it. The Parties and their representatives shall disclose to JAMS any circumstances likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the Parties and their representatives. The obligation of the Arbitrator, the Parties and their representatives to make all required disclosures continues throughout the Arbitration process.

(i) At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to the Parties at the time the Arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing Parties, who may respond within seven (7) calendar days of service of the challenge. JAMS shall make the final determination as to such challenge. Such determination shall take into account the materiality of the facts and any prejudice to the Parties. That decision will be final.

(j) Where the Parties have agreed that a Party-appointed Arbitrator is to be non-neutral, that Party-appointed Arbitrator is not obliged to withdraw if requested to do so only by the party that did not appoint that Arbitrator.

RULE 16
Preliminary Conference

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

(a) The exchange of information in accordance with Rule 17 or otherwise;

(b) The schedule for discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;

(c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;

(d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;

(e) The attendance of witnesses as contemplated by Rule 21;

(f) The scheduling of any dispositive motion pursuant to Rule 18;

(g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;

(h) The form of the Award; and

(i) Such other matters as may be suggested by the Parties or the Arbitrator.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

RULE 17
Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information

("ESI")) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, names of individuals whom they may call as witnesses at the Arbitration Hearing and names of all experts who may be called to testify at the Arbitration Hearing, together with each expert's report, which may be introduced at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The Arbitrator may modify these obligations at the Preliminary Conference.

(b) Each Party may take at least one deposition of an opposing Party or an individual under the control of the opposing Party. The Parties shall attempt to agree on the number, time, location, and duration of the deposition(s). Absent agreement, the Arbitrator shall determine these issues, including whether to grant a request for additional depositions, based upon the reasonable need for the requested information, the availability of other discovery and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

(e) The Parties may take discovery of third parties with the approval of the Arbitrator.

RULE 18
Summary Disposition of a Claim or Issue

The Arbitrator may permit any Party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested Parties or at the request of one Party, provided other interested Parties have reasonable notice to respond to the motion. The Request may be granted only if the Arbitrator determines that the requesting Party has shown that the proposed motion is likely to succeed and dispose of or narrow the issues in the case.

RULE 19
Scheduling and Location of Hearing

(a) The Arbitrator, after consulting with the Parties that have appeared, shall determine the date, time and location of the Hearing. The Arbitrator and the Parties shall attempt to schedule consecutive Hearing days if more than one day is necessary.

(b) If a Party has failed to participate in the Arbitration process, and the Arbitrator reasonably believes that the Party will not participate in the Hearing, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date, unless the law of the relevant jurisdiction allows for, or the Parties have agreed to, shorter notice.

(c) The Arbitrator, in order to hear a third-party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location. Any JAMS Resolution Center may be designated a Hearing location for purposes of the issuance of a subpoena or subpoena duces tecum to a third-party witness.

RULE 20
Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with JAMS and serve and exchange (1) a list of the witnesses they intend to call, including any experts; (2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness' direct testimony; and (3) a list of all exhibits

intended to be used at the Hearing. The Parties should exchange with each other copies of any such exhibits to the extent that they have not been previously exchanged. The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit a concise written statement of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with JAMS and served upon the other Parties at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

RULE 21
Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a Party, all other Parties shall produce for the Arbitration Hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the Hearing pursuant to this Rule or Rule 19(c). The subpoena or subpoena duces tecum shall be issued in accordance with the applicable law. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party or subpoenaed person may file an objection with the Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

RULE 22
The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so. It is expected that the Employee will attend the Arbitration Hearing, as will any other individual party with information about a significant issue.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party, or otherwise at the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony, even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as he or she deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Arbitrator has full authority to determine that the Hearing, or any portion thereof, be conducted in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places, or in a combined form. If some or all of the witnesses or other participants are located remotely, the Arbitrator may make such orders and set such procedures as the Arbitrator deems necessary or advisable.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator,

to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted, or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, sua sponte or on application of a Party for good cause shown, reopen the Hearing. If the Hearing is reopened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing pursuant to Rule 19, fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic record to be made of the Hearing and shall inform the other Parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the Parties or by direction of the Arbitrator.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost, the stenographic record may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (see Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.

