



HIGHLIGHTS of the new American Arbitration Association® (AAA®) Consumer Arbitration Rules

Effective September 1, 2014

Following is a summary of the most significant, unique and noteworthy aspects of the **Consumer Arbitration Rules**, the AAA's first stand-alone set of rules developed specifically for the arbitration of disputes arising from consumer agreements. The Rules apply to all applicable cases filed on or after September 1, 2014 and replace the *Consumer-Related Disputes Supplementary Procedures*.

Significant Sections and Rules

Rules Divided into Sections Representing the Main Stages of the Arbitration Process

The **Consumer Arbitration Rules** ("Rules") have been organized into easy-to-follow sections that represent the main stages of the arbitration process, as follows:

- Filing a Case and Initial AAA Administrative Steps
- Appointing the Arbitrator
- Pre-Hearing Preparation
- Hearing Procedures
- Conclusion of Hearing
- Post-Hearing
- General Procedural Rules

Effective Management of the Arbitration Process

A significant focus has been placed on the need for arbitrators to manage the arbitration process effectively. The Rules provide arbitrators with the tools and authority to do so, while still promoting a process that is consistent with the due process principles of the *Consumer Due Process Protocol* ("Protocol").

R-21. Preliminary Management Hearing with the Arbitrator: Rule R-21 provides that if a party requests or if the AAA or the arbitrator so determines, a preliminary management hearing is to be scheduled as soon as practicable following the appointment of the arbitrator. The preliminary management hearing will be conducted by telephone unless the arbitrator determines an in-person meeting is necessary. If this management hearing takes place, the arbitrator and the parties should discuss the future conduct of the case, clarifying issues and claims, scheduling the hearings and other preliminary matters.



R-22. Exchange of Information between the Parties: This Rule conveys the principle that arbitration must remain a fast and economical process, while still empowering the arbitrator with the authority to order the exchange of information needed for a fair process for all parties. Paragraph (a) allows the arbitrator to direct the exchange of documents and other information between the parties, as well as the identification of witnesses, if any, the parties intend to have testify at the hearing. Paragraph (c) establishes the presumption that no other exchange of information beyond this is contemplated under the Rules, unless the arbitrator determines that further information exchange is needed to provide for a fundamentally fair process.

Effective Management of Motions

R-24. Written Motions (except for Dispositive Motions, see R-33): This Rule provides authority to the arbitrator to manage the filing of written motions (except for Dispositive Motions, see R-33) by requiring the parties and the arbitrator to first conduct a conference call to attempt to resolve the issue that gives rise to a proposed motion. Only after such a call takes place may the arbitrator consider a party's request to file a written motion. This Rule will limit the filing of expensive and time-consuming motions exclusively to situations deemed necessary by the arbitrator.

R-33. Dispositive Motions: This Rule specifically grants to the arbitrator the authority to allow the filing of a dispositive motion if he or she 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.

More Access to Information about Arbitration Agreements and Awards

Important elements of the Rules are provisions that make information publicly available about consumer arbitrations administered by the AAA. This includes Rules establishing a registry of businesses with AAA consumer arbitration agreements and another that provides for the publication of redacted consumer arbitration awards.

R-12. Business Notification and Publicly-Accessible Consumer Clause Registry: This Rule establishes a publicly-available registry of businesses whose arbitration agreements have been reviewed by the AAA and determined that they materially and substantially comply with the *Protocol*. After the AAA receives the consumer registry fee, reviews the submitted consumer clause and determines it will administer consumer-related disputes filed pursuant to the consumer clause, the business will be included on the publicly-accessible Consumer Clause Registry. The AAA's publicly-available Consumer Clause Registry will contain the name of the business, contact information, and the consumer arbitration clause, along with any related documents deemed necessary by the AAA. For more information on the registry, visit www.adr.org/consumerclauseregistry.

R-43. Form of Award: Paragraph (c) of this Rule allows the AAA to publish a consumer award rendered under the Rules, with the names of the parties and witnesses removed from such an award, unless a party agrees in writing to have its name included in the published award.



Nonpayment by a Party

To address issues and increasing concerns where parties refuse to deposit their share of arbitrator compensation or administrative charges, a new rule has been added that authorizes arbitrators to take specific measures related to nonpayment.

R-54. Remedies for Nonpayment: Paragraph (a) of this Rule provides that any party may advance the fees of a nonpaying party so that an arbitration may proceed. Paragraph (b) provides that a party may request that the arbitrator take specific action relating to a party's nonpayment and suggests that an arbitrator may limit the nonpaying party's ability to assert or pursue its claim. In no event, however, may the arbitrator preclude the nonpaying party from defending a claim or counterclaim. Paragraph (b) also grants to a party the right to oppose a request for such measures arising from nonpayment and confirms that the paying party who is making a claim must submit evidence as required by the arbitrator for the making of an award. Paragraph (c) grants to either the AAA or the arbitrator the authority to order suspension of the arbitration for nonpayment. Paragraph (d) states that either the AAA or the arbitrator may terminate the proceedings if full payment is not made within the time specified following a suspension.

Declining or Ceasing the AAA's Arbitration Services

The parties are expected to conduct themselves in a professional manner.

R-55. Declining or Ceasing Arbitration: This Rule sets forth the AAA's authority to decline to accept a demand for arbitration or stop the administration of an ongoing arbitration due to a party's improper conduct, including threatening or harassing behavior towards any AAA staff, an arbitrator or a party or party's representative.

