



Important Changes to the AAA Construction Industry Mediation and Arbitration Rules

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Introduction

The American Arbitration Association (AAA) is one of the primary providers of alternative dispute resolution, such as mediation and arbitration, in the United States. Many construction contracts call for disputes to be resolved through arbitration using AAA's Construction Industry Arbitration Rules and Mediation Procedures (the AAA Construction Rules). AAA recently made changes to the AAA Construction Rules and these changes apply to all cases filed after July 1, 2015. These changes pertain to AAA's arbitration rules. There were no substantive changes to the mediation procedures.

Changes Effective July 1, 2015

Many of the most recent changes to the AAA Construction Rules are non-substantive cleanup and wording changes. However, there are significant substantive changes that will affect how arbitrations are conducted. The significant substantive changes are as follows:

- the dollar threshold for Fast Track cases has increased from \$75,000 to \$100,000 (R-1);
- a new deadline (prior to the appointment of an arbitrator or within 90 days of the date the AAA determined that all administrative filing requirements were satisfied, whichever is later) and some procedural changes to joinder and consolidation (R-7);
- a default step to mediate all cases over \$100,000, unless there's no contractual requirement to mediate AND one or both parties actively opt out (R-10);
- failure to give notice of a conflict with an arbitrator may result in waiver of the right to object to an arbitrator (R-19);
- changes to the preliminary hearing checklist and preliminary hearing rules (now found in sections P-1 and P-2 of the new rules);

- a more robust rule on production & exchange of documents (R-24(b));
- newly defined enforcement powers of the arbitrator related to document production (protective orders, e-discovery, costs, willful non-compliance with arbitrator's discovery orders, etc.) (R-25);
- the scope of dispositive motions has been expanded to permit any motions that "narrow the issues in a case" (R-34);
- changes to evidence by affidavit/absentee witnesses (requirement that witnesses be available to appear in person & option for appearance of witnesses in alternative locations and/or on alternative dates) (R-36);
- a new rule permitting emergency relief such as injunctions (only applies to arbitration agreements entered after July 1, 2015) (R-39);
- a new rule on sanctions for failure to comply with rules or arbitrator's order (can result in limitation on participation at arbitration or an adverse determination of an issue or issues) (R-60);
- in Fast Track rules, any claims less than \$25,000 (increased from \$10,000) shall be resolved by submission of documents (F-1).

Conclusion

This Alert is not a complete list of all of the changes. If one or more of your contracts call for dispute resolution using AAA Construction Rules or you are interested in using AAA to resolve a dispute, you and/or your counsel should review the AAA Construction Rules carefully. AAA's website contains a brief summary of the changes at <http://info.adr.org/constructionrules/>. You may also print out the complete AAA Construction Rules from AAA's website.

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