



American Arbitration Association® Administrative Review Council

Review Standards

This document is intended to outline the Review Standards utilized by the AAA's Administrative Review Council (ARC) in making certain administrative decisions arising in the AAA's large, complex domestic caseload. The decisions made by the ARC resolve administrative issues including objections to arbitrators, locale determinations, and whether the filing requirements contained in the AAA Rules have been met. In conjunction with the ARC Guidelines and these ARC Review Standards, the ARC reviews and resolves issues in a time and cost effective manner after careful consideration of the parties' contentions, while upholding the integrity of the arbitration process and reinforcing the parties' confidence in the process.

ARBITRATOR OBJECTION AND RESPONSE STANDARDS

The AAA Rules allow for any party to object to an appointed arbitrator (See Commercial Arbitration Rule R-18, Construction Industry Arbitration Rule R-20, Employment Arbitration Rule 16). This guide will assist parties in understanding the standards and process to be used in making an arbitrator objection.

Grounds for Disqualification

The AAA Rules require that any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith. Under the AAA's various rules, an arbitrator may be subject to disqualification for:

1. Partiality or lack of independence
2. Inability or refusal to perform his or her duties with diligence and in good faith, and
3. Any grounds for disqualification provided by applicable law.

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 in the rules, and shall inform the parties of its decision, which decision shall be conclusive.



Standard for Disqualification

Partiality or Lack of Independence

As part of its consideration, the ARC utilizes a four-part test in determining whether an arbitrator(s) disclosure 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 ARC's administrative determination is based upon whether the disclosure creates, to a reasonable person, the appearance that an award would not be fairly rendered.

Inability or Refusal to Perform His or Her Duties With Diligence and in Good Faith

The ARC'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.

Method for Disqualification

- Objections must be made in writing and should be submitted to the AAA with a copy of the objections shared with all parties to the arbitration. The arbitrator should not be copied on any objection.
- Any opposing party will be given the opportunity to respond. The AAA will establish the schedule for the response at the time the objection is received.
- Replies or sur-replies are not provided for and should not be submitted without the prior approval of the AAA.
- Parties should limit each individual submission to no more than five pages, excluding attachments. Where replies or sur-replies are approved by the AAA, the page limit for each party's total submission may not exceed 10 pages.

Best Practice Tips

Objections should be raised at the first available opportunity.

Any party may make an objection to an arbitrator at any time in the arbitration, up to the issuance of the Award or other terminating order.

While a party may file multiple objections to an arbitrator, additional objections should not be made unless there are new grounds for making the objection. The ARC's decision on whether to remove or reaffirm an arbitrator is conclusive.



If a party raises a potential conflict not previously disclosed by the arbitrator, before considering the objection, the AAA will ask the arbitrator to make a supplemental disclosure to the parties regarding the new potential conflict. Once the supplemental disclosure is submitted, the AAA will then provide the parties with the opportunity to file an objection.

Pursuant to the AAA Rules, party-appointed arbitrators are considered neutral unless the parties have specifically agreed that these arbitrators should be non-neutral. Absent this agreement, party-appointed arbitrators are subject to the same disclosure and challenge standards contained in the Rules.

FILING REQUIREMENT DETERMINATIONS

Pursuant to the ARC Guidelines, the AAA Vice President or Director in charge of the AAA's office where the case is being administered has the discretion whether or not to request that the ARC decide if the filing requirements contained in the AAA Rules have been met in a particular case. Any issue not submitted to the ARC will be decided by the appropriate AAA Vice President with case management responsibility for that case. The AAA's Rules provide information regarding the filing requirements necessary for the AAA to administer a case (see Commercial Arbitration Rules R-1, 2, 4 & R-5, Construction Industry Arbitration Rules R-1, 2, 4 & R-5, Employment Arbitration Rules 1, 3 & 4). Should a party challenge whether a Claimant has met the AAA's filing requirements, this guide will assist the parties in understanding the standards and process used by the ARC to make this determination.

Standard for Review

The ARC will review the case file and the parties' contentions when making an administrative determination as to whether the Claimant has met the filing requirements contained in the AAA Rules by filing a demand for arbitration accompanied by an arbitration clause or submission agreement providing for administration by the AAA under its Rules or by naming the AAA as the dispute resolution provider. The AAA is not authorized to make arbitrability determinations, however the ARC will review disputes about whether a matter has been properly filed with the AAA.

Best Practice Tips

If the ARC has determined that the Claimant has met the filing requirements, the AAA will proceed with the administration of the arbitration absent an agreement of the parties or a court order staying the matter.

The filing requirement challenge will be made a part of the AAA's administrative file. The parties may submit their jurisdictional or arbitrability arguments to the arbitrator for determination.

The AAA serves as a neutral administrative agency and does not generally appear or participate in judicial proceedings relating to arbitration. If a party seeks court intervention regarding the arbitrability of a dispute, the AAA should not be named as a party-defendant. The AAA's Rules provide that the AAA is not a "necessary party," and the AAA will abide by an order issued by the courts regarding the continued administration of the arbitration and the parties are requested to keep the AAA informed as to the outcome.



LOCALE DETERMINATION STANDARDS

The AAA's Rules provide a process for the determination of the locale of the evidentiary hearings (see Commercial Arbitration Rule R-11, Construction Industry Arbitration Rule R-12, Employment Arbitration Rule 10). Should the parties have a dispute about the locale of the arbitration, this guide will assist the parties in understanding the standards and process used by the ARC to make this determination.

Factors for Consideration

The ARC considers the following factors in making a locale determination:

- 1) Location of parties
- 2) Location of witnesses and documents
- 3) Location of site or place or materials
- 4) Consideration of relative cost to the parties
- 5) Place of performance of contract
- 6) Laws applicable to the contract
- 7) Place of previous court actions
- 8) Necessity of an on-site inspection of the project
- 9) Any other reasonable arguments that might affect the locale determination

Best Practice Tips

If the parties' contract contains a designated hearing location, the ARC will set the locale at that hearing location.

The parties should make sure that each of the factors outlined above have been addressed.

Under the Commercial Arbitration Rules, the AAA's decision is final and binding. However, AAA Commercial Rule R-24 provides that the arbitrator has the authority to "set the date, time and place for each hearing" within the locale determined by the AAA.

Under Construction Industry Arbitration Rule R-12, the AAA's decision is subject to the power of the arbitrator to finally determine the locale within 14 calendar days after the date of the preliminary hearing.

Under Employment Arbitration Rule 10, the AAA's decision is subject to the power of the arbitrator(s), after their appointment, to make a final determination on the locale.