Procedures for the Resolution of Disputes through Document Submission

Conducting arbitration through the submission of documents rather than through an in-person or telephonic hearing can be a fast, economical and effective way to resolve a consumer dispute. As such, if claims or counterclaims do not exceed \$25,000, the dispute will be resolved through the submission of documents only, unless a party asks for a hearing or the arbitrator decides a hearing is necessary; see R-1(g). Applicability (When the AAA Applies These Rules) and R-29. Documents-Only Procedure. To assist the parties and the arbitrator in establishing an effective process for such cases, the section *Procedures for the Resolution of Disputes through Document Submission* has been added to the Rules.

Additional Noteworthy Rules and Sections

R-1. Applicability (When the AAA Applies These Rules): Paragraph (a) specifies when the Rules will be applied, provides the AAA's definition of "consumer agreement" and gives examples of contracts that typically do and do not meet the criteria for application of the Rules. The Rule also indicates that parties providing for the AAA's rules or AAA administration as part of a consumer agreement also shall be deemed to have agreed that application of the AAA's rules and AAA administration of the consumer arbitration shall be an essential term of their consumer agreement. Paragraph (d) states that the AAA administers consumer disputes that meet the due process standards contained in the



Protocol and the Rules, and if the AAA does decline to administer an arbitration, the parties may choose to submit the dispute to the appropriate court for resolution. Paragraph (e) gives the AAA the initial authority to apply or not apply the Rules. It does allow either party to object to the AAA's decision by the due date for filing an answer, and if the objection is filed, the arbitrator shall have the authority to make a final decision on which AAA rules apply. Paragraph (f) creates a 30-day suspension of administration if a party seeks judicial intervention and provides documentation that the judicial intervention was sought to the AAA within 30 days of the AAA's commencement of the administration. This allows the party 30 days to obtain a stay of arbitration from the court.

R-9. Small Claims Option for the Parties: This Rule clarifies that if the party's claim is within the jurisdiction of a small claims court, either party may choose to take the claim to that court instead of arbitration as follows: paragraph (a) states that a party can take the case directly to small claims court before filing with the AAA; paragraph (b) provides that after a case is filed with the AAA but before an arbitrator is appointed, a party can send a written notice to the opposing party and the AAA that it wants the case decided by a small claims court, at which time the AAA will administratively close the case; and paragraph (c) states that once the arbitrator is appointed, a party still can request that the case go to small claims court, but it will be up to the arbitrator to determine if the case proceeds in arbitration or in small claims court.

R-11. Fixing of Locale (the city, county, state, territory and/or country where the arbitration will take place):

The Rule provides that the AAA makes the initial locale determination for an in-person hearing. A party who disagrees with the AAA's decision can ask the arbitrator to make a final decision. The locale decision will be made after considering the parties' positions on the subject, the circumstances of the parties and dispute and the Protocol.

R-17. Number of Arbitrators: Disputes under the Rules will be heard and decided by a single arbitrator, unless the agreement provides for a specific number or the parties agree on a number.

R-18. Disclosure: Paragraph (a) places a duty not only on the arbitrator but also upon the parties and their representatives to make disclosures about possible conflicts in connection with an appointed arbitrator. In addition, Paragraph (a) introduces a provision that failure of a party or representative to disclose a potential conflict may result in waiver of the right to object to an arbitrator in accordance with Rule 50.

R-25. Representation of a Party: The Rule clarifies that a party can participate without representation or may choose to be represented by an attorney or other authorized representative, unless that choice is prohibited by applicable law. It also clarifies that because arbitration is a final, legally-binding process that may impact a party's rights, parties may want to consider consulting an attorney.

R-32. Conduct of Proceedings: Paragraph (d) sets the expectation that arbitrations under these Rules generally will not exceed a day of hearing. If a party shows good cause, the arbitrator may schedule additional hearings within seven calendar days after the initial hearing.

R-42. Time of Award: For cases that have an in-person or telephonic hearing, the award shall be issued no later than 30 calendar days from the date the hearing is closed. For a documents-only arbitration, the award is due no later than 14 days from the date the arbitrator sets for his or her receipt of the final statements and proofs.



R-43. Form of Award: Paragraph (b) provides that an award shall provide the concise written reasons for the decision unless the parties agree otherwise.

R-44. Scope of Award: Paragraph (a) states that the arbitrator may grant any remedy, relief or outcome that the parties could have received in court. Paragraph (c) sets forth the arbitrator's authority to allocate compensation, administrative fees and certain expenses to any party upon the arbitrator's determination that a party's claim or counterclaim was filed for purposes of harassment or is patently frivolous.

Costs of Arbitration (Including AAA Administrative Fees)

Due to the increasing complexity of some consumer arbitration cases, the AAA has added the flexibility to raise administrative fees and arbitrator compensation in certain circumstances. The following sub-sections set forth the circumstances when the AAA would consider taking such actions:

- **Sub-section (i), Filing Fees,** permits the AAA to assess additional administrative fees for services performed by the AAA beyond those provided for in the Rules and which may be required by the parties' agreement or stipulation.
- **Sub-section (ii), Neutral Arbitrator's Compensation,** permits the AAA to raise arbitrator compensation rates set forth in the Costs of Arbitration Section because of the complexity of the case or for processes or procedures beyond those provided for in the Rules and which may be required by the parties' requests, agreement or stipulation.

As discussed previously, a Consumer Clause Registry is being established by these Rules. The cost for such service is set forth in the Costs of Arbitration section. Subsection (viii), Consumer Clause Registry Fee, sets forth the non-refundable fee to businesses that submit their consumer clauses for review and inclusion on the Consumer Clause Registry.