RULE 23
Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

RULE 24
Awards

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing, as defined in Rule 22(h) or (i), or, if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award; or (3) as provided in Rule 22(i). The Arbitrator shall provide the Final Award or the Partial Final Award to JAMS for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator will be guided by the law or the rules of law that he or she deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses, unless such an

allocation is expressly prohibited by the Parties' Agreement or by applicable law. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses pursuant to Rule 31(c).)

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. The Award shall also contain a concise written statement of the reasons for the Award, stating the essential findings and conclusions on which the Award is based. The Parties may agree to any other form of Award, unless the Arbitration is based on an Arbitration Agreement that is required as a condition of employment.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 31, the Award shall be issued by serving copies on the Parties. Service may be made by U.S. mail. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and file with JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31 or on account of the effect of an offer to allow judgment), or the Arbitrator may sua sponte propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file and serve any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of either the Optional Arbitration Appeal Procedure pursuant to Rule 34 or a judicial proceeding to enforce, modify or vacate the Award pursuant to Rule 25, fourteen (14) calendar days after service if no request for a correction is made, or as of the effective date of service of a corrected Award.

RULE 25
Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1, et seq., or applicable state law. The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

RULE 26
Confidentiality and Privacy

(a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

RULE 27
Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to the Arbitrator or JAMS. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

RULE 28
Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to JAMS for mediation. The JAMS mediator assigned to the case may not be the Arbitrator or a member of the Appeal Panel, unless the Parties so agree, pursuant to Rule 28(b).

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request, unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

RULE 29
Sanctions

The Arbitrator may order appropriate sanctions for failure of a Party to comply with its obligations under any of these Rules or with an order of the Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses; any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the Party that has failed to comply.

RULE 30
Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the Arbitrator, the Case Manager or any other JAMS employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other JAMS employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(b) The Parties shall defend and/or pay the cost (including any attorneys' fees) of defending the Arbitrator, Case Manager and/or JAMS from any subpoenas from outside parties arising from the Arbitration.

(c) The Parties agree that neither the Arbitrator, nor the Case Manager, nor JAMS is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, nor the Case Manager, nor JAMS, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including, but not limited to, any disqualification of or recusal by the Arbitrator.

RULE 31
Fees

(a) Except as provided in paragraph (c) below, unless the Parties have agreed to a different allocation, each Party shall pay its pro rata share of JAMS fees and expenses as set forth in the JAMS fee schedule in effect at the time of the commencement of the Arbitration. To the extent possible, the allocation of such fees and expenses shall not be disclosed to the Arbitrator. JAMS' agreement to render services is jointly with the Party and the attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rule 6(c).

(b) JAMS requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its pro rata or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) If an Arbitration is based on a clause or agreement that is required as a condition of employment, the only fee that an Employee may be required to pay is the initial JAMS Case Management Fee. JAMS does not preclude an Employee from contributing to administrative and Arbitrator fees and expenses. If an Arbitration is not based on a clause or agreement that is required as a condition of employment, the Parties are jointly and severally liable for the payment of JAMS Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities or individuals whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of JAMS' assessment of fees. JAMS shall determine whether the interests between entities or individuals are adverse for purpose of fees, considering such factors as whether the entities or individuals are represented by the same attorney and whether the entities or individuals are presenting joint or separate positions at the Arbitration.

RULE 32
Bracketed (or High-Low) Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify JAMS and provide to JAMS a copy of their written agreement setting forth the agreed-upon minimum and maximum amounts.

