DELAWARE STATE BAR ASSOCIATION

CONTINUING LEGAL EDUCATION

ARBITRATION TRAINING CERTIFICATION IN COMMERCIAL LITIGATION 2022

DSBA HYBRID CLE LIVE AND VIA ZOOM

SPONSORED BY THE DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, APRIL 20, 2022 | 10:00 A.M. TO 12:00 P.M.

2.0 Hours of CLE credit for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

Attorneys who wish to be certified by DSBA as a Commercial Law Arbitrator should take this course, along with the General Arbitration Training course (offered February 10, 2022). Experienced arbitrators in these areas of law will provide attendees with wisdom and insight as to the best practices for handling a commercial law arbitration.

CLE SCHEDULE

Moderator

Andrea L. Rocanelli, Esquire
Delaware ADR, LLC

Speakers

Ian Connor Bifferato, Esquire
The Bifferato Firm P.A.

William D. Johnston, Esquire
Young Conaway Stargatt & Taylor, LLP

Joshua W. Martin III, Esquire
Potter Anderson & Corroon LLP

Myron T. Steele, Esquire
Potter Anderson & Corroon LLP

adr SERVICES

Visit https://www.dsba.org/event/arbitration-training-certification-in-commercial-litigation/ for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

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DSBA
Commercial Arbitration Training Seminar

April 20, 2022
(materials prepared 2017; updated 2022)

TOPICS TO BE COVERED

- Selection of the Arbitrator
- Jurisdiction and Arbitrability
- Pre-hearing Conference and Pre-hearing Management
- Motions, Discovery and e-Discovery
- The Hearing on the Merits
- Deciding the Award
- Drafting and Issuing the Award
- Fees and Expenses
- Delaware Rapid Arbitration Act
- Questions

Useful Resources

- *The College of Commercial Arbitrators Guide to Best Practices In Commercial Arbitration* (3d ed.) (2014)
- *The College of Commercial Arbitrators Protocols for Expeditious, Cost-Effective Commercial Arbitration* (2010)

SELECTION OF THE ARBITRATOR, DISCLOSURES AND DISQUALIFICATION

ARBITRATOR QUALIFICATIONS

- Failure to comply with qualifications specified in the arbitration agreement can result in a challenge to enforcement of an award
- “The Arbitrator must be knowledgeable in the subject matter of the dispute.”

NUMBER OF ARBITRATORS

- Courts have vacated awards when the correct number of arbitrators specified in the arbitration agreement were not appointed.
- Courts have held that reference to “an arbitrator” or to “the arbitrator” does not signal clear intent that a single arbitrator is to be appointed

PARTY-APPOINTED ARBITRATORS

- Party-appointed arbitrators can serve as either neutral or non-neutral arbitrators
- Each party shall select a “disinterested arbitrator” – neutral or non-neutral?
- Non-neutral arbitrators cannot be disqualified if there is a perceived bias or lack of independence

ETHICAL OBLIGATIONS

- Always confirm in writing whether you are required to adhere to a specific code of ethics
- Review the governing ethical code
- The Code of Ethics for Commercial Arbitrators places ethical obligations on both neutral and non-neutral (Canon X) arbitrators

CONFLICT DISCLOSURES

- Must make a reasonable effort to identify any direct or indirect interests or relationships that need to be disclosed
- Disclosures must be very specific
- You do not need to disclose confidential information

DISCLOSURES

- Disclosure requirements vary by jurisdiction
- Must disclose any financial interest or relationship that is direct (existing or past) or indirect (existing or past) involving a party, attorney, members of an attorney's law firm, witness and other arbitrator involved in the case
- Obligation to disclose is ongoing

DISQUALIFICATION/REMOVAL

- If all parties request that you withdraw you should withdraw
- If a party requests removal and the other parties do not respond/object, you should withdraw
- AAA's internal Administrative Review Council: Direct, Recent, Continuing, Substantial?

JURISDICTION AND ARBITRABILITY

- Threshold Issue
  AAA R-7(c)
  CPR Ad Hoc Rule 8.3
  CPR Administered Rule 8.3

- Best Practices – CCA Guide

- Delaware Cases
  James & Jackson, LLC v. Willie Gary, 906 A.2d 76 (Del. 2006)

  Viacom Int'l Inc. v. Winshall, 72 A.3d 78 (Del. 2013)

  Redeemer Comm. Of the Highland Crusader Fund v. Highland Capital Mgmt., L.P., Civil Action No. 12533-VCG (Del. Ch.) (February 23, 2017)

PRE-HEARING CONFERENCE AND PRE-HEARING MANAGEMENT

- The Importance Of Prehearing Management
- Convening The Prehearing Conference
- Conducting The Prehearing Conference
- Memorializing The Prehearing Conference
- Matters To Address At The Prehearing Conference

MOTIONS, DISCOVERY AND E-DISCOVERY

Motions – Authority of Arbitrator

- Preliminary Relief
  - AAA Rule R-37
  - JAMS Rule 24(e)
  - CPR Rule 13
- Dispositive Motions
  - AAA Rule R-33
  - JAMS Rule 18
- Caveat – avoid grounds for vacating an award
  - DUA, 10 Del. C. § 5714
  - FAA, 9. U.S.C. § 10(a)(3)

Motions – Variety of Motions/Caveats

- Service of process
- Jurisdiction and arbitrability
- Consolidation and joinder
- Preliminary and interim relief
- Failure to state a claim
- Discovery
- Bifurcation
- Dispositive Motions
- Motions in limine/exclude evidence
- Privilege claims
- Sanctions
- Continuances
- Disqualification
- Motions during merits hearings

Protocol to Discourage Unproductive and Inappropriate Motion Practice

Arbitrators should establish procedures to avoid filing of unproductive and inappropriate motions. They should generally require that, before filing any motion, the moving party demonstrate, either in a short letter or teleconference, that the motion is likely to be granted and is likely to produce a net savings in arbitration time and/or costs.

- *A Protocol for Arbitrators, Paragraph 7, CCA Protocols for Expeditious, Cost-Effective Commercial Arbitration* (2010)

Protocol to Limit Dispositive Motions

- AAA Rule R-33
- "The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case."
- As an Arbitrator you should explain to parties:
  - Dispositive motions involving issues of fact rarely granted
  - Dispositive motions on legal issues may provide opportunity for shortening, streamlining or focusing the arbitration process.

- *See A Protocol for Arbitrators*, Paragraph 7.

Discovery

- Ordinarily much more limited in arbitration than in litigation
- Keep a close eye on discovery progress
- Promptly resolve any problems that might disrupt case schedule
- Use conference call process with prior e-mail submissions instead of formal submissions

- *See A Protocol for Arbitrators*, Paragraph 6.

Discovery – AAA Rule R-22

- Pre-Hearing Exchange and Production
  - Efficient and economical resolution of the dispute
  - Documents in possession, custody or control on which party intends to rely
  - Require parties to update
  - Reasonable requests for documents relevant and material to the dispute
  - Make electronic documents available in form most convenient and economical for party in possession absent good cause for a different form
  - Note that there is no mention of depositions in R-22
  - AAA Procedures for Large, Complex Commercial Disputes L-3 (claim or counterclaim >$500,000 exclusive of interest, fees and cost)("In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions . . . .").

e-Discovery

- Absent compelling need:
  - Production from ordinary course of business sources
  - Using generally available technology
  - Searchable format
  - No metadata – except header fields for e-mail
- Proportionality
  - Gravity of dispute
  - Amount in controversy
  - Costs and burdens
- Advancement of reasonable costs of production, subject to allocation in fomal award

- *See JAMS Arbitration Discovery Protocol* and AAA R-22

HEARING ON THE MERITS

- Designing The Appropriate Hearing Process
- Document Hearings
- Setting The Basic Construct Of The Hearing
- Management Of Exhibits
- Management Of Testimony
- Management Of Hearing Time
- Management Of Logistics
- Site Visits
- Arbitrator Conduct During Hearings
- Determining Requests For Fees, Costs And Interest
- Briefing
- Statements And Arguments Of Counsel

DECIDING THE AWARD

Deciding the Award – Ethical Obligations (Canon V)

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

Deciding the Award – Timing of the Award

- AAA R-45 – 30 calendar days from date of closing of hearing unless otherwise agreed or specified by law

- AAA R-39 – Closing of Hearing
  - Upon declaration as of date of last hearing, or
  - Final day of receipt of briefs

Deciding the Award – Basic Steps in Award Deliberation Process

1. Identify the issues, questions and/or claims to be decided
2. Review the evidence
3. Determine the quality of the evidence
4. Determine the credibility of the evidence
5. Determine the weight of the evidence
6. Make a decision on each issue, question or claim based on analysis of the evidence
7. Draft the award

DRAFTING AND ISSUING THE AWARD

- Clear and Definite
- Decide every issue submitted in arbitration
- Should not rule on anything outside the scope of the arbitrator's authority

TIME OF ISSUANCE

- Must be issued no later than the due date specified in the arbitration agreement or agreed upon by the parties

- Failure to issue the award by the specified deadline results in loss of jurisdiction

SCOPE OF THE AWARD

- Always confirm in writing the remedies you are authorized to award
- Arbitrators can generally award contractual relief even if not specifically requested
- There is a wide disparity in the law between jurisdictions on allowing attorneys' fees.

FORMAT OF AN AWARD

You must be careful to include all pertinent information or the award could be subject to challenge:

- Reasoned versus non-reasoned award?
- Heading, preamble, reference to interim or partial final awards, identification of all claims and counterclaims, closing, signature(s)

FEES AND EXPENSES

TERMS OF COMPENSATION

- Hourly rate to conduct hearing; hourly rate for study or travel time; cancellation policy; reimbursement reasonable and necessary travel expenses
- Advise prior to appointment if you plan to bill for local travel time/expenses, use of a personal administrative assistant, overhead expenses

COLLECTION OF DEPOSITS

- Request deposits immediately following appointment to cover pre-hearing estimated compensation/expenses
- Following issuance of a scheduling order request reasonable deposits to cover hearing related compensation/expenses
- Keep track of the amount of money on hand as the case progresses

NON-PAYMENT

- Prior to the first day of hearing you can either suspend/terminate the proceeding or proceed knowing that you can allocate your fees in expenses in the final award
- Never suspend or seek additional compensation after the hearings have been closed and an award it due
- A party can never prevent a party from defending a claim or counterclaim due to non-payment

MORRIS NICHOLS ARSHT & TUNNELL

Overview of the Delaware Rapid Arbitration Act and Other Relevant Delaware M&A Issues

Donald F. Parsons, Jr.,
Vice Chancellor (Ret.), Delaware Court of Chancery,
Senior Counsel, Morris, Nichols, Arsht & Tunnell LLP

Overview of the DRAA

- In response to common concerns with traditional arbitration, the Delaware Rapid Arbitration Act (the "DRAA" or, "the Act") is designed to give Delaware business entities greater capacity to resolve business disputes in a rapid and efficient manner through voluntary arbitration, conducted by expert arbitrators under strict timelines.
- The Act is an enabling statute. Consistent with Delaware's "contractarian" approach, the Act is designed "to give maximum effect to the principle of freedom of contract and the enforceability of agreements."
- The animating themes of the Act are speed, efficiency, and the confidential resolution of complex business issues.
- Parties forego comprehensive and often time-consuming pre-hearing evidence gathering in exchange for a prompt resolution of their dispute.
- The Act provides for the resolution of disputes in as little as 120 days.
- Types of disputes ideal for DRAA include: Post-merger working capital adjustments and earn-out disputes; advancement and indemnification requests by employees, officers or directors; investor information rights; and valuation disputes.

Pre-Arbitration Mechanics

- The DRAA is limited to business disputes.
  - To invoke the Act, the parties must have a written agreement, signed by the parties to the arbitration, governed by Delaware law, that expressly refers to the DRAA by name.
  - The deal documents need not be governed by Delaware law.
  - At least one of the parties to the arbitration agreement must either have its principal place of business in Delaware or be a Delaware-organized entity.
  - The Act is not applicable to any dispute with a "consumer."
  - The DRAA does not contain monetary thresholds. The parties may use the Act to seek non-monetary relief.

Pre-Arbitration Mechanics

- The parties may designate a person in the arbitration agreement to serve as the arbitrator.
  - An arbitrator who is not legally trained may retain counsel to resolve legal issues that arise during the arbitration proceeding.
    - This may be ideal if the disputes concern escrow determinations or working capital adjustment and designation of a financial expert is more apt than a law trained individual.
  - If the arbitrator is not expressly named, the parties may also designate a method in the agreement under which an arbitrator may be selected.
- If the parties did not select an arbitrator and cannot agree on one, the Court of Chancery must appoint an arbitrator within 30 days of the service of a petition.
  - The Court's decision is *not* appealable to the Delaware Supreme Court.

The DRAA Arbitration

- The arbitrator has discretion to select a time and place for the hearing, which may take place outside Delaware.
- The DRAA does not address the scope of permissible discovery.
  - The parties may contract for a desired scope.
  - If the parties cannot agree to a scope, discretion is given to the arbitrator.
- By statutory default, arbitrators have the authority to compel attendance of witnesses and the production of documents.
  - Subpoena power may be conferred by the arbitration agreement.

The DRAA Arbitration (cont'd)

- Parties who submit to arbitration under the DRAA are treated as having consented to submit all issues of arbitrability exclusively to the arbitrator.
  - This provision cannot be altered by contract.
  - The parties can modify the arbitrator's powers by agreement, but the statutory default gives the arbitrator the power to make rulings of law or to impose sanctions as the arbitrator deems proper to resolve the dispute.
  - The arbitrator's interim rulings *cannot be appealed or challenged*.
  - Courts may not enjoin an arbitration under the Act.
  - However, the Court of Chancery may issue an injunction "in aid of arbitration" only if it is done *before* the arbitrator accepts appointment.
  - Such an injunction may not divest the arbitrator of his or her authority.

The DRAA Arbitration (cont'd)

- Absent an agreement to the contrary, all matters must be finally determined within 120 days of the arbitrator's acceptance of appointment.
  - This deadline can be extended by 60 days with the unanimous consent of all parties.
  - The arbitrator's fee is reduced on a percentage basis if the arbitrator does not decide the matter within the deadline.
  - If the arbitrator's decision is more than 60 days late, then the arbitrator forfeits his or her fee entirely.

The Arbitrator's Final Award

- The final award can be legal or equitable unless the parties' agreement provides otherwise.
- The Act eliminates the confirmation process for an arbitrator's award.
  - The final award is "deemed confirmed" by the court 5 days after the challenge period expires (15 days from the issuance of the final award).
- The prevailing party must have final judgment on the award entered in a Delaware court.
  - The Delaware Superior Court enters final judgment if the award is solely for monetary damages.
  - The Delaware Court of Chancery enters final judgment for all other awards.

Appellate Review

- Parties to an arbitration under the DRAA are deemed to have waived their right to challenge an interim ruling or order of an arbitrator.
- Challenges to a final award are made directly to the Delaware Supreme Court.
  - But, an appeal to the Delaware Supreme Court is presumptively public.
  - A challenge to the Delaware Supreme Court must be made within 15 days of the issuance of the final award.
  - The Delaware Supreme Court may only "vacate, modify or correct the final award in conformity with the Federal Arbitration Act."
  - The statute does not allow for plenary review by the Court.
- The parties can waive their right to appeal the arbitrator's final award by agreement.
- The parties may contract for a private appeal to one or more appellate arbitrators.
  - This approach preserves the feature of privacy inherent in the DRAA's contemplated proceedings.
  - Parties may contract for an applicable appellate standard of review in a private appeal.

Issues To Consider In Drafting

- The type and scope of dispute that will be subject to arbitration.
- The identity of the arbitrator and whether to require an arbitrator with particular non-legal expertise.
- The procedure for selecting the arbitrator if one is not named in the agreement.
- The fee arrangement and how fees will be allocated among the parties.
- The scope of the arbitrator's power, including with respect to the ability to compel discovery from third-parties.
- The nature and scope of the evidence to be presented at the hearing.
- The location for the arbitration.
- The nature and scope of appellate review, if any.

