



## Retail Litigation Center’s Comments to AAA Employment Arbitration Rules

### Addendum 1 – Comparison of Proposed Revisions to Employment Rule Amendments

This Addendum lists rules in the numerical order of the proposed amended or proposed additional rules. See the RLC’s comments for explanations of the proposed RLC revisions.

#### Proposed Amended Rule 2 – Judicial Intervention

Existing Employment Rule 1	Proposed Employment Rule 2	RLC Proposed Revisions (additions in red)
<p>If, within 30 days after the AAA’s commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 60 days to permit the party to obtain a stay of arbitration from the court.</p>	<p>If, within 30 calendar days after the AAA’s commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 90 calendar days to permit the party to obtain an order regarding the arbitration from the court, with the authority to extend that time period on its’ own initiative or at the request of a party for good cause shown. Any request by a party to extend the time period must be made before the expiration of the initial suspension or any approved extension.</p>	<p>If, within <del>30</del> <b>90</b> calendar days after the AAA’s commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration <del>for 90 calendar days</del> to permit the party to obtain an order regarding the arbitration from the court, <del>with the authority to extend that time period on its’ own initiative or at the request of a party for good cause shown. Any request by a party to extend the time period must be made before the expiration of the initial suspension or any approved extension.</del> <b>with the authority to extend that time period on its’ own initiative or at the request of a party for good cause shown. Any request by a party to extend the time period must be made before the expiration of the initial suspension or any approved extension.</b></p>



**Proposed Amended Rule 4 – Content of Demand**

Existing Employment Rule 2	Proposed Employment Rule 4	RLC Proposed Revisions (additions in red)
<p>The Demand must do the following:</p> <ul style="list-style-type: none"> <li>• Briefly explain the dispute</li> <li>• List the names and addresses of the consumer and the business, and, if known, the names of any representatives of the consumer and the business</li> <li>• Specify the amount of money in dispute, if applicable</li> <li>• Identify the requested location for the hearing if an in-person hearing is requested</li> <li>• State what the claimant wants</li> </ul>	<p>R-4 Filing Requirements and Procedures Filing Requirements</p> <p>iv. Information to be included with any arbitration filing includes: a) the name of each party; b) the address of each party and, if known, the telephone number and email address; c) if applicable the name, address, telephone number, and email address of any known representative for each party; d) a statement setting forth the nature of the claim including the relief sought and the amount involved; e) identify the requested location of the hearing if an in-person hearing is requested; f) a brief explanation of the dispute and specify the amount of money in dispute, if applicable; and g) state the relief sought.</p>	<p>R-4 Filing Requirements and Procedures (a) Filing Requirements</p> <p>iv. <b>The following information must be included</b> <del>Information to be included</del> with any arbitration filing includes:</p> <ul style="list-style-type: none"> <li>a. The name of each party;</li> <li>b. the address of each party and, if known, the telephone number and email address;</li> <li>c. if applicable the name, address, telephone number, and email address of any known representative for each party;</li> <li>d. a <b>particularized</b> statement setting forth the nature of the claim including the relief sought and the amount involved;</li> <li>e. identify the requested location of the hearing if an in-person hearing is requested;</li> <li>f. a brief explanation of the dispute and specify the amount of money in dispute, if applicable; and</li> <li>g. state the relief sought.</li> </ul>



**Proposed Amended Rule 5(d) – Controlling Arbitration Agreement**

Existing Rule sub-part	Proposed Employment Rule 5(d)	RLC Proposed Revisions
N/A	(d) 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.	<ul style="list-style-type: none"> <li data-bbox="1360 332 1858 397">• The RLC recommends removing the proposed Rule 5(d):</li> </ul> <p data-bbox="1402 438 1806 714"><del>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.</del></p>

**Proposed Rule 11**

Existing Rule	Proposed Employment Rule 11	RLC Proposed Revisions
N/A	During the AAA’s administration of the arbitration or at any time while the arbitration is pending, the AAA may refer the parties to mediation, or the parties may request mediation. Mediation will be administered by the AAA and conducted pursuant to the applicable provisions of the AAA’s Consumer 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. The parties shall confirm	<ul style="list-style-type: none"> <li data-bbox="1360 933 1869 998">• Recommend Not Adopting Proposed Rule 11</li> <li data-bbox="1360 1039 1890 1323">• If AAA goes forward with a new rule on mediation, the RLC recommends adopting the language existing in Mass Arbitration Supplemental Rule 9 stating: “Any party may unilaterally opt out of mediation upon written notification to the AAA-ICDR and the other parties to the arbitration.”</li> </ul>



	to the AAA the completion of any mediation. Unless agreed to by all parties and the neutral, the mediator and arbitrator should not be the same individual.	
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**Proposed Rule 19 – Vacancies**

Existing Employment Rule 18	Proposed Employment Rule 19	RLC Proposed Revisions (additions in red)
<p>a. If for any reason an arbitrator is unable 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 applicable provisions of these Rules.</p> <p>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.</p> <p>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.</p>	<p>(a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may declare the office vacant. Vacancies shall be filled in accordance with applicable provisions of these Rules.</p> <p>(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.</p>	<p>(a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may declare the office vacant. Vacancies shall be filled in accordance with applicable provisions of these Rules.</p> <p>(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 <del>the parties agree otherwise</del> <b>a party requests otherwise.</b></p>



