

Commercial Arbitration Rules and Mediation PROCEDURES (Including Procedures for Large, Complex Commercial Disputes)

Summary of Changes Amended and Effective July 1, 2003

The American Arbitration Association (AAA) recently undertook a review of the Commercial Dispute Resolution Procedures. This was done in anticipation of upcoming changes in the Code of Ethics for Arbitrators in Commercial Disputes, and because case law is evolving in this area and provides for full disclosure, neutrality, impartiality, and independence for all arbitrators, including party-appointed arbitrators. You will notice the Applicability sections (R-7, E-1, and L-1) have been consolidated into R-1 (Agreement of Parties), and R-12 (Qualifications of an Arbitrator) has been deleted. Due to these changes, the remaining rules have been renumbered R-7 through R-54, E-1 through E-10, and L-1 through L-4. Also, since the Procedures for Large, Complex Commercial Disputes are no longer optional for cases involving claims of at least \$500,000, the word "Optional" has been removed from the title. Additionally, the commercial rules have been renamed "Commercial Arbitration Rules and Mediation Procedures." Below is a summary of the significant changes made to the rules.

M-2. Initiation

The "Appropriate filing fee" was replaced by the amount of the filing party's case set-up fee (\$325).

Mediation Administrative Fees

The nonrefundable case set-up fee was increased from \$150 per party to \$325 per party. Reference to the additional AAA administrative fee of \$75 per hour of conference time spent by the mediator was deleted, since this hourly administrative fee is no longer applicable.

R-1. Agreement of Parties

This rule combines the information regarding the applicability of our various procedures that had previously been contained in three separate rules (R-7, E-1, and L-1). Language was revised to clarify that the rules in effect at the time the demand's administrative filing requirements are met will apply. After the appointment of the arbitrator, modifications to the procedures set forth in the rules may only be made with the consent of the arbitrator. Unless the parties agree otherwise, the Large, Complex Commercial case procedures are now applicable to all commercial cases with claims of at least \$500,000. The first footnote was revised to explain our new policy for applying the Supplementary Procedures for Consumer-Related Disputes. A second footnote has also been added to notify parties that disputes arising out of employer-promulgated plans will be administered under the AAA's National Rules for the Resolution of Employment Disputes.

R-9. Administrative Conference

Since a filing fee is required to initiate a case, the last sentence, stating that there is no administrative fee for the conference, was deleted.

R-11. Appointment from National Roster

The "Panel" is now referred to as the "National Roster." Subsection (a) was revised to include that the AAA will send a list of ten arbitrators unless the AAA decides that a different number is appropriate. Subsection (c) was revised to eliminate the 15 day time limit for parties in multiparty cases to notify the AAA of their agreement to receive an AAA list of arbitrators. To provide AAA discretion in deciding whether to appoint arbitrators in multi-party cases, "shall" was replaced with "may."

R-12. Direct Appointment by a Party

This rule is revised to require party-appointed arbitrators to meet impartiality and independence standards (delineated in R-17), unless the parties specifically agree otherwise.

R-13. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

The language is updated to comport with revisions to R-11 and R-12, explained above.

R-14. Nationality of Arbitrator

This rule is revised to (1) limit the applicability of this rule to nationals of different countries; and (2) expand the appointment authority of the AAA to include all arbitrators.

R-15. Number of Arbitrators

The language is revised to clarify that a party may request three arbitrators in the demand or answer.

R-16. Disclosure

This rule is revised to (1) require all arbitrators to disclose circumstances likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence; (2) clarify that the disclosure obligation remains in effect throughout the arbitration; (3) explain that disclosures made pursuant to the rules are not to be construed as an indication that the arbitrator considers the disclosed circumstances likely to affect his or her impartiality or independence.

R-17. Disqualification of Arbitrator

Additional language has been added to outline an arbitrator's responsibility to be impartial and independent, as well as grounds for disqualification. Also, the AAA may now, "on its own initiative," disqualify an arbitrator.

R-18. Communication with Arbitrator

This rule is revised to clarify acceptable and unacceptable *ex parte* communication with arbitrators or candidates for arbitrator.

R-20. Preliminary Hearing

The last sentence in subsection (a) was deleted. Even if the parties have more than one preliminary hearing, the AAA will not charge a case service fee.

R-44. Award upon Settlement

This rule is revised to provide that a consent award must include an allocation of arbitration costs, including administrative fees and expenses, as well as arbitrator fees and expenses.

R-48. Application to Court and Exclusion of Liability

Subsection (d) has been revised to clarify that parties have consented to relieve the AAA and arbitrators from any liability for any act or omission in connection with the arbitration under the rules.

R-51. Neutral Arbitrator's Compensation

This rule is revised to eliminate reference to arbitrators customarily serving without compensation on cases where no claim exceeds \$10,000.

E-7. Date, Time and Place of Hearing

The first sentence was deleted to allow for an administrative conference, if necessary.

E-10. Arbitrator's Compensation

This new rule explains that arbitrators on cases administered under the Expedited Procedures will receive compensation at a rate to be suggested by the AAA regional office.

Summary of Changes Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

This rule is revised to provide that the administrative conference will (1) be held via conference call; and (2) take place within 14 days of the commencement of the arbitration. If the conference cannot be scheduled within the 14 days, the AAA is authorized to contact the parties individually to discuss the conference issues.

L-2. Arbitrators

Additional language was included to provide for one arbitrator when the parties are unable to agree on the number of arbitrators and all claims and counterclaims are less than \$1,000,000. When the parties are unable to agree on the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrators will hear and determine the case.

L-3. Preliminary Hearing

This rule is revised to provide that the preliminary hearing will be conducted via conference call

unless the parties agree otherwise. A new issue, a procedure for the issuance of subpoenas, has been added to the list of discussion items for the preliminary hearing. In this way, subpoenas, and the procedural issues surrounding their issuance, can be addressed up front, lessening the chance for disputes in the future of the proceedings. Finally, the rule now contemplates that a "Scheduling and Procedure Order" will memorialize the agreements of the parties and the orders of the arbitrator.

L-4. Management of Proceedings

Subpart (c) now uses the word "discovery" rather than "document discovery." This contemplates the arbitrator and parties addressing all issues of discovery. Subpart (e) now provides that the exchange of exhibits must be completed at least ten days prior to the hearing unless the arbitrator(s) determines otherwise. Subpart (f) incorporates the "Scheduling and Procedure Order" into the discovery process. Subpart (g) is a general statement on the arbitrator's authority to resolve disputes regarding discovery. Finally, the reference to an arbitrator ordering the recording of the hearing on his or her own has been removed. This was taken out so as to not raise the costs of the process for something neither party wants.

Administrative Fees

A reference to the fee section in the Supplementary Procedures for Consumer-Related Disputes has been added, as well as a further explanation for when the Supplementary Consumer Procedures will apply.

Fees

The word "non-refundable" was deleted from the first sentence since the rules now have a refund schedule. Filing fees and case service fees were increased for certain claim ranges.

Refund Schedule

Filing fees will now be subject to a refund schedule. If a case is settled or withdrawn within 60 days of filing, a portion of the filing fee will be returned. Filing fees will not be refunded on cases that (1) are not settled or withdrawn within 60 days of filing; (2) have an arbitrator appointed; or (3) are awarded.