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QUESTIONS

American Arbitration Association

REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER

Preliminary Hearing Scheduling Order # _____ Case # _____

Pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA), a preliminary hearing was held on _____,before Arbitrator(s) _____. Appearing at the hearing were _____. _____.

By Agreement of the parties and Order of the Arbitrator(s), the following is now in effect.

1. An additional preliminary hearing shall be held (check one):
   ☐ At _____ on _____, at _____.m.
   before the Arbitrator(s), or
   ☐ if needed, by mutual agreement later.
2. Pursuant to the direction of the Arbitrator(s), all parties shall amend/specify claims and/ or counterclaims (monetary amounts) and file any motion to join additional parties by _____.
3. The parties shall file a stipulation of uncontested facts by _____.
4. a) Pursuant to the direction of the Arbitrator(s), claimant(s) shall serve and file a disclosure of all witnesses reasonably expected to be called by the claimant(s) on or before _____ _____.

   b) Pursuant to the direction of the Arbitrator(s), respondent(s) shall serve and file a disclosure of all witnesses reasonably expected to be called by the respondent(s) on or before _____ _____.

   c) The disclosure of witnesses shall include the full name of each witness, a short summary of anticipated testimony, copies of any experts reports, and written C.V. of experts. If certain required information is not available, the disclosures shall so state. Each party shall be responsible for updating its disclosures as such information becomes available. The duty to

update this information continues up to and including the date that hearing(s) in this matter terminate.

d) The parties shall make arrangements to schedule the attendance of witnesses so that the case can proceed with all due expedition and without any unnecessary delay.

e) The party presenting evidence shall give notice to the other party the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

5. a) Not later than _____, the parties shall exchange copies of (or, when appropriate, make available for inspection) all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the hearing. Each proposes exhibits shall be premarked for identification using the following designations:

PARTY	**EXHIBIT # to EXHIBIT #**	
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

b) The parties shall attempt to agree upon and submit a jointly prepared consolidated and Comprehensive set of joint exhibits.

6. Hearings in this matter will commence before the Arbitrator(s) at _____ on _____ at _____.m. The parties estimate that this case will require _____ days of hearing time, inclusive of arguments.

7. Any and all documents to be filed with or submitted to the Arbitrator(s) outside the hearing

   a. shall be given to the AAA Case Administrator electronically for transmittal to the Arbitrator(s).

   b. All hard copies are to be submitted to the Arbitrators directly with a copy of the transmittal letter to the Association.

   c. COPIES OF SAID DOCUMENTS SHALL ALSO BE SENT SIMULTANEOUSLY 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.

8. On or before _____, each party shall serve and file a prehearing brief on all significant disputed issues, setting forth briefly the party's position and the supporting arguments and authorities.

9. a) **Form of Award:** (Circle one)

1. Standard Award
2. Reasoned Award
3. Findings of fact and conclusions of law

b) **Court Reporter:** (Y) (N) _____

c) **Other:** _____

_____

_____

_____

10. Pursuant to the direction of the Arbitrator(s), any other preliminary matters not otherwise provided for herein shall be raised by _____
(date)

11. All deadlines stated herein will be strictly enforced. After such deadline, the parties may not file such motions except with the permission of the Arbitrator(s), good cause having been shown.
12. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator(s).

Dated: _____ _____

Arbitrator's Signature

_____

Arbitrator's Signature

_____

Arbitrator's Signature

ADMINISTRATIVE REVIEW COUNCIL

Arbitrator Challenge Review Procedures

For Non-Administered Arbitrations
By the Administrative Review Council
Of the American Arbitration Association®

AMERICAN ARBITRATION ASSOCIATION®

Available online at **adr.org**

Procedures Effective May 1, 2014

Table of Contents

Arbitrator Challenge Review Procedures for Non-Administered Arbitrations by the Administrative Review Council of the American Arbitration Association

These Procedures apply to non-administered cases in which the parties agree to submit objections or challenges to the arbitrator(s) continued service to the AAA®'s Administrative Review Council ("Council") for determination. The Council may include internal, divisional and corporate executives, or external members such as retired AAA executives, AAA board members or other individuals with arbitration expertise. The Council may also include additional non-voting members as determined by the chairperson. A member of the legal department will also serve as a non-voting liaison to the Council.

1. Agreement of Parties

Whenever parties mutually agree to have their objections to the arbitrator's continued service decided by the Council, these Procedures, as amended and in effect as of the date of filing of a submission for decision, shall apply.

2. Submission of Arbitrator Objection to Administrative Review Council

Parties to an arbitration may submit their dispute regarding an arbitrator's continued service by providing a Submission of Arbitrator Objection to Administrative Review Council form (available on **www.adr.org**) to **arc@adr.org** along with the administrative fee set forth below. The party transmitting the Submission to Council form shall copy all parties (the arbitrator(s) shall not be copied) on the communication and provide the following information:

- The names, email addresses, and telephone numbers of all parties to the dispute and representatives, if any.
- The name and contact information for the arbitrator appointed to the arbitration.
- All parties' contentions regarding the continued service of the arbitrator and any supporting documentation they want the Council to consider including the arbitrator written disclosures.

- Each party's contentions to the Council may not exceed ten (10) pages in length, excluding attachments or exhibits. Only documents directly relevant to the challenge or response should be included as an attachment or exhibit. Parties should refrain from submitting duplicate documents.

3. Requests for Additional Information

The Council may request additional information from the parties and the arbitrator. The party, from whom additional information is sought, shall have five (5) business days from the transmittal date of the request for additional information to file their response with the Council.

Absent approval from the Council, any supplemental filing may not exceed ten (10) pages in length, excluding attachments or exhibits. Only documents directly relevant to the supplemental request should be included as an attachment or exhibit. Parties should refrain from providing duplicate documents that were already provided to the Council.

4. Standard for Disqualification of Arbitrator

Arbitrators may be subject to disqualification for:

a. partiality or lack of independence,

b. inability or refusal to perform his or her duties with diligence and in good faith, and

c. any grounds for disqualification provided by applicable law.

5. Council Decision Standards

Upon objection of a party to the continued service of the arbitrator, and the submission of all contentions of the parties, the Council shall determine as expeditiously as possible whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be deemed administrative and final. The Council decision shall be based on the Council Review Standard for Disqualification as outlined in Paragraph 6.

Council decisions shall be made based on the written submissions only, and without oral argument or presentations.

6. Council Decision Making

a. Decisions will be made by a panel of at least three (3) panel members in accordance with the following Standards for Disqualification:

i. Partiality or Lack of Independence

As part of its consideration, the Council utilizes a four-part test in determining whether an arbitrator's disclosure, purported conflict or other objection related to the arbitrator's continued services rises to the level of removing an arbitrator from a case. The four-part test is whether the conflict is:

- Direct
- Continuing
- Substantial
- Recent

Weighing these factors together serves as a guide as to whether the conflict is disqualifying. Ultimately, the Council's administrative determination is based upon whether the disclosure, purported conflict or other objection creates, to a reasonable person, the appearance that an award would not be fairly rendered.

ii. Inability or Refusal to Perform His or Her Duties with Diligence and in Good Faith

The Council's administrative determination is based upon whether the circumstances create, to a reasonable person, that the arbitrator is unable or has refused to perform his or her duties with diligence and in good faith.

b. Decisions will be by a majority vote of the designated panel of Council members assigned to a case.

c. All decisions of the Council will be confirmed to the parties in writing and include the following:

i. Issue presented

ii. Date of the Council meeting

iii. Non-reasoned decision (decision will not set forth the Council's reasoning)

d. The Council's deliberative process is confidential and parties may not attend Council sessions.

e. The AAA's authority to address objections to the continued service of the arbitrator or involvement in the arbitration in any way, terminates upon the issuance of the Council decision. While the arbitrator's obligation to make disclosures is ongoing for the duration of his or her appointment, the AAA will have no authority under this service to address subsequent challenges to an arbitrator's continued service unless re-submitted to the Council in accordance with these Procedures.

7. Future Administration

The AAA reserves the right, at its sole discretion, to decline to administer disputes submitted according to these Procedures.

8. Exclusion of Liability

Neither the AAA nor any Council member is a necessary or proper party in judicial proceedings relating to the arbitration.

Parties to an arbitration submitting to the Council under these Procedures shall be deemed to have consented that neither the AAA nor any Council member 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.

Parties to an arbitration submitting to the Council under these procedures may not call the AAA or any Council member as a witness in litigation or any other proceeding relating to the arbitration. The AAA and Council members are not competent to testify as witnesses in any such proceeding.

Administrative Fees

The administrative fee for submitting a dispute under these procedures is $3,500 per arbitrator objection.

A Protocol for Arbitrators

Whether or not business users have tailored arbitration procedures to most effectively promote economy and efficiency, they commonly rely on arbitrators to conduct arbitration proceedings economically and efficiently. Arbitrator training, experience and philosophy may all play a part in their ability to accomplish these goals through thoughtful case management; adherence to contractual limits on discovery, timetables, etc.; and effectively distinguishing, and appropriately acting upon, dispositive motions that might conclude or streamline a dispute. The following Actions are offered as detailed guidance for arbitrators in addressing these concerns.

1. Get training in managing commercial arbitrations.

It is axiomatic that all arbitrators should have the knowledge, temperament, experience and availability required by the appointment, as well as a working knowledge of arbitration law, practice and procedures of administrative organizations, and the various opportunities for realizing economies and efficiencies throughout the arbitration process. Those who wish to arbitrate large and complex commercial cases should secure special training in how to manage such arbitrations with expedition and efficiency without sacrificing essential fairness, should identify that training in their biographical materials, and should pledge to conduct the arbitration so as to adhere to any time limits in the arbitration agreement or governing rules (see *Protocol for Arbitration Providers*, Action 7).

Comments:

Just as "one size fits all" is not a cost-saving approach to arbitration rules, it is also true that being an effective arbitrator in one field does not assure effectiveness in another. Commercial arbitration, for example, is quite different from labor arbitration or consumer arbitration. One serving as an arbitrator in any of these fields should be well grounded in the arbitration law, practice, and management techniques particular to that field. Fortunately, many institutions, including the American Bar Association, the American Arbitration Association, JAMS and CPR, offer specialized instruction in managing the sort of large, complex cases that typify commercial arbitration. In addition, there are a number of excellent published practice guides, including *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* (James M. Gaitis, Curtis E. von Kann & Robert W. Wachsmuth, eds. 2nd ed. Juris Net 2010) and *Commercial Arbitration at Its Best: Successful Strategies for Business Users* (Thomas J. Stipanowich & Peter H. Kaskell, eds. 2001). In short, the resources are there for those who seek to learn how to arbitrate commercial cases fairly but efficiently.

2. Insist on cooperation and professionalism.

Arbitrators should communicate clearly and unequivocally from the outset their expectation that counsel can and will cooperate fully and willingly with each other and with the arbitrator in all procedural aspects of the arbitration. Arbitrators should establish a professionally cordial atmosphere, one that reinforces expectations of cooperation and reasonableness and

affords counsel the fullest opportunity to contribute to shaping the arbitration process. Arbitrators should lead by example by being prepared and punctual for all arbitration proceedings and by fixing and meeting deadlines for their own actions, such as ruling on motions, issuing orders and the like (see *Protocol for Outside Counsel*, Actions 4, 5, 8).

Comments:

Arbitrators set the tone of any arbitration, and establishing a tone of professionalism and mutual respect among participants greatly increases the prospects for developing cooperative approaches to expedite the proceedings. Arbitrators must make clear that they expect reasonable and constructive conduct by counsel and must model such conduct in their own interactions with counsel and parties. Arbitrators can hardly insist on counsel's compliance with deadlines if they themselves are late in issuing rulings, appearing at hearings, and the like. Arbitrators who make their expectations of cooperation clear and lead by example will have built a solid foundation on which to rest reasonable and efficient management actions.

3. Actively manage and shape the arbitration process; enforce contractual deadlines and timetables.

Arbitrators should recognize that commercial parties are generally looking for "muscular" arbitrators who will take control of the arbitration and actively manage it from start to finish, encourage and guide efforts to streamline the process, make a serious effort to avoid unnecessary discovery or motions, and generally conduct the arbitration fairly and thoughtfully but also expeditiously. Commercial arbitrators should utilize their considerable discretion and the natural reluctance of counsel and parties to displease the ultimate decision-maker so as to fashion, with the input and cooperation of the parties and their counsel, an arbitration process that is appropriate for the case at hand and as expeditious as possible while still affording all parties a full and fair hearing.

Arbitrators should routinely enforce contractual deadlines or timetables for arbitration except in circumstances that were clearly beyond the contemplation of the parties when the time limits were established (see *Protocol for Business Users*, Action 3). They should also encourage parties to "tee up" particular issues for early resolution when the resolution of such issues is likely to promote fruitful settlement discussions or expedite the arbitration (see *Protocol for Arbitration Providers*, Action 6; *Protocol for Outside Counsel*, Action 8).

Comments:

A recurrent plea from National Summit participants was that arbitrators take active control of commercial arbitrations. Even when counsel are cooperating with one another, there are inevitably many points during an arbitration when someone needs to make a decision or take other action to keep the proceeding "on time and under budget." All arbitration rules give arbitrators considerable discretion in managing the arbitration process. Business users, in-house counsel, and outside counsel want arbitrators who will accept that responsibility and act. Especially if they have set a collegial tone at the outset and thoughtfully consider the views of

counsel on process issues that arise, arbitrators will find that parties welcome pro-active management by the neutral person(s) to whom they have entrusted the resolution of their dispute. With input from counsel, arbitrators must announce clear procedures and deadlines and must enforce them absent exceptional circumstances. In the commercial arbitration world of today, it is no longer up to arbitrators to decide whether to be pro-active or laissez faire. Thoughtful, well-informed and active management of the arbitration is now a critical part of the service parties are paying arbitrators to deliver. Just as Harry Truman reminded us that those who can't stand the heat should get out of the kitchen, those who are unwilling to devote serious attention to managing their cases should not serve as commercial arbitrators.

4. Conduct a thorough preliminary conference and issue comprehensive case management orders.

As early in the case as possible, arbitrators should conduct a thorough Preliminary Conference in the manner prescribed in Chapter 6 of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration.* Arbitrators should emphasize the importance of participation by senior client representatives of each party, in person or by phone, in this critical opportunity to develop a sensible and economical plan for the arbitration. Whenever feasible, the first conference should be conducted in-person, since that setting is more conducive than conference calls to fostering cordial and cooperative relations among parties and counsel. After the conference, arbitrators should issue a comprehensive "case management order" setting forth the procedures and schedule that will govern the arbitration. Arbitrators should only permit departures from those procedures and schedule for good cause shown (see *Protocol for Outside Counsel*, Actions 3, 4, 5).

Comments:

The single greatest tool for achieving a fair and efficient commercial arbitration is a well-conducted preliminary conference. It is the best opportunity for all participants to focus their attention and creativity on how to make the arbitration run smoothly and economically. It is also the ideal time for client representatives to appreciate how costly and protracted a "scorched earth" campaign will be and how much time and money can be saved by scaling back on discovery, motions and hearing time. That is why arbitrators should insist that senior client representatives (business executives or in-house counsel) attend the conference.

Because the preliminary conference is such a critical phase of the arbitration, it must not be given short shrift. Arbitrators should assure that lead counsel appear at the conference and that all parties have reserved ample time for careful consideration of all issues. If possible, the conference should be conducted in-person, which is more conducive to cooperation and mutual brainstorming than a conference call. Unless the amount at stake is quite modest, the increased productivity of an in-person conference is almost always worth the added expense.