**Proposed New Rule 23 – Date, Time, Place, and Method of Hearing**

Existing Employment Rule 11	Proposed Employment Rule 22	RLC Proposed Revisions (additions in red)
<p>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 days in advance of the hearing date, unless otherwise agreed by the parties.</p>	<p>The arbitrator shall set the date, time, place and method for each hearing. The hearing shall be held virtually or by other means as approved by the arbitrator unless the parties agree otherwise or the arbitrator determines that an in-person hearing is necessary for a fundamentally fair process. 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 days in advance of the hearing date, unless otherwise agreed by the parties.</p>	<p>The arbitrator shall set the date <b>and time</b>, <del>place and method</del> for each hearing. <del>The hearing shall be held virtually or by other means as approved by the arbitrator unless the parties agree otherwise or the arbitrator determines that an in-person hearing is necessary for a fundamentally fair process.</del> 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 days in advance of the hearing date, unless otherwise agreed by the parties.</p>

**Proposed Rule 31**

Existing Employment Rule 27	Proposed Employment Rule 32 - Motions	RLC Proposed Revisions (additions in red)
<p>The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.</p>	<p>(a) The arbitrator has the sole discretion to allow or deny the filing of a written motion and the arbitrator’s decision is final.            (b) Where a party seeks to file a dispositive motion, the arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines the moving party has shown that the motion is likely to succeed and</p>	<p><b>Subject to differing terms in the parties’ agreement:</b></p> <p>(a) The arbitrator has the sole discretion to allow or deny the filing of a written motion and the arbitrator’s decision is final.            (b) Where a party seeks to file a dispositive motion, the arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator</p>



	<p>to dispose of or narrow the issues in the case.</p> <p>(c) Consistent with the goal of achieving an efficient and economical resolution of the dispute, the arbitrator shall consider the time and cost associated with the briefing of a dispositive motion in deciding whether to allow any such motion.</p>	<p>determines the moving party has shown that the motion is likely to succeed and to dispose of or narrow the issues in the case.</p> <p><del>(c) Consistent with the goal of achieving an efficient and economical resolution of the dispute, the arbitrator shall consider the time and cost associated with the briefing of a dispositive motion in deciding whether to allow any such motion.</del></p>
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**Proposed Rule 34 – Written Statements and Post-Hearing Evidence**

Existing Employment Rule 35	Proposed Employment Rule 34	RLC Proposed Revisions (additions in red)
<p>The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, upon the appointment of the arbitrator, the arbitrator shall specify a fair and equitable procedure.</p>	<p>(a) The arbitrator may receive and consider the evidence of witnesses by written statements rather than in-person testimony but will give this evidence only such credence as the arbitrator decides is appropriate. The arbitrator will consider any objection to such evidence made by the opposing party.</p> <p>(b) If the parties agree or the arbitrator decides that documents or other evidence need to be submitted to the arbitrator after the hearing, those documents or other evidence will be filed with the AAA so that they can be sent to the arbitrator. All parties will be given the opportunity to review and respond to these documents or other evidence.</p>	<p>(a) The arbitrator may receive and consider the evidence of witnesses by <b>declaration or affidavit</b> <del>written statements</del> rather than in-person testimony but will give this evidence only such credence as the arbitrator decides is appropriate. The arbitrator will consider any objection to such evidence made by the opposing party.</p> <p>(b) If the parties agree or the arbitrator decides that documents or other evidence need to be submitted to the arbitrator after the hearing, those documents or other evidence will be filed with the AAA so that they can be sent to the arbitrator. All parties will be given the opportunity to review and respond to these documents or other evidence.</p>



**Proposed Rule 42 – Confidentiality**

Existing Employment Rule 23	Proposed Employment Rule 42	RLC Proposed Revisions
<p>The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.</p>	<p>(a) Unless otherwise required by applicable law, court order, or the parties’ agreement, the AAA and the arbitrator shall keep confidential all matters relating to the arbitration or the award.</p> <p>(b) Upon the agreement of the parties or the request of any party, the arbitrator may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.</p> <p>(c) The AAA may choose to publish an award rendered under these Rules; however, the names of the parties and witnesses will be removed from awards that are published.</p>	<p>(a) Unless otherwise required by applicable law, court order, or the parties’ agreement, the AAA and the arbitrator shall keep confidential all matters relating to the arbitration or the award.</p> <p>(b) Upon the agreement of the parties or the request of any party, the arbitrator may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.</p> <p><del>(c) The AAA may choose to publish an award rendered under these Rules; however, the names of the parties and witnesses will be removed from awards that are published.</del></p>

**Proposed Rule 43 – Majority Decision**

Existing Employment Rule 26	Proposed Employment Rule 43	RLC Proposed Revisions
<p>All decisions and awards of the arbitrators must be by a majority, unless the unanimous decision of all arbitrators is expressly required by the arbitration agreement or by law.</p>	<p>(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, including the final award.</p>	<p>The RLC supports proposed Rule 43 as long as the ability for a party to object to the chairperson solely resolving procedural or information exchange disputes remains in the proposed rule.</p>



	<p>(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.</p> <p>(c) Absent an objection of a party or another member of the panel, the chairperson may sign any order on behalf of the panel.</p>	
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**Proposed Rule 57 - Sanctions**

Existing Rule	Proposed Employment Rule 57	RLC Proposed Revisions
N/A	<p>(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.</p> <p>(b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to</p>	<p>(a) The arbitrator may, upon a party’s request, order appropriate sanctions where a party, <b>counsel to a party, or other party representative</b> fails to comply with <del>its</del> <b>their</b> 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</p>



	<p>making any determination regarding the sanctions application.</p>	<p>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.</p> <p>(b) The arbitrator may, upon a party's request, order appropriate sanctions against counsel appearing in an arbitration proceeding where the counsel fails to comply with their ethical obligations, the AAA Standards of Conduct for Parties and Representatives, or the standards described in Rule 11 to the Federal Rules of Civil Procedure.</p> <p>(c) The arbitrator must provide a party, counsel to a party, or other party representative that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.</p>
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