(b) JAMS shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 24.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

RULE 33
Final Offer (or Baseball) Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to JAMS written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 24(c). JAMS shall promptly provide copies of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to JAMS, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

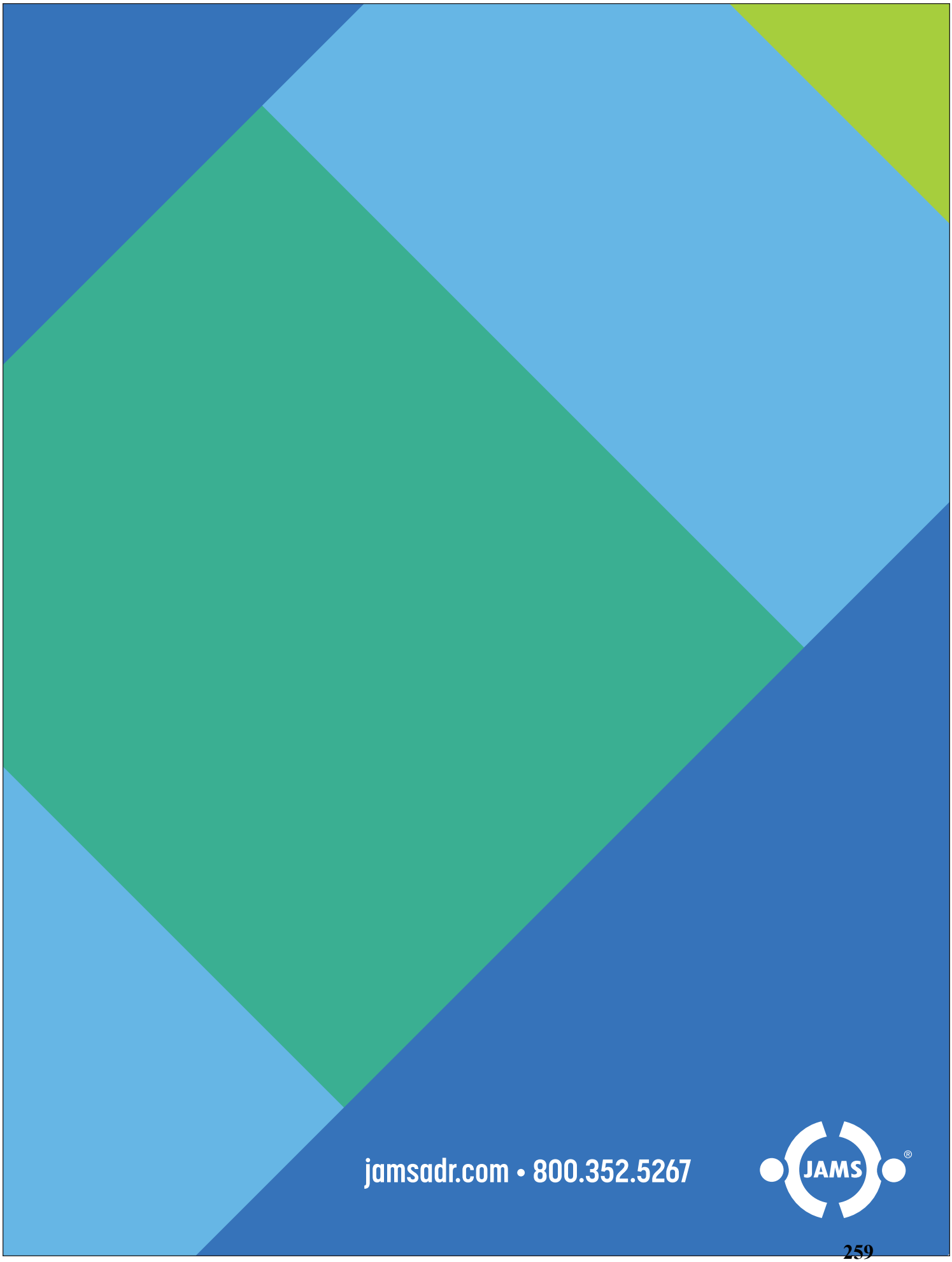
(b) If the Arbitrator has been informed of the written proposals, in rendering the Award, the Arbitrator shall choose between the Parties' last proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 24(c). This provision modifies Rule 24(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 24 shall be applicable.

RULE 34
Optional Arbitration Appeal Procedure

The Parties may agree at any time to the JAMS Optional Arbitration Appeal Procedure. All Parties must agree in writing for such procedures to be effective. Once a Party has agreed to the Optional Arbitration Appeal Procedure, it cannot unilaterally withdraw from it, unless it withdraws, pursuant to Rule 13, from the Arbitration.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