A productive preliminary conference requires thorough preparation by all participants. Arbitrators should provide counsel with an agenda of matters to be taken up at the conference and should invite counsel to add to the list. Arbitrators should require counsel to discuss the agenda items in an effort to reach agreement on as many items as possible and provide to the

arbitrators, prior to the conference, a joint email setting forth the agreements they have reached and their respective positions on points of disagreement. How best to conduct a preliminary conference could be a course in itself. *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* devotes thirty single-spaced pages to the topic. While that discussion should be consulted in full, here is a summary checklist of the matters that ought to be determined at the preliminary conference:

- Identity of ALL parties to the arbitration (no *et al* descriptions).
- The specific claims, defenses and counterclaims (if any) to be decided. Are all stated with sufficient specificity?
- Under what arbitration agreement is the arbitration being conducted?
- What law governs the arbitration procedure?
- What law governs the merits of the claims and defenses?
- What rules will apply in the arbitration?
- Is there any dispute concerning the arbitrability of any claim or defense?
- Do the arbitrators need any additional information (e.g., names of testifying witnesses and key actors who may not testify) in order to make additional disclosures?
- Does any party seek to join additional parties? On what authority and basis?
- Does any party seek consolidation with another arbitration? On what authority and basis? Who is authorized to make the decision if a party is opposed to consolidation?
- What discovery (if any) will be permitted? What procedures will apply? (See *Protocol for Arbitration Providers*, Action 3.)
- What motions (if any) will be permitted? What procedures and time frames will apply? (See *Protocol for Business Users and In-House Counsel*, Action 9.)
- Does the arbitration involve specialized scientific or technical matters for which the arbitrators should have a "tutorial"? If so, can the parties agree on a treatise or other publication for the arbitrators to read, or neutral expert to teach the Panel?
- Would appointment of one or more neutral experts be appropriate?
- How will the parties submit documents and information to the arbitrators and to each other- email, fax, electronic filing, hand delivery?
- At what location(s) will the hearing be held?
- On what dates will the hearing be held?
- Do the parties need subpoenas for non-party witnesses? What authority to issue?
- Procedures and standards for seeking a continuance of the hearing.
- Procedures for the conduct of the hearing (see Action 9 below).
- Nature of the award (see Action 10 below).
- Due date of the award.

Following the preliminary conference, arbitrators should promptly issue a case management order that memorializes the determinations made on all the foregoing matters and any others addressed at the conference. If subsequent developments require some adjustments in that order, an amended case management order should be promptly be prepared and issued.

5. Schedule consecutive hearing days.

In order to avoid the delay and excess costs caused by having multiple hearing sessions, arbitrators should schedule the hearing on consecutive days whenever possible. Arbitrators should encourage the parties to make a realistic estimate of the number of hearing days they will need and should reserve a sufficient number of days for completing the hearing in the time allotted, even if unexpected developments, or unduly optimistic estimates, lead to a somewhat longer hearing than originally projected.

Comments:

Arbitration hearings that do not run on consecutive days involve much greater expense than those that do.[188] Apart from the possibility of repetitive travel expenses, there is duplicative deployment, preparation and refreshing tasks for all participants and added work that people think to do in the time between sessions. Spreading the hearing out over a period of weeks or months obviously protracts the arbitration. Arbitrators should attempt to schedule consecutive hearing days whenever possible.[189] Arbitrators should also be sure that a realistic number of days are reserved for the hearing. Counsel frequently underestimate, sometimes drastically, the amount of time they will take for examinations and arguments at the hearing. It is better to schedule an ample number of days and cancel those not needed than to schedule too few days and then have to find, on the calendars of busy lawyers and arbitrators, additional, mutually available time for completing the hearing.

6. Streamline discovery; supervise pre-hearing activities.

Arbitrators should make clear at the preliminary conference that discovery is ordinarily much more limited in arbitration than in litigation and should work with counsel in finding ways to limit or streamline discovery in a manner appropriate to the circumstances. Arbitrators should actively supervise the pre-hearing process. They should keep a close eye on the progress of discovery and other preparations for the hearing and should promptly resolve any problems that might disrupt the case schedule (usually through a conference call preceded by a jointly-prepared email outlining the nature of the parties' disagreements and each side's position with regard to the dispute, rather than formal written submissions) (see *Protocol for Outside Counsel*, Action 5).

Comments:

The necessity of containing discovery and multiple ways of doing so are thoroughly discussed in the *Protocol for Arbitration Providers*, Action 3. Such procedures are typically set at the preliminary conference and memorialized in the case management order. However, it is

[188] The AAA COMMERCIAL RULES provide that, "Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs." AAA COMMERCIAL RULES, *supra* note 160, at R. L-4(h).

[189] When a hearing may require multiple weeks, it may be appropriate to have one week day off per week so that counsel and arbitrators can keep up with their other cases.

equally essential for arbitrators to monitor the parties' progress with discovery and other pre-hearing activities and to quickly step in if unexpected developments threaten to disrupt the schedule. Some arbitrators like to schedule periodic conference calls to check the status of pre-hearing activities. Others fear this may encourage counsel to pile up problems for the periodic calls rather than work them out themselves and thus instruct counsel to request a conference call promptly after serious, good faith efforts at resolution have failed. Whichever approach is taken, arbitrators need to "stay on top of the case" from preliminary conference to hearing to make sure that the parties' expectations about the length of the arbitration are met.[190]

An excellent template for arbitrator control of discovery is provided by the *New York State Bar Association Report on Arbitration Discovery* and *JAMS Recommended Arbitration Discovery Protocols* based on the Report.[191]

7. Discourage the filing of unproductive motions; limit motions for summary disposition to those that hold reasonable promise for streamlining or focusing the arbitration process, but act aggressively on those.

Arbitrators should establish procedures to avoid the filing of unproductive and inappropriate motions. They should generally require that, before filing any motion, the moving party demonstrates, either in a short letter or a telephone conference, that the motion is likely to be granted and is likely to produce a net savings in arbitration time and/or costs.

Arbitrators should explain to parties that dispositive motions involving issues of fact are granted less frequently in arbitration than in litigation because there is no appellate court to reinstate the case if they erred in dismissing it. However, there are matters for which a dispositive motion, especially a motion for partial summary disposition, might provide an opportunity for shortening, streamlining or focusing the arbitration process—as, for example, where arbitrators are able to rule on a statute of limitations defense, determine whether a contract permits claims for certain kinds of damages, or construe a key contract provision. Thus, arbitrators should encourage parties to be judicious in filing motions but should be willing to entertain and rule on them in situations where the motion presents a realistic possibility of shortening, streamlining or focusing the arbitration process.

Comments:

After discovery, motions are probably the leading cause of excessive cost and delay in commercial arbitrations. Veteran litigators, acting largely out of habit, frequently file motions

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[190] The ICDR has established a voluntary set of guidelines designed to promote fair and expeditious arbitration proceedings by encouraging voluntary exchanges of the most material documents. *See* ICDR GUIDELINES, *supra* note 140.

[191] NEW YORK STATE BAR ASSOCIATION, REPORT ON ARBITRATION DISCOVERY IN DOMESTIC COMMERCIAL CASES (2009) *available at* http://www.nysba.org/Content/NavigationMenu42/April42009HouseofDelegatesMeetingAgendaItems/DiscoveryPreceptsReport.pdf; JAMS RECOMMENDED ARBITRATION DISCOVERY PROTOCOLS FOR DOMESTIC, COMMERCIAL CASES (2010) *available at* http://www.jamsadr.com/arbitration-discovery-protocols/.

for summary disposition and other relief, which impose substantial burdens of briefing and argument on all counsel and intensive factual and legal review by arbitrators. While arbitrators certainly have the authority to grant such motions, the absence of appellate review typically and properly makes them quite cautious about doing so, especially when the other side has had little or no discovery. On the other hand, there are purely legal issues, such as statute of limitations, interpretation of a contract, or identifying the required elements of a cause of action, which arbitrators can and should undertake to decide early in a case, particularly when a decision in favor of the movants could substantially reduce transaction time and cost for both sides. Arbitrators need to educate counsel on which sorts of motions are likely to be productive in arbitration and which are not and then establish procedures for processing the former quickly and efficiently.[192]

8. Be readily available to counsel.

Arbitrators should recognize that their acceptance of an arbitral appointment carries with it an obligation to be reasonably available to the parties to resolve procedural, process or scheduling disputes that could delay the timely resolution of the case. Thus, they should be willing on fairly short notice (generally not more than two or three business days) to hold a conference call with the parties in order to resolve such matters.

In litigation, parties sometimes wait months to present an issue to a judge or to receive the judge's decision; often the case is at a near standstill until the issue is resolved. Arbitration parties can escape these long delays, but only if arbitrators are prepared to hear their arguments promptly and issue prompt decisions. Arbitrators who are committed to speed and economy in commercial arbitration must encourage counsel to consult them quickly when obstacles to schedule compliance arise, must be willing to convene a conference call within a few days of such a contact, and must be able to rule either at the end of the call or very shortly thereafter.

9. Conduct fair but expeditious hearings.

Arbitrators should conduct hearings in a manner that is both fair and expeditious as described in detail in Chapter 9 of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration*.

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[192] For example, arbitrators may provide in their case management order that (1) prior to filing any dispositive motion, the moving party must provide the arbitrator with a letter of not more than five pages explaining why the motion is ripe, likely to be granted, and likely to save time and money in the arbitration; (2) the opposing party may have five days to respond with a five page letter; and (3) the arbitrator will promptly decide whether to entertain the motion. If he or she does so, the arbitrator may set an expedited briefing schedule and page limits on the briefs. After receiving the briefs, the arbitrator may deny the motion without argument or schedule a prompt oral argument (perhaps by phone) and then rule. *See generally* CCA GUIDE TO BEST PRACTICES, *supra* note 84.

Comments:

Every day of a hearing, in which one or more lawyers, paralegals, client representatives and witnesses are in attendance, having prepared hours for that day's events, typically costs a client many thousands of dollars. While it is certainly important that the proceedings be fair and contribute to a sound result, it is also important that the proceedings be efficient and respectful of the parties' time and money. Conducting a fair but efficient hearing is almost entirely in the hands of the arbitrators and is the best hallmark of a truly accomplished commercial arbitrator. Chapter 9 of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration* provides 45 pages of guidance on how to accomplish that goal and should be reviewed in detail. Major steps toward an efficient arbitration hearing include the following:

- Make clear to counsel that, unless formal rules of evidence apply (which is rare in arbitration), virtually all non-privileged evidence offered by any party will be received and traditional objections (hearsay, foundation, etc.) will not be entertained. Urge counsel to focus on the probativeness of evidence, not its admissibility.
- Determine what order of proof is most appropriate for the particular case, including sequencing the hearing in progressive phases, taking both sides' witnesses issue by issue, or ruling on threshold issues before receiving evidence on other issues.
- Encourage the parties to submit a joint collection of core exhibits in chronological order with key portions highlighted.
- Establish an expedited procedure for receipt of other exhibits. For example, require all parties to submit their tabbed, index exhibits in advance of the hearing and advise counsel that all such exhibits will be received en masse at the start of the hearing save for any that are privileged or genuinely challenged as to authenticity.
- Require that parties show demonstrative exhibits, including power point slides, to each other a reasonable time before they are used in the hearing so that time is not wasted in assessing and possibly challenging their accuracy.
- Discuss with counsel the possible use of written direct testimony for some or all witnesses.
- Establish procedures to narrow and highlight the matters on which opposing experts disagree. For example, require experts to confer before hearing and provide the arbitrators with a list of the points on which they agree, the points on which they disagree, and a summary statement of their respective opinions on the latter.
- Limit the presentation of duplicative or cumulative testimony.
- Make appropriate arrangements for receiving by conference call or otherwise testimony from witnesses in remote locations.
- Consider receiving affidavits or pre-recorded testimony regarding less critical matters.
- Sequester witnesses until they testify unless all parties request otherwise.
- Establish and maintain a realistic daily schedule for the hearing. Start hearings on time and don't allow excessive recesses and lunch breaks.

- Encourage the parties to employ a "chess clock" that limits the total number of ours available to counsel for examination and argumentation.
- At the close of each hearing day (NOT the beginning), discuss with counsel any administrative matters that need attention and monitor their progress against the projected hearing schedule. If needed to meet the scheduled completion date, consider starting hearings earlier, ending them later, or having one or more weekend sessions.
- Don't hesitate to tell counsel when a point has been understood and they may move on, or when a point was not understood and requires clarification.
- Make sure, well prior to the hearing, that counsel have worked out all logistical arrangements concerning transcripts, shared use of power point or other equipment, etc.
- Freely take witnesses out of turn when necessary to accommodate scheduling conflicts.
- Prohibit parties from running out of witnesses on any given day. "Call your next witness" is a powerful tool for keeping a hearing moving.[193]

Through these and similar techniques practiced by experienced arbitrators, commercial arbitration hearings can be conducted both fairly and efficiently.

10. Issue timely and careful awards.

Arbitrators should issue carefully crafted awards that meet the parties' needs in terms of format, level of detail, and timing, and that are unlikely to lead to additional cost and delay due to vacatur and further proceedings. See Chapter 11 of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration.*

Comments:

Arbitration award are of multiple types (e.g., interim awards, partial final awards, and final awards) and multiple forms (e.g., bare awards, reasoned awards, awards with findings of fact and conclusions of law). There are pros and cons to each form and type. *See generally* Chapter 11 of *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration*.[194] Arbitrators should explain these considerations to the parties and ascertain what sort of award they want. Arbitrators should then exercise maximum care and judgment in crafting such an award and issuing it within any applicable time limit. Vacatur proceedings can add substantially to the cost and length of an arbitration; arbitrators thus have a duty to the parties to render awards that are as "vacatur-proof" as possible.

[193] *Id.* at Ch. 9.

[194] *Id.* at Ch. 11.

The Code of Ethics for Arbitrators in Commercial Disputes

Effective March 1, 2004

The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association® and a special committee of the American Bar Association. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA®.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the **Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.**

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called "arbitrators," although in some types of proceeding they might be called "umpires," "referees," "neutrals," or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. 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. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a "party-appointed arbitrator") and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators including any party-appointed arbitrators to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

CANON I: An arbitrator should uphold the integrity and fairness of the arbitration process.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

(1) that he or she can serve impartially;

(2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;

(3) that he or she is competent to serve; and

(4) 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.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II: An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality.

A. 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.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.

E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

(1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or

(2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

(1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or

(2) Withdraw.

CANON III: An arbitrator should avoid impropriety or the appearance of impropriety in communicating with parties.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

(1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:

(a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and

(b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.

(2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;

(3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;

(4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;

(5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or

(6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

CANON IV: An arbitrator should conduct the proceedings fairly and diligently.

A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.

C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.

E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.

F. Although 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. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to Paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude *ex parte* requests for interim relief.

CANON V: An arbitrator should make decisions in a just, independent and deliberate manner.

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI: An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. 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 the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII: An arbitrator should adhere to standards of integrity and fairness when making arrangements for compensation and reimbursement of expenses.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:

(1) Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established;

(2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and

(3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

CANON VIII: An arbitrator may engage in advertising or promotion of arbitral services which is truthful and accurate.

A. Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX: Arbitrators appointed by one party have a duty to determine and disclose their status and to comply with this code, except as exempted by Canon X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:

(1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;

(2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and

(3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

CANON X: Exemptions for arbitrators appointed by one party who are not subject to rules of neutrality.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. *Obligations Under Canon I*

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and

(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. *Obligations Under Canon II*

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and

(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. *Obligations Under Canon III*

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

(1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;

(2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3);

(3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;

(4) Canon X arbitrators may not at any time during the arbitration:

(a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;

(b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or

(c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

(5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;

(6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and

(7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. *Obligations Under Canon IV*

Canon X arbitrators should observe all of the obligations of Canon IV.

E. *Obligations Under Canon V*

Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. *Obligations Under Canon VI*

Canon X arbitrators should observe all of the obligations of Canon VI.

G. *Obligations Under Canon VII*

Canon X arbitrators should observe all of the obligations of Canon VII.

H. *Obligations Under Canon VIII*

Canon X arbitrators should observe all of the obligations of Canon VIII.

I. *Obligations Under Canon IX*

The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.

I. DEFINITIONS

This section is intended to define some of the general terms that are applicable to disclosure obligations and is not intended to be a comprehensive listing of all terms impacting your disclosure obligations. These definitions were taken from Standard 2 of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (amended, effective July 1, 2014) . The proposed arbitrator is responsible for consulting the full text of these standards for any amendments or changes.

Standard 2. Definitions

As used in these standards:

(a) Arbitrator and neutral arbitrator

(1) "Arbitrator" and "neutral arbitrator" mean any arbitrator who is subject to these standards and who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them; or

(C) By a dispute resolution provider organization, under an agreement of the parties.

(2) Where the context includes events or acts occurring before an appointment is final, "arbitrator" and "neutral arbitrator" include a person who has been served with notice of a proposed nomination or appointment. For purposes of these standards, "proposed nomination" does not include nomination of persons by a court under Code of Civil Procedure section 1281.6 to be considered for possible selection as an arbitrator by the parties or appointment as an arbitrator by the court.

(Subd (a) amended effective July 1, 2014.)

(f) Dispute Resolution Neutral means a temporary judge appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure §§638 or 639, an arbitrator, a neutral evaluator, a special master, a mediator, a settlement officer, or a settlement facilitator.

(g) Dispute Resolution Provider Organization and Provider Organization mean any non-governmental entity that, or individual who, coordinates, administers, or provides the services of two or more dispute resolution neutrals. Provider organization does not include a court.

(i) Financial Interest means a financial interest within the meaning of Code of Civil Procedure §170.5

(l) Lawyer in the arbitration means the lawyer hired to represent a party in arbitration.

(m) Lawyer for a party means the lawyer hired to represent a party in the arbitration and any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

(n) Member of the arbitrator's immediate family means the arbitrator's spouse or domestic partner [as defined in Family Code §297] and any minor child living in the arbitrator's household.

(o) Member of the arbitrator's extended family means the parents, grandparents, great grandparents, children, grandchildren, great grandchildren, siblings, uncles, aunts, nephews and nieces of the arbitrator or the arbitrator's spouse or domestic partner [as defined in Family Code §297] or the spouse or domestic partner of such person.

(Subd (o) amended effective July 1, 2014.)

(p) Party

(1) Party means a party to the arbitration agreement:

(A) Who seeks to arbitrate a controversy pursuant to the agreement;

(B) Against whom such arbitration is sought; or

(C) Who is made a party to such arbitration by order of a court or the arbitrator upon such party's application, upon the application of any other party to the arbitration, or upon the arbitrator's own determination;

(2) Party includes the representative of a party.

(q) Party-arbitrator means an arbitrator selected unilaterally by a party.

(s) Significant personal relationship includes a close personal friendship.

Standard 2 amended effective July 1, 2014

II. GENERAL PROVISIONS APPLICABLE TO DISCLOSURE OBLIGATIONS

This section is intended to direct your attention to some general provisions that are applicable to disclosure obligations and is not intended to be a comprehensive listing of all provisions impacting your disclosure obligations. References to Standards are to the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (amended, effective July 1, 2014).

Standard 7. Disclosure

(b) General Provisions

For purposes of this standard:

(1) *Collective bargaining cases excluded*

The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.

(3) *Names of Parties in cases*

When making disclosures about other pending or prior cases, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity

(Subd (b) amended effective July 1, 2014.)

(c) Time and manner of Disclosure.

(1) *Initial Disclosure*

Within 10 calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing all matters listed in subdivisions (d) and (e) [of standard 7] of which the arbitrator is then aware

(2) *Supplemental Disclosure*

If an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (d) or (e) [of standard 7], the arbitrator must disclose that matter to the parties in writing within 10 calendar days after the arbitrator becomes aware of the matters.

(f) Continuing Duty

An arbitrator's duty to disclose the matters described in subdivisions (d) and (e) [of standard 7] is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding.

Standard 7 amended effective July 1, 2014.

Standard 9. Arbitrators' duty to inform themselves about matters to be disclosed

(a) General duty to inform him or herself

A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or

herself of matters that must be disclosed under standards 7 and 8.

(b) Obligation regarding extended family

An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships or other matters involving his or her extended family and former spouse that are required to be disclosed under standard 7 by:

(1) Seeking information about these relationships and matters from the members of his or her immediate family and any members of his or extended family living in his or her household; and

(2) Declaring in writing that he or she has made the inquiry in (1).

(c) Obligation regarding relationships with associates of lawyer in arbitration

An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships with any lawyer associated in the private practice of law with the lawyer in the arbitration required to be disclosed under standard 7 by:

(1) Informing the lawyer in the arbitration, in writing, of all such relationships within the arbitrator's knowledge and asking the lawyer if the lawyer is aware of any other such relationships;

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the lawyer in arbitration.

(e) Obligation regarding relationships with provider organization

An arbitrator can fulfill his or her obligation under this standard to inform himself or herself of the information that is required to be disclosed under standard 8 by:

(1) Asking the dispute resolution service provider for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

Standard 12. Duties and limitations regarding future professional relationships or employment

(a) Offers as lawyer, expert witness, or consultant

From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration.

(b) Offers for employment or professional relationships

(1) In addition to the disclosures required by standards 7 and 8, within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing if, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in another case.

(2) If the arbitrator discloses that he or she will entertain such offers of employment or new professional relationships while the arbitration is pending:

(A) In consumer arbitrations, the disclosure must also state that the arbitrator will inform the parties as required under (d) if he or she subsequently receives an offer while that arbitration is pending.

(B) In all other arbitrations, the disclosure must also state that the arbitrator will not inform the parties if he or she subsequently receives an offer while that arbitration is pending.

(3) A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b).

(Subd (b) amended effective July1, 2014.)

(c) Acceptance of offers under (b) prohibited unless intent disclosed

If an arbitrator fails to make the disclosure required by subdivision (b) of this standard, from the time of appointment until the conclusion of the arbitration the arbitrator must not entertain or accept any such offers of employment or new professional relationships, including offers to serve as a dispute resolution neutral.

(Subd (c) amended effective July 1, 2014.)

(d) Required notice of offers under (b)

If, in the disclosure made under subdivision (b), the arbitrator states that he or she will entertain offers of employment or new professional relationships covered by (b), the arbitrator may entertain such offers. However, in consumer arbitrations, from the time of appointment until the conclusion of the arbitration, the arbitrator must inform all parties to the current arbitration of any such offer and whether it was accepted as provided in this subdivision.

(1) The arbitrator in a consumer arbitration must notify the parties in writing of any such offer within five days of receiving the offer and, if the arbitrator accepts the offer, must notify the parties in writing within five days of that acceptance. The arbitrator's notice must identify the party or attorney who made the offer and provide a general description of the employment or new professional relationship that was offered including, if the offer is to serve as a dispute resolution neutral, whether the offer is to serve in a single case or multiple cases.

(2) If the arbitrator fails to inform the parties of an offer or an acceptance as required under (1), that constitutes a failure to comply with the arbitrator's obligation to make a disclosure required under these ethics standards.

(3) If an arbitrator has informed the parties in a pending arbitration about an offer required under (1):

(A) Receiving or accepting that offer does not, by itself, constitute corruption in or misconduct by the arbitrator;

(B) The arbitrator is not also required to disclose that offer or its acceptance under standard 7; and

(C) The arbitrator is not subject to disqualification under standard 10(a)(2), (3), or (5) solely on the basis of that offer or the arbitrator's acceptance of that offer.

(4) An arbitrator is not required to inform the parties in a pending arbitration about an offer under this subdivision if:

(A) He or she reasonably believes that the pending arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration;

(B) The offer is to serve as an arbitrator in an arbitration conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements; or

(C) The offer is for uncompensated service as a dispute resolution neutral.

(Subd (d) adopted effective July 1, 2014)

(e) Relationships and use of confidential information related to the arbitrated case

An arbitrator must not at any time:

(1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, expert witness, or a consultant relating to the case arbitrated; or

(2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

(Subd (e) relettered effective July 1, 2014; adopted as subd (d).)

III. DISCLOSURES COMMON TO ALL ARBITRATORS

1. Are you or a member of your immediate or extended family a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party?

Yes No

2. Are you or a member of your immediate or extended family a party in the arbitration?

Yes No

3. Are you or a member of your immediate or extended family the spouse or domestic partner of a party in the arbitration?

Yes No

4. Are you or your spouse, former spouse, domestic partner, child, or sibling, or your spouse's or domestic partner's parent, a lawyer in the arbitration?

Yes No

5. Are you or your spouse, former spouse, domestic partner, child, or sibling, or your spouse's or domestic partner's parent, the spouse or domestic partner of a lawyer in the arbitration?

Yes No

6. Are you or your spouse, former spouse, domestic partner, child, or sibling, or your spouse's or domestic partner's parent, currently associated in the private practice of law with a lawyer in the arbitration?

Yes No

7. Were you or your spouse or domestic partner associated in the private practice of law with a lawyer in the arbitration within the preceding two years?

Yes No

8. Do you or a member of your immediate family have or have any of you had a significant personal relationship with any party or a lawyer for a party?

Yes No

9. Are, or within the preceding two years were, you or a member of your immediate family an employee of or an expert witness or a consultant for a party in the arbitration?

Yes No

10. Are, or within the preceding two years were, you or a member of your immediate family an employee of or an expert witness or a consultant for a lawyer in the arbitration?

Yes No

11. Are you serving or, within the preceding five years, have you served as a neutral arbitrator in another prior or pending noncollective bargaining case involving a party to the current arbitration or a lawyer for a party; and/or as a party-appointed arbitrator in another prior or pending noncollective bargaining case for either a party to the current

arbitration or a lawyer for a party; and/or as a neutral arbitrator in another prior or pending noncollective bargaining case in which you were selected by a person serving as a party-appointed arbitrator in the current arbitration?

NOTE: If you answered yes to this question and are serving or have served in any of the capacities listed in this question, you must disclose the names of the parties in each prior and pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case, the results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

NOTE: If the total number of cases disclosed in response to this question is greater than five, then you must provide a summary of these cases that states the number of pending cases in which the arbitrator is currently serving in each capacity, the number of prior cases in which the arbitrator previously served in each capacity, the number of prior cases arbitrated to conclusion, and the number of such prior cases in which the party to the current arbitration, the party represented by the lawyer for a party in the current arbitration or the party represented by the party-arbitrator in the current arbitration was the prevailing party.

Yes No

12. Are you serving or have you served as a dispute resolution neutral other than an arbitrator in another pending or prior noncollective bargaining case involving a party or lawyer for a party and you received or expect to receive any form of compensation for serving in this capacity?

NOTE: For purposes of this question, prior case means any case in which you concluded your service as a dispute resolution neutral within two years before the date of your proposed nomination or appointment.

NOTE: If you answered yes to this question and are serving or have served in any of the capacities listed in this question, you must disclose the names of the parties in each prior and pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case; the dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; in each such case in which you rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the amount of the monetary damages awarded, if any, and the names of the parties' attorneys.

NOTE: If the total number of the cases disclosed in response to this question is greater than five you must also provide a summary that states the number of pending cases in which the arbitrator is currently serving in each capacity, the number or prior cases in which the arbitrator served in each capacity, the number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee, and the number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

Yes No

13. Do you have any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral, or are you participating in, or within the last 2 years, have participated in discussions regarding such prospective employment or service with a party?

Yes No

14. Do you have, or have you had any attorney-client relationship with a party or lawyer for a party?

NOTE: Attorney-client relationships include the following:

(1) An officer, a director, or a trustee of a party who is or, within the preceding two years, was your client in your private practice of law or a client of a lawyer with whom you are or were associated in the private practice of law;

(2) In any other proceeding involving the same issues, you gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration.

(3) You served as a lawyer for or as an officer of a public agency which is a party and personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration.

Yes No

15. Do you or a member of your immediate family have or have any of you had any other professional relationship with a party or lawyer for a party in the arbitration that is not specifically covered by other subparts of Standard 7(d) of the Ethics Standards?

Yes No

16. Do you or a member of your immediate family have a financial interest in a party?

Yes No

17. Do you or a member of your immediate family have a financial interest in the subject matter of the arbitration?

Yes No

18. Are you aware of any financial interest that the provider organization has in a party to this arbitration?

Yes No

19. Are you aware of any financial interest that a party to this arbitration or lawyer in the arbitration or a law firm with which a lawyer is currently associated has in the provider organization?

Yes No

20. Do you or a member of your immediate family have an interest that could be substantially affected by the outcome of the arbitration?

Yes No

21. Do you or a member of your immediate or extended family have personal knowledge of disputed evidentiary facts relevant to the arbitration?

NOTE: A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.

Yes No

22. Are you a member in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation?

NOTE: Membership in a religious organization, an official military organization of the United States, or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

Yes No

23. Are you aware of any other matter that might cause a person aware of the facts to reasonably entertain a doubt that you would be able to be impartial?

Yes No

24. Are you aware of any other matter that leads you to believe there is a substantial doubt as to your capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration?

Yes No

25. Are you aware of any other matter that otherwise leads you to believe that your disqualification will further the interests of justice?

Yes No

26. Do you have any permanent or temporary physical impairment that will cause you to be unable to properly perceive the evidence or properly conduct the proceedings?

Yes No

27. Are there any constraints on your availability that will interfere with your ability to commence or complete the arbitration in a timely manner?

Yes No

28. While the instant arbitration is pending, will you entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in another case?

Yes No

NOTE: If yes, and the instant arbitration is not a consumer arbitration, the arbitrator will not inform the parties if he or she subsequently receives an offer while that arbitration is pending.

NOTE: If yes, and the instant arbitration is a consumer arbitration, the arbitrator must notify the parties in writing of any such offer within five days of receiving the offer and, if the arbitrator accepts the offer, must notify the parties in writing within five days of that acceptance. The arbitrator's notice must identify the party or attorney who made the offer and provide a general description of the employment or new professional relationship that was offered including, if the offer is to serve as a dispute resolution neutral, whether the offer is to serve in a single case or multiple cases.

29. Have you been disbarred or had your license to practice a profession or occupation revoked by a professional or occupational disciplinary agency or licensing board whether in California or elsewhere?

NOTE: The disclosure must specify the date of the revocation, what professional or occupational disciplinary

agency or licensing board revoked the license, and the reasons given by that professional or occupational disciplinary agency or licensing board for the revocation.

Yes No

30. Have you resigned your membership in the State Bar or another professional or occupational licensing agency or board, whether in California or elsewhere, while public or private disciplinary charges were pending?

NOTE: The disclosure must specify the date of the resignation, what professional or occupational disciplinary agency or licensing board had charges pending against you at the time of the resignation, and what those charges were.

Yes No

31. Within the preceding 10 years, whether in California or elsewhere, have you had public discipline, other than that covered under Question 29, imposed on you by a professional or occupational disciplinary agency or licensing board?

NOTE: "Public discipline" under this provision means any disciplinary action imposed on the arbitrator that the professional or occupational disciplinary agency or licensing board identifies in its publicly available records or in response to a request for information about the arbitrator from a member of the public.

NOTE: The disclosure must specify the date the discipline was imposed, what professional or occupational disciplinary agency or licensing board imposed the discipline and the reasons given by that professional or occupational disciplinary agency or licensing board for the discipline.

Yes No

Please explain any "yes" answer to any question above and/or make any additional disclosures you believe are appropriate. (Attach additional sheets, if necessary.)

IV. DISCLOSURES IN CONSTRUCTION ARBITRATIONS

Complete the following questions and the declaration only if serving on a binding arbitration of a claim for more than $3,000 pursuant to a contract for construction or improvement of residential property consisting of 1-4 units.

1. Have you, your employer, or the arbitration service had a personal or professional affiliation with either party?

Yes No

2. Have you, your employer, or the arbitration service been selected or designated as an arbitrator by either party in the transaction?

Yes No

I declare under penalty of perjury under the laws of the State of California that my responses to questions 1 and 2 of Section IV are true and correct.

_____ _____

Date Signature of Arbitrator

COMMERCIAL

Commercial

Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes

AMERICAN ARBITRATION ASSOCIATION®

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

Rules Amended and Effective October 1, 2013
Fee Schedule Amended and Effective July 1, 2016

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Table of Contents

Commercial Arbitration Rules and Mediation Procedures

(Including Procedures for Large, Complex Commercial Disputes)

Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA®. To ensure that you have the most current information, see our web site at **www.adr.org.**

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® (AAA), 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, families, communities, and all levels of government. Services are available through AAA headquarters in New York 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 various forms of alternative dispute resolution.

Standard Arbitration Clause

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

> *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.*

Arbitration of existing disputes may be accomplished by use of the following:

> *We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following Controversy: (describe briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.*

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds $75,000, the rules provide that the parties shall mediate their dispute upon the administration of the arbitration or at any time when the arbitration is pending. In mediation, the neutral mediator assists the parties in

reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional filing fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

Although these rules include a mediation procedure that will apply to many cases, parties may still want to incorporate mediation into their contractual dispute settlement process. Parties can do so by inserting the following mediation clause into their contract in conjunction with a standard arbitration provision:

> *If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.*

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission agreement:

> *The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)*

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least $500,000 exclusive of claimed interest, arbitration fees and costs. The key features of these procedures include:

- A highly qualified, trained Roster of Neutrals;
- A mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;
- Broad arbitrator authority to order and control the exchange of information, including depositions;
- A presumption that hearings will proceed on a consecutive or block basis.

Commercial Arbitration Rules

R-1. Agreement of Parties*

(a) 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) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular 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. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds $75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least $500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under $500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.

(e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* *A dispute arising out of an employer promulgated plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures.*

R-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. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Filing Requirements

(a) Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration.

(b) Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract which provides for arbitration.

- **i.** The filing party shall include a copy of the court order.
- **ii.** The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
- **iii.** The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to R-32.

(c) It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

(d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written submission agreement and the administrative filing fee. To the extent that the parties' submission agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.

(e) Information to be included with any arbitration filing includes:

- **i.** the name of each party;
- **ii.** the address for each party, including telephone and fax numbers and e-mail addresses;
- **iii.** if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
- **iv.** a statement setting forth the nature of the claim including the relief sought and the amount involved; and
- **v.** the locale requested if the arbitration agreement does not specify one.

(f) The initiating party may file or submit a dispute to the AAA in the following manner:

- **i.** through AAA WebFile, located at **www.adr.org;** or
- **ii.** by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.

(g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.

(h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.

(i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

R-5. Answers and Counterclaims

(a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(b) A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in Rule R-6. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.

(c) If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.

(d) If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

R-6. Changes of Claim

(a) A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.

(b) Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. 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 or to the arbitrability of any claim or counterclaim.

(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.

R-8. 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 these rules, it shall be decided 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 rules shall be interpreted and applied by the AAA.

R-9. Mediation

In all cases where a claim or counterclaim exceeds $75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of this rule upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

(a) When the parties' arbitration agreement is silent with respect to locale, 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 after appointment, to make a final determination on the locale.

(b) When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.

(c) If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

R-12. 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:

(a) The AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.

(b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar 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. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. 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 lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.

(c) Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-13. Direct Appointment by a Party

(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. 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.

(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-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.

(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 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-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 14 calendar 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.

R-15. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-16. Number of Arbitrators

(a) If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.

(b) Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the R-6 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

R-17. Disclosure

(a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, 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. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-41.

(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) Disclosure of information pursuant to this Section R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. 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.

(b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

(c) 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.

R-19. 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 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-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.

(c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.

(d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-20. Vacancies

(a) If for any reason an arbitrator is unable or unwilling 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.

(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.

R-21. Preliminary Hearing

(a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.

(b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

(a) *Authority of arbitrator.* The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.

(b) *Documents.* The arbitrator may, on application of a party or on the arbitrator's own initiative:

- **i.** require the parties to exchange documents in their possession or custody on which they intend to rely;
- **ii.** require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
- **iii.** require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.

R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation:

(a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;

(b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;

(c) allocating costs of producing documentation, including electronically stored documentation;

(d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and

(e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place 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 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings 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 or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

R-26. Representation

Any party may participate without representation (*pro se*), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. 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 it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

(a) 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 calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.

(b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.

(c) If the transcript or any other recording is 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.

(d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

R-29. Interpreters

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

R-30. 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.

R-31. 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 party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

(a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) 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 of which could dispose of all or part of the case.

(c) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.

(d) The parties may agree to waive oral hearings in any case and may also agree to utilize the Procedures for Resolution of Disputes Through Document Submission, found in Rule E-6.

R-33. Dispositive Motions

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

R-34. Evidence

(a) 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. 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.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

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

R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

(a) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider to be just and reasonable.

(b) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.

(c) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.

(c) 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.

R-38. Emergency Measures of Protection

(a) Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.

(b) 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 or e-mail 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.

(c) Within one business day of receipt of notice as provided in section (b), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on 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.

(d) 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 a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.

(e) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.

(f) 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.

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

(h) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, 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 this rule 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.

(i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

R-39. Closing of Hearing

(a) 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.

(b) If documents or responses are to be filed as provided in Rule R-35, or 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 no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.

(c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

R-40. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties , the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

R-41. 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 in writing shall be deemed to have waived the right to object.

R-42. 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.

R-43. Serving of Notice and Communications

(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), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by 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.

(d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

(e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.

(f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. Majority Decision

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

(b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-45. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

(a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.

(b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-47. Scope of Award

(a) 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.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator(s) may include:

- **i.** interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
- **ii.** an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-48. Award Upon Settlement—Consent Award

(a) 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." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.

(b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

R-49. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-50. Modification of Award

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.

R-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-52. Applications to Court and Exclusion of Liability

(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 a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(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.

(e) Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

R-53. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and

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.

R-55. Neutral Arbitrator's Compensation

(a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.

(b) 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.

(c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-56. Deposits

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

(b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.

(c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

R-57. Remedies for Nonpayment

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.

(a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.

(b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue their claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

(c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.

(d) In the event that the arbitrator grants any request for relief which limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.

(e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

(f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

R-58. Sanctions

(a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.

(b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.

Preliminary Hearing Procedures

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; and
  - **(c)** substantive law govern 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.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in Section R-5.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds $75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-43, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

(a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.

(b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.

(c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-18. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission

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. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

(a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.

(b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.

(c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.

(d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.

(e) Unless the parties have agreed to a form of award other than that set forth in rule R-46, when the parties have agreed to resolve their dispute by this rule, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.

(f) If the parties agree to a form of award other than that described in rule R-46, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.

(g) The award is subject to all other provisions of the Regular Track of these rules which pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

(a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.

(b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-28.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 calendar days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

(a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;

(b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;

(c) to obtain conflicts statements from the parties; and

(d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

(a) 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.

(b) In cases involving the financial hardship of a party or other circumstance, the AAA at its discretion may require that only one arbitrator hear and determine the case, irrespective of the size of the claim involved in the dispute.

(c) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Management of Proceedings

(a) The arbitrator shall take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy and cost-effective resolution of a Large, Complex Commercial Dispute.

(b) As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be scheduled in accordance with sections P-1 and P-2 of these rules.

(c) The parties shall exchange copies of all exhibits they intend to submit at the hearing at least 10 calendar days prior to the hearing unless the arbitrator(s) determines otherwise.

(d) The parties and the arbitrator(s) shall address issues pertaining to the pre-hearing exchange and production of information in accordance with rule R-22 of the AAA Commercial Rules, and the arbitrator's determinations on such issues shall be included within the Scheduling and Procedure Order.

(e) The arbitrator, or any single member of the arbitration tribunal, shall be authorized to resolve any disputes concerning the pre-hearing exchange and production of documents and information by any reasonable means within his discretion, including, without limitation, the issuance of orders set forth in rules R-22 and R-23 of the AAA Commercial Rules.

(f) In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who may possess information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition.

(g) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Administrative Fee Schedules (Standard and Flexible Fees)

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

Commercial 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 or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, 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 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, 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.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the 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. 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-5. 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-6. 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-4.

M-7. 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.

M-8. 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-9. 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-10. 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-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. 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-13. 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.

M-14. 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-15. 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-16. Expenses

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

M-17. Cost of the Mediation

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

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Part IV
Special Proceedings
Chapter 58
DELAWARE RAPID ARBITRATION ACT

§ 5801 Definitions.

For purposes of this chapter only, unless the context requires otherwise:

(1) "Agreement" means an agreement described in § 5803(a) of this title.

(2) "Arbitration" means an arbitration provided for under this chapter.

(3) "Arbitrator" means a person named in an agreement, selected under an agreement, or appointed by the parties to an agreement or the Court of Chancery, to preside over an arbitration and issue a final award. If an arbitration proceeds before more than 1 arbitrator,

a. References in this chapter to an arbitrator shall be deemed to be references to the arbitrators; and

b. Unless otherwise provided in an agreement, references in this chapter to an act of an arbitrator shall be deemed to be references to an act of a majority of the arbitrators.

(4) "Final award" means an award designated as final and issued in an arbitration by an arbitrator.

(5) "Organization" means a civic association, neighborhood alliance, homeowners maintenance corporation, homeowners maintenance association, common interest community (as defined in § 81-103 of Title 25), or other similar entity charged with or assuming the duties of maintaining the public areas, open space, or common facilities within a residential development or community.

(80 Del. Laws, c. 6, § 1.)

§ 5802 Purpose of the chapter.

The purpose of the Delaware Rapid Arbitration Act is to give Delaware business entities a method by which they may resolve business disputes in a prompt, cost-effective, and efficient manner, through voluntary arbitration conducted by expert arbitrators, and to ensure rapid resolution of those business disputes. This chapter is intended to provide an additional option by which sophisticated entities may resolve their business disputes. Therefore, nothing in this chapter is intended to impair the ability of entities to use other arbitral procedures of their own choosing, including procedures that afford lengthier proceedings and allow for more extensive discovery.

(80 Del. Laws, c. 6, § 1.)

§ 5803 Effect of arbitration agreement.

(a) A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciable character of the controversy, so long as:

(1) The agreement is signed by the parties to an arbitration;

(2) At least 1 party to the agreement is a business entity, as that term is defined in § 346 of this title, formed or organized under the laws of this State or having its principal place of business in this State;

(3) No party to the agreement is a consumer, as that term is defined in § 2731 of Title 6, or an organization, as that term is defined in this chapter;

(4) The agreement provides that it shall be governed by or construed under the laws of this State, without regard to principles of conflict of laws, regardless of whether the laws of this State govern the parties' other rights, remedies, liabilities, powers and duties; and

(5) The agreement includes an express reference to the "Delaware Rapid Arbitration Act."

During the pendency of an arbitration, an agreement may be amended to alter the procedures of the arbitration only with the approval of an arbitrator, but the agreement may not be amended so as to alter the time set forth in 5808(b) of this title.

(b) A party to an agreement is deemed to have waived objection and consented to:

(1) The arbitration procedures set forth in this chapter;

(2) The submission exclusively to an arbitrator of issues of substantive and procedural arbitrability;

(3) The exclusive personal and subject matter jurisdiction of an arbitration, the seat of which is this State, regardless of the place of a hearing;

(4) The exclusive personal and subject matter jurisdiction of the courts of the State for the limited purposes set forth in § 5804 of this title; and

(5) Except as otherwise limited by the agreement, an arbitrator's power and authority to:

a. Determine in the first instance the scope of the arbitrator's remedial authority, subject to review solely under § 5809 of this title; and

b. Grant relief, including to award any legal or equitable remedy appropriate in the sole judgment of the arbitrator.

(c) A party to an agreement is deemed to have waived the right to:

(1) Seek to enjoin an arbitration;

(2) Remove any action under this chapter to a federal court;

(3) Appeal or challenge an interim ruling or order of an arbitrator;

(4) Appeal or challenge a final award, except under § 5809 of this title; and

(5) Challenge whether an arbitration has been properly held, except under § 5809 of this title.

(80 Del. Laws, c. 6, § 1.)

§ 5804 Jurisdiction.

(a) *Jurisdiction of the Supreme Court.* — Except as otherwise provided in an agreement, the making of the agreement confers jurisdiction on the Supreme Court of the State to hear only a challenge to a final award under § 5809 of this title. The Supreme Court does not have jurisdiction to hear appeals of:

(1) The appointment of an arbitrator under § 5805 of this title;

(2) The determination of an arbitrator's fees under § 5806(b) of this title;

(3) The issuance or denial of an injunction in aid of arbitration under paragraph (b)(5) of this title; and

(4) The grant or denial of an order enforcing a subpoena issued under § 5807(b) of this title.

A party to any agreement shall be deemed to have waived the right to such appeals. The Supreme Court, in consultation with the Court of Chancery, may publish rules for arbitration proceedings under this chapter and, unless an agreement provides for different rules, may specify that those rules govern arbitration proceedings under this chapter.

(b) *Jurisdiction of the Court of Chancery.* — The making of an agreement confers jurisdiction on the Court of Chancery of the State only to:

(1) Appoint an arbitrator under § 5805 of this title;

(2) Enter judgment under § 5810(b) of this title;

(3) Upon the request of an arbitrator, enforce a subpoena issued under § 5807(b) of this title;

(4) Determine an arbitrator's fees under § 5806(b) of this title; and

(5) Issue, only before an arbitrator accepts appointment as such, an injunction in aid of an arbitration, provided that the injunction may not divest the arbitrator of jurisdiction or authority. Notwithstanding the foregoing, no court has jurisdiction to enjoin an arbitration under this chapter.

The Court of Chancery may promulgate rules to govern proceedings under this chapter.

(c) *Jurisdiction of the Superior Court.* — The making of an agreement confers jurisdiction on the Superior Court of the State only to enter judgment under § 5810(c) of this title.

(80 Del. Laws, c. 6, § 1.)

§ 5805 Appointment of arbitrator by the Court of Chancery.

(a) The Court of Chancery of the State, on petition or on application of a party in an existing case, has exclusive jurisdiction to appoint 1 or more arbitrators upon:

(1) The consent of all parties to an agreement;

(2) The failure or inability of an arbitrator named in or selected under an agreement to serve as an arbitrator;

(3) The failure of an agreement to name an arbitrator or to provide a method for selecting an arbitrator;

(4) The inability of the parties to an agreement to appoint an arbitrator; or

(5) The failure of a procedure set forth in an agreement for selecting an arbitrator.

Following the petition or application, each party shall propose to the Court of Chancery no more than 3 persons that are qualified and willing to serve as an arbitrator.

(b)(1) The Court of Chancery shall, within 30 days of the service of the petition or application, appoint an arbitrator and, in so doing, may take into account:

a. The terms of an agreement;

b. The persons proposed by the parties; and

c. Reports made under § 5806(d) of this title.

(2) An arbitrator appointed by the Court of Chancery may only be:

a. A person named in or selected under an agreement;

b. A person expert in any nonlegal discipline described in an agreement; or

c. A member in good standing of the Bar of the Supreme Court of the State for at least 10 years.

An arbitrator so appointed has all the powers of an arbitrator specifically named in an agreement. Unless otherwise provided in an agreement, the Court of Chancery shall appoint a single arbitrator.

(80 Del. Laws, c. 6, § 1.)

§ 5806 Arbitrator; fees and expenses of arbitration.

(a) A person accepting an appointment as an arbitrator is deemed to have:

(1) Consented to the terms of this chapter; and

(2) Accepted the consequences set forth in subsection (b) of this section for failing to comply with the provisions of § 5808(b) of this title.

An arbitrator is immune from civil liability for or resulting from any act or omission done or made in connection with an arbitration, unless the arbitrator's act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a wilful, wanton disregard of the rights, safety, or property of another.

(b) Unless otherwise provided in an agreement, an arbitrator's fees and expenses, together with other expenses incurred in the conduct of an arbitration, but not including counsel fees of parties to the arbitration, shall be borne as provided in a final award. Notwithstanding the foregoing, an arbitrator that fails to issue a final award in compliance with § 5808(b) of this title is not entitled to full payment of the arbitrator's fees. The arbitrator's fees must be reduced by 25% if the final award is less than 30 days late; the arbitrator's fees must be reduced by 75% if the final award is between 30 and 60 days late; and the arbitrator's fees must be reduced by 100% if the final award is more than 60 days late. Notwithstanding the foregoing sentence, upon petition by an arbitrator, the Court of Chancery may summarily determine, on clear and convincing evidence, that exceptional circumstances exist such that the reductions in the foregoing sentence should be modified or eliminated.

(c) An arbitrator may retain appropriate counsel, in consultation with the parties. The arbitrator's counsel may make rulings on issues of law, to the extent requested to do so by the arbitrator, which shall have the same effect as a ruling by the arbitrator, if the arbitrator so determines. The fees and expenses incurred by the arbitrator's counsel must be included in the arbitrator's expenses described in subsection (b) of this section.

(d) An arbitrator that fails to issue a final award in compliance with § 5808(b) of this title shall, within 90 days of the failure, report that failure to the Register in Chancery, indicating:

(1) The date on which the arbitrator accepted appointment as an arbitrator; and

(2) The date on which the final award was issued.

(80 Del. Laws, c. 6, § 1.)

§ 5807 Hearing; witnesses; prehearing evidence gathering; rulings before final award.

(a) Unless otherwise provided in an agreement, an arbitrator shall appoint a time and place for a hearing or an adjourned hearing, either of which may be held within or without the State and within or without the United States. Notwithstanding the foregoing sentence, the seat of an arbitration is the State of Delaware. Unless otherwise provided in an agreement, a party to an arbitration is entitled to be heard, to present evidence relevant to the arbitration, and to cross-examine witnesses appearing at a hearing. Notwithstanding the foregoing, an arbitrator may make such interim rulings and issue such interim orders as the arbitrator deems necessary to determine what evidence and which witnesses may be presented at the hearing, including to limit the presentation of evidence and witnesses as necessary to satisfy § 5808(b) of this title. An arbitrator may resolve an arbitration on the evidence produced at a hearing notwithstanding the failure of a party duly notified to appear or participate at the hearing.

(b) Unless otherwise provided in an agreement, an arbitrator has the power to administer oaths and may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence. Only if provided in an agreement, an arbitrator has the power to issue subpoenas, and all provisions of law compelling a person under subpoena to testify are applicable. Only if provided in an agreement, an arbitrator may award commissions to permit a deposition to be taken, in the manner and on the terms designated by the arbitrator, of a witness who cannot be subpoenaed.

(c) An arbitrator may make such rulings, including rulings of law, and issue such orders or impose such sanctions as the arbitrator deems proper to resolve an arbitration in a timely, efficient, and orderly manner.

(80 Del. Laws, c. 6, § 1.)

§ 5808 Awards.

(a) A final award must be in writing and signed by an arbitrator, must be provided to each party to an arbitration, and must include a form of judgment for entry under § 5810 of this title. Unless otherwise provided in an agreement, an arbitrator may make any award, whether legal or equitable in nature, deemed appropriate by the arbitrator. Unless otherwise provided in an agreement, an arbitrator may make in a final award rulings on any issue of law that the arbitrator considers relevant to an arbitration.

(b) Subject to subsection (c) of this section, an arbitrator shall issue a final award within the time fixed by an agreement or, if not so fixed, within 120 days of the arbitrator's acceptance of the arbitrator's appointment.

(c) Parties to an arbitration may extend the time for the final award by unanimous consent in writing either before or after the expiration of that time, but the extension may not exceed, whether singly or in the aggregate, 60 days after the expiration of the period set by subsection (b) of this section.

(80 Del. Laws, c. 6, § 1.)

§ 5809 Challenges; court powers to vacate, modify, or correct a final award.

(a) A challenge to a final award may be taken to the Supreme Court of the State in the manner as appeals are taken from orders or judgments in a civil action.

(b) A challenge to a final award must be taken within 15 days of the issuance of the final award. The record on the challenge is as filed by the parties to the challenge in accordance with the Rules of the Supreme Court.

(c) In a challenge to a final award, the Supreme Court of the State may only vacate, modify, or correct the final award in conformity with the Federal Arbitration Act [9 U.S.C. § 1 et seq.]. The Supreme Court shall have the authority to order confirmation of a final award, which confirmation shall be deemed to be confirmation under § 5810(a) of this title.

(d) Notwithstanding any other provision of this section, an agreement may provide for:

(1) No appellate review of a final award; or

(2) Appellate review of a final award by 1 or more arbitrators, in which case appellate review shall proceed as provided in the agreement. An appellate arbitrator may be appointed by the Court of Chancery of the State under § 5805 of this title. An appellate arbitrator shall have authority to order confirmation of a final award, which confirmation shall be deemed to be confirmation under § 5810(a) of this title.

(80 Del. Laws, c. 6, § 1.)

§ 5810 Confirmation of a final award; judgment on final award.

(a) Unless a challenge is taken under § 5809 of this title or unless an agreement provides for appellate review by 1 or more arbitrators, a final award, without further action by the Court of Chancery of the State, is deemed to have been confirmed by the Court of Chancery on the fifth business day following the period for challenge under § 5809(b) of this title. If an agreement provides for no appellate review of a final award, the final award is deemed to have been so confirmed on the fifth business day following its issuance.

(b) Except if a final award is solely for money damages, upon application to the Court of Chancery of the State by a party to an arbitration in which a final award has been confirmed under subsection (a) of this section, the Court of Chancery shall promptly enter a final judgment in conformity with that final award. A final judgment, so entered, has the same effect as if rendered in an action by the Court of Chancery.

(c) If a final award is solely for money damages, upon application to the Superior Court of the State by a party to an arbitration in which a final award has been confirmed under subsection (a) of this section, the prothonotary of the Superior Court shall promptly enter a judgment on the judgment docket in conformity with that final award. The prothonotary of the Superior Court shall enter in the judgment docket the names of the parties, the amount of the final award, the time from which interest, if any, runs, and the amount of the costs, with the true date of the filing and entry. A final judgment, so entered, has the same force and effect as if rendered in an action at law, and, from that date, becomes and is a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of the Superior Court.

(80 Del. Laws, c. 6, § 1.)

§ 5811 Application of chapter.

It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of agreements.

(80 Del. Laws, c. 6, § 1.)

§ 5812 Short title.

This chapter may be cited as the "Delaware Rapid Arbitration Act."

(80 Del. Laws, c. 6, § 1.)

Part IV
Special Proceedings
Chapter 57
UNIFORM ARBITRATION ACT

§ 5701 Effect of arbitration agreement.

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciable character of the controversy, and confers jurisdiction on the Chancery Court of the State to enforce it and to enter judgment on an award. In determining any matter arising under this chapter, the Court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, except as otherwise provided in § 5725 of this title.

(10 Del. C. 1953, § 5701; 58 Del. Laws, c. 382, § 2.)

§ 5702 Jurisdiction; applications; venue; statutes of limitations.

(a) *Jurisdiction of the Court; applications to the Court* — The term "Court" means the Court of Chancery of this State, except where otherwise specifically provided. The making of an agreement described in § 5701 of this title specifically referencing the Delaware Uniform Arbitration Act [§ 5701 et seq. of this title] and the parties' desire to have it apply to their agreement confers jurisdiction on the Court to enforce the agreement under this chapter and to enter judgment on an award thereunder, except as provided in § 5718 of this title. Action shall be commenced by an initial complaint and shall be heard in the manner and upon the notice provided by law or rule of court on any civil action. Notice of an initial complaint shall be served in the manner provided by law for the service of summons in an action.

(b) *Venue* — An initial complaint shall be made to the Court with the Register in Chancery in and for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the complaint shall be filed with the Register in Chancery in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to the Register in and for any county. All subsequent pleadings or applications for an order made under this chapter shall be filed in the Court hearing the initial complaint unless the Court otherwise directs.

(c) *Court of Chancery jurisdiction over arbitration-related disputes in cases not governed by the Delaware Uniform Arbitration Act.* — Unless an arbitration agreement complies with the standard set forth in subsection (a) of this section for the applicability of the Delaware Uniform Arbitration Act, any application to the Court of Chancery to enjoin or stay an arbitration, obtain an order requiring arbitration, or to vacate or enforce an arbitrator's award shall be decided by the Court of Chancery in conformity with the Federal Arbitration Act [9 U.S.C. § 1 et seq.], and such general principles of law and equity as are not inconsistent with that Act. In such cases, the other provisions of this Delaware Uniform Arbitration Act are without standing and cases shall be adjudicated in accordance with the Court of Chancery's Rules of Procedure.

(d) *Jurisdiction of the Court of Common Pleas.* — Notwithstanding anything to the contrary in this Chapter 57 of this title, the term "Court" in this chapter shall refer to the Court of Common Pleas with respect to all actions arising from an arbitration agreement in or relating to a contract to provide consumer credit, and the making of such an agreement to arbitrate issues arising from the extension of consumer credit shall confer jurisdiction on the Court of Common Pleas, and not the Court of Chancery, to enforce the agreement and to enter judgment on an award. Any action brought under this Chapter 57 of this title relating to an agreement to arbitrate issues arising from the extension of consumer credit filed in the Court of Chancery shall not therefore be dismissed, but shall be transferred to the Court of Common Pleas for resolution there as though filed originally in that Court.

(10 Del. C. 1953, § 5702; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 34, § 1; 77 Del. Laws, c. 8, §§ 2, 3.)

§ 5703 Proceedings to compel or enjoin arbitration; notice of intention to arbitrate.

(a) *Proceeding to compel arbitration* — A party aggrieved by the failure of another to arbitrate may file a complaint for an order compelling arbitration. Where there is no substantial question whether a valid agreement to arbitrate in this State was made or complied with the Court shall order the parties to proceed with arbitration. Where any such question is raised it shall be tried forthwith in said Court. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in the Court of Chancery in the State the application shall be made therein. If the application is granted, the order shall operate to stay the pending or any subsequent action, or so much of it as is referable to arbitration. Any action or proceeding in any other court of the State, involving an issue subject to arbitration, shall be stayed if an order for arbitration or a complaint or an application therefor has been made in the Court of Chancery under this chapter or, if the issue is severable, the stay may be with respect thereto only.

(b) *Application to enjoin arbitration* — Subject to subsection (c) of this section, a party who has not participated in the arbitration and who has not been made or served with an application to compel arbitration may file its complaint with the Court seeking to enjoin arbitration on the ground that a valid agreement was not made or has not been complied with.

(c) *Notice of intention to arbitrate* — A party must serve upon another party a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such

party is an association or corporation, and stating that unless the party served applies to enjoin the arbitration within 20 days after such service such party shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with. Such notice shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. A complaint seeking to enjoin arbitration must be made by the party served within 20 days after service of the notice or the party shall be so precluded. Notice of the filing of such complaint shall be served in the same manner as a summons or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5703; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 8, §§ 4-6.)

§ 5704 Appointment of arbitrators by Court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and the arbitrator's successor has not been duly appointed, the Court on complaint or on application in an existing case of a party shall appoint 1 or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

(10 Del. C. 1953, § 5704; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5705 Majority action by arbitrators.

The powers of the arbitrators shall be exercised by a majority unless otherwise provided by the agreement.

(10 Del. C. 1953, § 5705; 58 Del. Laws, c. 382, § 2.)

§ 5706 Hearing.

Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail, return receipt requested, not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Court, on complaint or on application in an existing action, may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(10 Del. C. 1953, § 5706; 58 Del. Laws, c. 382, § 2.)

§ 5707 Representation by attorney.

A party has the right to be represented by an attorney, and may claim such right at any time at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. If a party is represented by an attorney, papers to be served on the party shall be served upon the party's attorney.

(10 Del. C. 1953, § 5707; 58 Del. Laws, c. 382, § 2 ; 70 Del. Laws, c. 186, § 1.)

§ 5708 Witnesses; subpoenas; depositions.

(a) The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths. An arbitrator and any attorney of record in any arbitration proceeding shall have the power to issue subpoenas in his or her own name. Subpoenas so issued shall be served by any sheriff, deputy sheriff, constable or other person, in the manner provided by law for the service and enforcement of subpoenas in a civil action and in accordance with the provisions of Chapter 21 of this title.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be in accordance with § 8903 of this title.

(10 Del. C. 1953, § 5708; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5709 Award generally.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on complaint or application of a party in an existing case. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of such objection prior to the delivery of the award. The arbitrators shall deliver a copy of the award to each party in the manner provided in the agreement, or if no provision is so made, personally or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5709; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5710 Award by confession.

(a) *When available* — An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) *Time of award* — The award shall be made at any time within 3 months after the statement is verified and has been served upon the arbitrators or the agency or person or persons named by the parties to designate the arbitrators. Such service shall be made personally or by registered or certified mail, return receipt requested.

(c) *Persons or agency making award* — The award may be made and entered on the judgment roll by the arbitrators or by the agency or person or persons named by the parties to designate the arbitrators.

(10 Del. C. 1953, § 5710; 58 Del. Laws, c. 382, § 2.)

§ 5711 Modification of award by arbitrators.

On written application of a party to the arbitrators within 20 days after delivery of the award to the applicant, or, if an application to the Court is pending under § 5713, 5714 or 5715 of this title, on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in § 5715(a)(1) and (3) of this title, or for the purpose of clarifying the award. Written notice of such application to the arbitrators shall be given forthwith to the opposing party, delivered personally or by registered or certified mail, return receipt requested, stating that the party must serve his or her objections thereto, if any, within 10 days from the date of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within 30 days after either written objection to modification has been served on them or the time for serving such objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration. The award so modified or corrected by the arbitrators is subject to the provisions of §§ 5713, 5714 and 5715 of this title.

(10 Del. C. 1953, § 5711; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5712 Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. The Court, on complaint or on application in an existing case, may reduce or disallow any fee or expense which it finds excessive, or may allocate it as justice requires.

(10 Del. C. 1953, § 5712; 58 Del. Laws, c. 382, § 2.)

§ 5713 Confirmation of an award.

The Court shall confirm an award upon complaint or application of a party in an existing case made within 1 year after its delivery to the party, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in §§ 5714 and 5715 of this title.

(10 Del. C. 1953, § 5713; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5714 Vacating an award.

(a) Upon complaint or application of a party in an existing case, the Court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral except where the award was by confession, or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 5706 of this title, or failed to follow the procedures set forth in this chapter, so as to prejudice substantially the rights of a party, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection; or

(5) There was no valid arbitration agreement, or the agreement to arbitrate had not been complied with, or the arbitrated claim was barred by limitation and the party applying to vacate the award did not participate in the arbitration hearing without raising the objection;

but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in paragraph (a)(5) of this section, the Court may order a rehearing and determination of all or any of the issues, before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with § 5704 of this title, or, if the award is vacated on grounds set forth in paragraphs (a)(3) and (4) of this section, the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 5704 of this title. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

(10 Del. C. 1953, § 5714; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 7.)

§ 5715 Modification or correction of award by Court.

(a) Upon complaint or on application in an existing case made within 90 days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or,

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(10 Del. C. 1953, § 5715; 58 Del. Laws, c. 382, § 2.)

§ 5716 Judgment or decree on award.

Upon the granting of an order confirming, modifying or correcting an award, except in cases where the award is for money damages, a final judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court.

(10 Del. C. 1953, § 5716; 58 Del. Laws, c. 382, § 2.)

§ 5717 Judgment roll; docketing with Register in Chancery.

(a) On entry of judgment or decree in cases other than an award for money damages, the Register shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the final judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

(10 Del. C. 1953, § 5717; 58 Del. Laws, c. 382, § 2.)

§ 5718 Transfer of money damage award to Superior Court; lien on real estate.

(a) Upon the granting of an order confirming, modifying or correcting an award for money damages, a duly certified copy of the award and of the order confirming, modifying or correcting the award shall be filed with the prothonotary of the Superior Court in the county where the arbitration was conducted and the award made. The prothonotary shall enter in his or her judgment docket the names of the parties, the amount of the award, the time from which interest, if any, runs, and the amount of the costs, with the true date of such filing and entry. A confirmed award, so entered, shall constitute a judgment or decree on the docket with the same force and effect as if rendered in an action at law.

(b) Any confirmed award so transferred as authorized by subsection (a) of this section, shall, from that date, become and be a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of that Court.

(10 Del. C. 1953, § 5718; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5719 Appeals.

(a) Appeals may be taken from:

(1) A final order denying a complaint seeking to compel arbitration made under § 5703(a) of this title;
(2) An order granting an application to enjoin arbitration made under § 5703(b) of this title;
(3) A final order confirming or denying confirmation of an award;
(4) A final order modifying or correcting an award;
(5) A final order vacating an award without directing a rehearing; or
(6) A final judgment or decree entered pursuant to the provisions of this chapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

(10 Del. C. 1953, § 5719; 58 Del. Laws, c. 382, § 2.)

§ 5720 Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(10 Del. C. 1953, § 5720; 58 Del. Laws, c. 382, § 2.)

§ 5721 Short title.

This chapter may be cited as the "Delaware Uniform Arbitration Act."

(10 Del. C. 1953, § 5721; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 8.)

§ 5722 Death or incompetency of a party.

Where a party dies after making a written agreement to submit a controversy to arbitration, the proceedings may be begun or continued upon the application of, or upon notice to, the party's executor or administrator, or, where it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the Court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a judgment or decree has been rendered.

(10 Del. C. 1953, § 5722; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5723 Arbitration of contracts of State and municipalities.

It shall be lawful to include in any contract hereinafter executed by or on behalf of the State, or any department or agency thereof or by or on behalf of any county, municipal corporation, or other division of the State, a provision that any matter in dispute arising under the said contract shall be submitted to arbitration in accordance with this chapter or such sections thereof as may be set forth in such contract, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5723; 58 Del. Laws, c. 382, § 2.)

§ 5724 Application of chapter to state and municipal contracts.

This chapter applies to any written contract to which the State or any agency or subdivision thereof, or any municipal corporation or political division of the State shall be a party, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5724; 58 Del. Laws, c. 382, § 2.)

§ 5725 Exclusion of collective bargaining labor contracts with public and private employers.

Notwithstanding anything contained in this chapter by word or inference to the contrary, this chapter shall not apply to labor contracts with either public or private employers where such contracts have been negotiated by, or the employees covered thereby are represented by, any labor organization or collective bargaining agent or representative.

(10 Del. C. 1953, § 5725; 58 Del. Laws, c. 382, § 2.)

34 A.3d 1064
Supreme Court of Delaware.

DELAWARE TRANSIT CORPORATION, Plaintiff Below, Appellant,
v.
AMALGAMATED TRANSIT UNION LOCAL 842 and Harry Bruckner, Defendants Below, Appellees.

No. 85, 2011.
|
Submitted: Oct. 26, 2011.
|
Decided: Nov. 28, 2011.

Synopsis

Background: Employer brought suit against employee whom employer had terminated and union, seeking order vacating or modifying labor arbitration award that reinstated employee's employment. The Court of Chancery granted summary judgment to union and affirmed award. Employer appealed.

Holdings: As matters of first impression, the Supreme Court, Holland, J., held that:

[1] to demonstrate evident partiality of an arbitrator sufficient to require vacatur of an arbitration award, the record must reflect that the arbitrator failed to disclose a substantial personal or financial relationship with a party, a party's agent, or a party's attorney that a reasonable person would conclude was powerfully suggestive of bias;

[2] fact that arbitrator's wife recently had died from cancer did not establish evident partiality of arbitrator sufficient to require vacatur of arbitration award; and

[3] arbitrators are not disqualified because of their shared life experience with a party or a party's agent, and disclosure of a shared life experience is not mandatory.

Affirmed.

West Headnotes (6)

[1]	**Labor and Employment** Public Policy **Labor and Employment** Fraud **Labor and Employment** Interpretation of Collective Bargaining Agreement

	Court of Chancery will not disturb a labor arbitration award unless (a) the integrity of the arbitration has been compromised by, for example, fraud, procedural irregularity, or a specific command of law; (b) the award does not claim its essence from the CBA; or (c) the award violates a clearly defined public policy. 1 Cases that cite this headnote

[2]	**Alternative Dispute Resolution** Prejudice or partiality and interest in subject matter
	To demonstrate "evident partiality" of an arbitrator sufficient to require vacatur of an arbitration award, the record must reflect that the arbitrator failed to disclose a substantial personal or financial relationship with a party, a party's agent, or a party's attorney that a reasonable person would conclude was powerfully suggestive of bias. 2 Cases that cite this headnote

[3]	**Alternative Dispute Resolution** Competency
	The party seeking the disqualification of an arbitrator bears the burden of establishing the basis for a recusal. Cases that cite this headnote

[4]	**Alternative Dispute Resolution** Prejudice or partiality and interest in subject matter

	To set aside an arbitration award for evident partiality of the arbitrator, the moving party must identify an undisclosed relationship between the arbitrator and a party or the party's agent that is so intimate, personally, socially, professionally, or financially, as to cast serious doubt on the arbitrator's impartiality; in addition, the alleged past or present conflicting personal or financial relationship with the arbitrator must be direct, definite, and capable of demonstration rather than remote, uncertain, or speculative. 2 Cases that cite this headnote

[5]	**Labor and Employment** Appointment and competency of arbitrators
	Fact that arbitrator's wife recently had died from cancer did not establish evident partiality of arbitrator sufficient to require vacatur of arbitration award that reinstated employee who was terminated for repeatedly failing to report on time for scheduled work; although employee testified that his untimeliness was due to inability to find child care after his mother-in-law, who had provided daycare for his children, died of cancer, shared life experience between arbitrator and employee did not give appearance of bias or impartiality so as to make arbitrator's disclosure of life experience mandatory. 1 Cases that cite this headnote

[6]	**Alternative Dispute Resolution** Property ownership and rights
	Arbitrators are not disqualified because of their shared life experience with a party or a party's agent, and disclosure of a shared life experience is not mandatory. Cases that cite this headnote

***1065** Court Below—Court of Chancery of the State of Delaware, C.A. No. 5345.
Upon appeal from the Superior Court. **AFFIRMED.**

Attorneys and Law Firms

Andrew G. Kerber, Esquire, Department of Justice, Wilmington, Delaware, for appellant.

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Before HOLLAND, JACOBS and RIDGELY, Justices.

Opinion

HOLLAND, Justice:

Delaware Transit Corporation ("DTC") filed a complaint with the Court of Chancery of the State of Delaware against the ***1066** Amalgamated Transit Union, Local 842 ("Union") and Harry Bruckner ("Bruckner") in the nature of a declaratory judgment action ("Complaint"), pursuant to Title 10, Chapter 65. The Complaint sought an order vacating or modifying a labor arbitration award ("Award") issued by Arbitrator Alan A. Symonette ("Arbitrator"), pursuant to a collective bargaining agreement ("CBA") between DTC and the Union.[1] The Award reinstated Bruckner, who was terminated by DTC, with back pay less interim earnings.

The Court of Chancery granted the Union's motion for summary judgment. DTC's sole argument in this appeal is that the Arbitrator's decision should be vacated due to the appearance of bias or partiality on the part of the Arbitrator. We have concluded that argument is without merit. Therefore, the judgment of the Court of Chancery must be affirmed.

Facts

The DTC hired Bruckner as a para-transit driver in 2004—a job in which his responsibilities included picking up and transporting people who met DTC criteria. At the time of his hire, Bruckner was married and had four children. His wife is employed as a nurse and works the midnight shift from approximately 11 p.m. through 7 a.m. Bruckner drove a split shift from Monday through Friday, beginning at 7 a.m. to 10 a.m. and then following up at 2 p.m. to 6 p.m.

Given their work schedules, Bruckner or his wife were able to be present for their children for all hours of the day except from approximately 6 a.m. to 8 a.m. Prior to June 2008, Bruckner's mother-in-law provided child care during those two hours, while residing in the couple's home. In June 2008, Bruckner's mother-in-law was undergoing treatments for cancer and was losing her sight. Nevertheless, she continued to provide childcare for the two hours in which both parents were at work.

On June 15, 2008, Bruckner incurred a "miss," which at the time was his fifth miss within a twelve-month period. A miss is defined as an instance in which an employee fails to report on time for the scheduled work day. The CBA permits progressive discipline for individuals who incur a miss during a floating twelve-month period ("Miss Rules"). Pursuant to the CBA, an individual receives progressive penalties over eight steps with the final step being termination from employment. After his fifth miss, DTC placed Bruckner on the two-day list status for the fifth miss in a rolling twelve-month period. Around the same time, Bruckner's mother-in-law became very ill and was suffering from the side effects of chemotherapy treatment. She died on July 6, 2008.

According to testimony by Bruckner at the hearing, the loss of his mother-in-law resulted in further violations of the Miss Rules because he could not secure dependable childcare. On July 28, 2008, Bruckner incurred his sixth miss, and, on August 7, 2008, his seventh miss.

Prior to incurring his eighth miss, Bruckner attempted to take steps to prevent that from happening. He contacted his supervisor, the labor relations specialist, and the executive director. He asked for retroactive leave pursuant to the Family Medical Leave Act, but was not eligible since that Act does not provide coverage for the illness or death of one's mother-in-law. He asked for a leave of absence ***1067** pursuant to Article 20.1 of the CBA, which gave DTC the ability to provide discretionary leave. DTC denied that request, as it was permitted to under the CBA. He asked to have his start time changed to an uncovered paratransit run that fit his childcare needs. DTC, without consulting the Union, denied that request because it unilaterally concluded that such action would constitute a violation of the CBA.

Arbitrator's Award

On November 9, 2009, a hearing was held before the Arbitrator. At the arbitration hearing, the Union and DTC, who were both represented by counsel, stipulated to the issue to be decided by the Arbitrator: "Was the grievant, Mr. Harry Bruckner, terminated for just cause? If not, what shall the remedy be?" On January 5, 2010, the Arbitrator issued an opinion and Award in which he sustained the grievance and ordered Bruckner to be reinstated with back pay less any interim earnings.

In rendering his decision, the Arbitrator relied upon several sections of the CBA. First, he cited Section 13 of the Miss Rules, which outlines progressive discipline for up to eight misses within a floating twelve-month period. Second, he quoted from Section 20, Leaves of Absence, which gives the DTC discretion to provide unpaid leaves of absence to employees who make a written request. Third, he quoted, in part, Section 35, Bid Shifts, which describes the process by which employees may bid on particular runs at DTC ("Bidding Rules"). Although the Arbitrator did not specifically mention Section 10, Discipline, he did rely upon it in finding that DTC did not have "just cause" in terminating Bruckner. Section 10 states, in pertinent part, that "[n]o employee who has successfully completed the probationary period shall be discharged or disciplined without just cause."

The Arbitrator found that DTC's failure to consider the option of allowing Bruckner to switch runs was either arbitrary or constituted disparate treatment:

> In this case, management's failure to consider that option at least to the extent of consulting with the Union to reach an accommodation was at least arbitrary or at most an instance of disparate treatment. It was clear that the grievant was attempting to correct his situation and had come to management for help. Even though the solution may have been a deviation from the language of the contract, given the history between the parties in which waivers have been granted and that this accommodation would not have affected any other employees, management could have at least spoken to the Union to determine whether this is a possibility. It is for this reason that I sustain this grievance.

As a remedy, the Arbitrator directed DTC to return Bruckner to his former position with back pay less any interim earnings. The Arbitrator also directed that Bruckner be placed on the disciplinary step of the Miss Rules that he was on at the time of his termination.

Court of Chancery Ruling

On March 17, 2010, DTC filed the Complaint in the Court of Chancery seeking to vacate the Award to Bruckner. The Union filed a motion for summary judgment, arguing that none of the three grounds for vacating a labor arbitration award applied in this case. Therefore, the Union argued that the Arbitrator's Award should be affirmed summarily.

[1] The standards for judicial intervention in arbitration proceedings are always narrowly drawn.[2] The role of the Court of ***1068** Chancery in conducting post-arbitration judicial review is limited in a labor dispute to three issues:

> Delaware has long had a policy favoring arbitration, and its courts have applied a deferential standard when reviewing labor arbitration awards. [The Court of Chancery] will not disturb a labor arbitration award unless (a) the integrity of the arbitration has been compromised by, for example, fraud, procedural irregularity, or a specific command of law; (b) the award does not claim its essence from the CBA; or (c) the award violates a clearly defined public policy.
>
> Where a grievance is arbitrated under a collective bargaining agreement, courts will not review the merits of the arbitration award other than on the grounds listed above. To do otherwise would give courts the final say on the merits of arbitration awards and undercut benefits of labor arbitration-namely, speed, flexibility, informality and finality.[3]

In opposing the Union's motion for summary judgment, DTC argued that the Award should be vacated on the grounds that the integrity of the arbitration was compromised because the Arbitrator failed to disclose to the parties that his wife had died of cancer a few months before the arbitration hearing. According to DTC, this created the appearance of bias or partiality because Bruckner argued that he failed to arrive at work in a timely fashion after his mother-in-law, who had provided daycare for his children, died of cancer. DTC raised no other issue in opposition to the Union's motion for summary judgment.

In this appeal, DTC does not argue that the Award violates public policy. It also does not argue that the Award "does not claim its essence from the CBA." The only grounds for vacating the Award that DTC raises in its opening brief to this Court is that the integrity of the arbitration was compromised because the Arbitrator's shared life experience gave the appearance of bias or partiality.[4]

Labor Arbitration Rule 17

In support of its sole argument on appeal, DTC relies upon Rule 17 (Disclosure and Challenge Procedure) of the American Arbitration Association Labor Arbitration Rules ("Rule 17"). Rule 17 states, in pertinent part:

> No person shall serve as a neutral arbitrator in any arbitration under these rules in which that person has any financial or personal interest in the result of the arbitration. Any prospective or designated neutral arbitrator shall immediately disclose any circumstance likely to affect impartiality, including any bias or financial or personal interest in the result of the arbitration.[5]

The rule requires that "any circumstance likely to affect impartiality" be disclosed.[6] DTC submits that if an arbitrator has a shared personal life experience that might possibly cause the arbitrator to be sympathetic or empathetic to the position of one of the parties, it must be disclosed and is a basis for disqualification. Thus, DTC contends that the Arbitrator's failure to disclose his wife's death from cancer to ***1069** the parties constituted a violation of Rule 17, and, therefore, requires vacating the Award.

The Court of Chancery concluded that Rule 17 concerns actual financial or personal relationships between the arbitrator and a party, an agent of a party, or an attorney for a party. The ethics rules for arbitrators, written and approved by the American Arbitration Association ("AAA"), the National Academy of Arbitrators, and the Federal Mediation and Conciliation Service, support that conclusion. The AAA requires its arbitrators to abide by the Code of Professional Responsibility for Arbitrators of Labor Management Disputes.[7] Under section 2(B)(1), arbitrators presiding over labor-management disputes are required to disclose (1) "any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding in which the arbitrator is being considered for appointment or has been tentatively designated to serve" and (2) "any pertinent pecuniary interest."[8] Additionally, section 2(B)(3) states that "[a]n arbitrator must not permit personal relationships to affect decision-making."[9]

The Court of Chancery noted that all the cases cited by both parties involved situations where the arbitrator had a personal relationship or financial interest with a party, an agent of a party, or an attorney of a party, and that none of the cited cases involved a situation where the arbitrator's personal life experiences constituted the basis for the alleged bias or partiality. Since the alleged bias in this case did not involve a personal or financial relationship, the Court of Chancery held that it did not compromise the integrity of the arbitration proceeding. The Court of Chancery concluded: "So I do not think that this type of affinity—potential affinity—is the type of thing that taints a proceeding or would require disclosure." DTC challenges that conclusion in this appeal.

Evident Partiality Standard

Commonwealth Coatings Corp. v. Cont'l Cas. Co. is the leading case addressing arbitrator disclosure and is relied upon by DTC in this appeal.[10] *Commonwealth Coatings* involved a dispute between a prime contractor and a subcontractor. The member of the three-person arbitration panel selected as a "neutral" was an engineering consultant. The prime contractor was one of the engineering consultant's regular customers. As the Supreme Court explained, "[a]n arbitration was held, but the facts concerning the close business connections between the third arbitrator and the prime contractor were unknown to [the other party] and were never revealed to it by this arbitrator, by the prime contractor, or by anyone else until after an award had been made."[11] In a plurality decision by Justice Black, the Supreme Court stated:

> [A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards ***1070** that might reasonably be though biased against one litigant and favorable to another.[12]

The plurality, therefore, vacated the award on the ground that the neutral arbitrator demonstrated "evident partiality" in failing to disclose his prior relationship with one of the parties. Justice White's concurring opinion stated that he joined in Justice Black's opinion. However, Justice White's concurring opinion limited Justice Black's statement in the plurality opinion about the "appearance of bias" as follows: "[t]he Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges."[13]

Ever since *Commonwealth Coatings* was decided, it has been generally accepted that an arbitrator's failure to disclose a substantial relationship with a party or a party's attorney justifies vacatur under an "evident partiality" standard.[14] Nevertheless, courts are divided on what constitutes "evident partiality."[15] Some courts follow Justice Black's plurality

opinion in *Commonwealth Coatings,* by adopting a standard whereby a failure to disclose may be grounds for vacatur of an arbitration award if the undisclosed relationship creates an appearance or impression of bias.[16] In other courts, however, this standard is limited in favor of a more narrow reasonableness standard,[17] requiring "more than a mere appearance of bias,"[18] such that an award will be vacated where the undisclosed relationship would lead a reasonable person to conclude that the arbitrator actually lacked impartiality.[19]

Most courts have concluded that evident partiality requires more than an appearance of bias but less than actual bias.[20] ***1071** The evolving standard of judicial review is that a reasonable person would have to conclude that a neutral arbitrator was partial or biased.[21] In *Kaplan v. First Options of Chicago, Inc.,*[22] the Third Circuit Court of Appeals recognized that after *Commonwealth Coatings* the proper standard for considering a claim of arbitrator bias is "evident partiality" and joined the courts that have adopted the reasonable person test. The Third Circuit stated:

> In order to show "evident partiality," "the challenging party must show 'a reasonable person would have to conclude that the arbitrator was partial' to the other party to the arbitration." "Evident partiality" is strong language and requires proof of circumstances "powerfully suggestive of bias."[23]

In *Beebe Med. Ctr., Inc. v. InSight Health Servs. Corp.,*[24] the Court of Chancery also recognized and applied the "evident partiality" standard arising from *Commonwealth Coatings* and adopted the reasonable person test. The Court of Chancery stated:

> In the wake of *Commonwealth Coatings,* it is almost universally accepted that an arbitrator's failure to disclose a *substantial relationship with a party or a party's attorney* justifies vacatur under the evident partiality standard. Judges have spilled many words on the pages of the federal reporters trying to put this standard into simple terms, but most agree that an arbitrator's nondisclosure of a relationship [with a party or the party's attorney] substantial enough to create a reasonable impression of bias will ordinarily dictate vacatur.[25]

In *Beebe,* the Court of Chancery found that the reasonable person test was satisfied where the arbitrator, a lawyer, failed to disclose that one of the corporate parties to an arbitration he heard was represented by a law firm that was simultaneously representing the arbitrator in litigation in a Delaware court.[26]

DTC characterizes the Court of Chancery's opinion in *Beebe* as calling for a strong pro-disclosure policy for arbitrators. DTC argues that this Court should follow the Second Circuit's holding in *Sanko S.S. Co. v. Cook Indus. Inc.*:[27]

> ***1072** To be sure, the broad disclosure called for in *Commonwealth Coatings* does not require that an arbitrator "provide the parties with his complete and unexpurgated business biography."[28] But where dealings "might create an impression of possible bias," they must be disclosed. Indeed, it seems to us that the better practice is that arbitrators should disclose fully all their relationships with the parties, whether these ties be of a direct or indirect nature. Although some unnecessary disclosure may result, if arbitrators err on the side of disclosure, it will not be difficult for courts to identify those undisclosed relationships which are too insubstantial to warrant vacating an award.[29]

The *Commonwealth Coatings* progeny of cases, including *Sanko,* set forth an evident partiality standard that confines post-arbitration judicial review to narrow issues essential to the integrity of the arbitration process. The practical effects of the evident partiality standard are to focus on the disclosure of an arbitrator's past and present personal or financial *relationships* with the parties and their representatives. That standard requires vacatur whenever an arbitrator fails to disclose a substantial relationship with a party, their agent, or their attorney that creates circumstances powerfully suggestive of bias.[30]

[2] We agree that arbitrators should disclose all of their past and present personal or financial relationships with the parties, their agents, and their attorneys. We hold that to demonstrate evident partiality sufficient to require vacatur, however, the record must reflect that an arbitrator failed to disclose a substantial personal or financial relationship with a party, a party's agent, or a party's attorney that a reasonable person would conclude was powerfully suggestive of bias.[31] The question presented in this appeal is whether an undisclosed shared life experience is sufficient to constitute evident partiality and to require vacatur.[32]

DTC acknowledges that under Rule 17 and the applicable ethics rules, the Arbitrator in this case had no duty to disclose before the arbitration hearing commenced because he had no past or present personal or financial relationship with any party, their agent, or their attorney. Arbitrators are under an ongoing obligation, however, to disclose information they acquire that might make them partial. In addition to the rules for mandatory disclosure, the AAA's ethics rules also provide that "[i]f the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator."[33] DTC contends that, when Bruckner's mother-in-law's death from cancer became known during the hearing, the Arbitrator was required ***1073** to disclose his shared life experience with his wife's death from cancer.

In deciding whether an arbitrator's personal life experiences should be disclosed either before acceptance of an appointment

or during the course of arbitration proceedings, the rules for judicial officers' recusal and disqualification are not binding on arbitrators.[34] However, they are didactic. The general rule is that a judge "is not disqualifiable because of his [or her] own life experiences."[35] "[L]ifetime experiences, good or bad, are something all judges bring with them to the bench, and only in unusual circumstances would a judge be required to recuse" because of a shared life experience.[36] "Obviously a judge is not disqualified from presiding at an automobile accident trial merely because he was once himself in an automobile accident. Nor is a judge disqualified from trying a divorce case either because he is himself married or divorced, or from trying a contested adoption case because he has either natural children or adopted children."[37]

[3] [4] The party seeking the disqualification of an arbitrator bears the burden of establishing the basis for a recusal. Other courts have concluded that to set aside an award for evident partiality, the moving party must identify an *undisclosed relationship* between the arbitrator and a party or the party's agent that is "so intimate—personally, socially, professionally or financially—as to cast serious doubt on [the arbitrator's] impartiality."[38] We agree. In addition, the alleged past or present conflicting personal or financial relationship with the arbitrator "must be direct, definite, and capable of demonstration rather than remote, uncertain or speculative."[39]

[5] [6] The alleged bias or partiality which DTC attributes to the Arbitrator in this matter fails to meet the "evident partiality" standard. The mere fact that an arbitrator may share a personal life experience with a party or a party's agent is legally insufficient to constitute a substantial relationship that a reasonable person would conclude is powerfully suggestive of bias. We hold that arbitrators are not disqualified because of their shared life experience with a party or a party's agent and that the disclosure of a shared life experience is not mandatory. In this case, the Arbitrator had no obligation to disclose that his wife had recently died from cancer.

Conclusion

The judgment of the Court of Chancery is affirmed.

All Citations

34 A.3d 1064, 161 Lab.Cas. P 61,210

Footnotes

1	The Delaware Uniform Arbitration Act in Title 10, Chapter 57 does not apply to "labor contracts with either public or private employers where such contracts have been negotiated by, or the employees covered thereby are represented by, any labor organization or collective bargaining agent or representative." Del.Code Ann. tit. 10, § 5725 (West 2006).
2	*Merit Ins. Co. v. Leatherby Ins. Co.,* 714 F.2d 673, 681 (7th Cir.1983); *Blue Tee Corp. v. Koehring Co.,* 754 F.Supp. 26, 30 (S.D.N.Y.1990).
3	*Meades v. Wilmington Hous. Auth.,* 2003 WL 939863, at *4 (Del.Ch. Mar.6, 2003).
4	*Emerald Partners v. Berlin,* 726 A.2d 1215, 1224 (Del.1999) ("Issues not briefed are deemed waived."); *Murphy v. State,* 632 A.2d 1150, 1152 (Del.1993) ("The failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim on appeal.") (footnote omitted).
5	Labor Arbitration Rules of the American Arbitration Association R.17, http://www.adr.org/sp.asp?id=25730# 17 (amended and effective July 1, 2005).
6	*Id.*

7	The Code of Professional Responsibility is published by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service.
8	Code of Professional Responsibility for Arbitrators of Labor–Management Disputes, § 2(B)(1)(2007).
9	*Id.* at § 2(B)(3).
10	*Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145, 146–50, 89 S.Ct. 337, 21 L.Ed.2d 301 (plurality opinion), *reh'g denied,* 393 U.S. 1112, 89 S.Ct. 848, 21 L.Ed.2d 812 (1969).
11	*Id.* at 146.
12	*Id.* at 150.
13	*Id.* (White, J., concurring).
14	*See, e.g., Woods v. Saturn Distrib. Corp.,* 78 F.3d 424, 427 (9th Cir.1996) ("In nondisclosure cases, vacatur is appropriate where the arbitrator's failure to disclose information gives the impression of bias in favor of one party.").
15	Deseriee A. Kennedy, *Predisposed with Integrity: The Elusive Quest for Justice in Tripartite Arbitrations,* 8 Geo. J. Legal Ethics 749, 773–76 (1995).
16	*See, e.g., Olson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 51 F.3d 157, 159 (8th Cir.1995) (noting uncertainty among courts of appeals following the *Commonwealth Coatings* decision).
17	*See, e.g., Gianelli Money Purchase Plan & Trust v. ADM Investor Servs. Inc.,* 146 F.3d 1309, 1312 (11th Cir.1998) (explaining awards may be vacated only when an actual conflict exists or where a failure to disclose offends the reasonable person standard); *Lifecare Int'l, Inc. v. CD Med., Inc.,* 68 F.3d 429, 433 (11th Cir.1995) (stating that the mere appearance of bias is insufficient to vacate an arbitration award); *Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds,* 748 F.2d 79, 83–84 (2d Cir.1984) (adopting a reasonable person standard); *Int'l Produce, Inc. v. A/S Rosshavet,* 638 F.2d 548, 551 (2d Cir.1981) (noting that appearance of bias does not necessarily rise to evident partiality).
18	*Health Svcs. Mgmt. Corp. v. Hughes,* 975 F.2d 1253, 1264 (7th Cir.1992) (noting that arbitrators often have "interests and relationships that overlap with the matter they are considering" and "[t]he mere appearance of bias that might disqualify a judge will not disqualify an arbitrator" (quoting *Florasynth, Inc. v. Pickholz,* 750 F.2d 171, 173 (2d Cir.1984))).
19	*See, e.g., Dawahare v. Spencer,* 210 F.3d 666, 669 (6th Cir.2000); *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.,* 991 F.2d 141, 146 (4th Cir.1993).
20	*See Health Svcs. Mgmt. Corp. v. Hughes,* 975 F.2d at 1264 (holding that relationship between arbitrator and party must be "so intimate—personally, socially, professionally, or financially—as to cast serious doubt on the arbitrator's impartiality" (quoting *Merit Ins. Co. v. Leatherby Ins. Co.,* 714 F.2d 673, 680 (7th Cir.1983))); *Apperson v. Fleet Carrier Corp.,* 879 F.2d 1344, 1358 (6th Cir.1989) (rejecting the exacting standard of "proof of actual bias"); *Sheet Metal Workers Int'l Ass'n Local Union # 420 v. Kinney Air Conditioning Co.,* 756 F.2d 742, 745–46 (9th Cir.1985) (adopting a "reasonable impression of partiality" standard); *Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds,* 748 F.2d at 84 (suggesting that "proof of actual bias" would prove an insurmountable burden for moving party); *Aetna Cas. & Sur. Co. v. Grabbert,* 590 A.2d 88, 96 (R.I.1991) (asserting that evident partiality requires a showing of "less than actual bias.").

21	*See Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.,* 10 F.3d 753, 758 (11th Cir.1993) (stating that arbitral awards can be set aside for conduct that creates "a reasonable appearance of bias"); *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.,* 991 F.2d at 146 (adopting a standard that "a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration") (internal quotation marks omitted); *Sheet Metal Workers Int'l Ass'n Local Union # 420 v. Kinney Air Conditioning Co.,* 756 F.2d at 746 (moving party must establish "reasonable impression of partiality"); *Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds,* 748 F.2d at 84.
22	*Kaplan v. First Options of Chicago, Inc.,* 19 F.3d 1503 (3d Cir.1994).
23	*Id.* at 1523 n. 30 (citation omitted).
24	*Beebe Med. Ctr., Inc. v. InSight Health Servs. Corp.,* 751 A.2d 426 (Del.Ch.1999).
25	*Id.* at 434–35 (emphasis added).
26	*Id.* at 427.
27	*Sanko S.S. Co. v. Cook Indus., Inc.,* 495 F.2d 1260, 1263–64 (2d Cir.1973).
28	*Commonwealth Coatings v. Cont'l Cas. Co.,* 393 U.S. at 151, 89 S.Ct. 337; *Reed & Martin, Inc. v. Westinghouse Elec. Corp.,* 439 F.2d 1268 (2d Cir.1971).
29	*Sanko S.S. Co. v. Cook Indus., Inc.,* 495 F.2d at 1263–64 (emphasis added).
30	*Kaplan v. First Options of Chicago, Inc.,* 19 F.3d at 1523 n. 30; *Beebe Med. Ctr., Inc. v. InSight Health Servs. Corp.,* 751 A.2d at 438–39.
31	*Beebe Med. Ctr., Inc. v. InSight Health Servs. Corp.,* 751 A.2d at 435; *Kaplan v. First Options of Chicago, Inc.,* 19 F.3d at 1523 n. 30.
32	*See* Merrick T. Rossein and Jennifer Hope, *Disclosure and Disqualification Standards for Neutral Arbitrators: How Far to Cast the Net and What is Sufficient to Vacate Award,* 81 St. John's L.Rev. 203, 209–13, 219, 228 (2007).
33	Code of Professional Responsibility for Arbitrators of Labor–Management Disputes, § 2(B)(4).
34	*Commonwealth Coatings v. Cont'l Cas. Co.,* 393 U.S. at 149, 89 S.Ct. 337.
35	*Johnson v. Salem Corp.,* 189 N.J.Super. 50, 458 A.2d 1290, 1295 (App.Div.1983); Richard E. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges (2d ed. 2007).
36	*Bravo Santiago v. Ford Motor Co.,* 206 F.Supp.2d 294, 297 (D.P.R.2002). *See id.* at 298 (holding a judge was not disqualified from presiding over a case involving injuries sustained in an automobile accident merely because, years before, he sued a different car manufacturer for injuries.).
37	*Johnson v. Salem Corp.,* 458 A.2d at 1295.
38	*Merit Ins. Co. v. Leatherby Ins. Co.,* 714 F.2d at 680.

39	*Health Svcs. Mgmt. Corp. v. Hughes,* 975 F.2d at 1264 (quoting *Tamari v. Bache Halsey Stuart Inc.,* 619 F.2d 1196, 1200 (7th Cir.1980)); *see also Ormsbee Dev. Co. v. Grace,* 668 F.2d 1140, 1147 (10th Cir.1982).