

PROCEDURES & RULES



Cincinnati Bar
ASSOCIATION
Arbitration Services

Rules, but not Procedures, may be modified by all parties to a dispute. Procedures may be modified or waived only by Cincinnati Bar Association Arbitration Services ("CBAAS"). These Procedures and Rules, including any amendment, shall apply to the form in effect on the date the submission is received by CBAAS.

PROCEDURE I. Intent

It is the intent of CBAAS under these Procedures to administer a binding arbitration program for the efficient and effective resolution of disputes to be conducted under, in accordance with, and consistent with the provisions of the Ohio Uniform Arbitration Act, Ohio Rev. Code §§ 2711.01 to 2711.16 (the "Act"). Where the provisions of these Procedures and Rules and the Act are inconsistent, the provisions of the Act shall govern. The Act, in its entirety, is hereby incorporated by reference.

PROCEDURE II. Assent to Arbitration

The parties shall submit disputes arising among them to final and binding arbitration pursuant either to (1) their own agreement to arbitrate; or alternatively (2) a Submission to Arbitration (the "Submission") in the form specified by CBAAS that the parties have executed. Execution of an agreement to arbitrate that identifies CBAAS for the administration of the arbitration or a Submission shall authorize CBAAS to administer the claim pursuant to CBAAS Procedures and Rules. Any matter not addressed in the agreement to arbitrate shall be governed by these Procedures and Rules.

PROCEDURE III. CBAAS Fees

- (A) CBAAS shall from time to time publish a schedule of its fees. Filing fees shall be non-refundable. The claimant shall pay the filing fee as specified in the current schedule of fees at the time the claimant files the Demand for Arbitration under Rule 1. Procedure VI, Choice of Arbitrator, will not begin until filing fees have been received. Any party submitting a counterclaim shall pay the applicable filing fee. If one or more parties does not advance the initial filing fee within ten (10) days of the filing of the Demand, all parties will be notified and Procedure VII(B) may be invoked to begin Procedure VI.
- (B) Pursuant to its schedule of fees, CBAAS shall also charge administrative fees assessed as a percentage of, and in addition to, the fees of the arbitrator that shall be apportioned equally among the sides, unless the parties otherwise agree and subject to any other award the arbitrator may make concerning the apportionment of the fees and expenses of the arbitration. Administrative fees shall be reflected in the CBAAS schedule of fees as amended from time to time.

PROCEDURE IV. Arbitrators and Program Director

- (A) CBAAS shall maintain a roster of attorneys eligible

for appointment as arbitrator under these Procedures and Rules. Arbitrators shall be members in good standing of the Cincinnati Bar Association, and CBAAS's Board shall approve applicants for inclusion in the roster on such criteria as it shall determine in its sole discretion, including the recommendations and professional reputation of such applicants. Arbitrators shall be required to annually provide their rates for service as an arbitrator and shall provide CBAAS with updated information concerning their background and qualifications to share with applicants. Arbitrators shall be responsible for advancing their own out of pocket expenses as may be required for their service as arbitrator and shall submit all billing to CBAAS for its submission to the parties. Arbitrators shall not be entitled to payment from CBAAS until CBAAS receives payment.

- (B) CBAAS shall have a Program Director whose term shall be for a calendar year. The Program Director shall be appointed by the CBAAS Board from the roster of those attorneys qualified for appointment as arbitrator. In the event the Program Director is serving as an arbitrator on any arbitration that requires action by the Program Director, or otherwise has a conflict of interest that precludes participation, the Executive Director of the Cincinnati Bar Association shall serve in his or her stead.

PROCEDURE V. No Right to Appeal; Exclusion of CBAAS and Arbitrators

- (A) There shall be no appeal of the arbitration award except for those bases enumerated in the Act.
- (B) Any motion to disqualify an arbitrator based upon an allegation of bias, fraud, corruption, misconduct or irregularity, shall be filed with CBAAS and served on the opposing party, and any opposition thereto shall be filed within five business days. The motion shall be ruled upon by the Program Director and such determination shall be final and binding.
- (C) Neither CBAAS nor the arbitrator(s), are necessary parties in any court, administrative action or legal proceedings, such as a motion to confirm, vacate or modify an award. If CBAAS, or any arbitrator, is joined in any action of any kind whatsoever, CBAAS, and/or arbitrator(s), shall be entitled to recover costs and attorney fees against the party joining them and/or the losing party. Neither CBAAS, nor an arbitrator, shall be liable for any act or omission arising out of or relating to the conduct of any arbitration.



PROCEDURE VI. Selection of Arbitrator

- (A) Unless agreed otherwise, there shall be a single arbitrator appointed to conduct the arbitration. All arbitrators are independent contractors of CBAAS and are not employees, representatives or agents of CBAAS.
- (B) CBAAS shall provide all parties a list of up to ten (10) individuals with background or experience commensurate with the dispute sought to be arbitrated. After striking any individuals, each party shall rank the list of arbitrators in the order of their preference, with a one (1) being the highest rating. The individual with the lowest combined number (highest ranked) shall be appointed. In the event of a tie, the person with the lower hourly fee shall be appointed; if there is still a tie, the Program Director shall make the determination. In the event that the chosen arbitrator is disqualified or unable to serve, the Program Director shall appoint another arbitrator after reviewing the parties' original ranking of the roster. The Program Director shall in his or her discretion appoint another arbitrator in any case in which no member of the roster without strikes remains for appointment.
- (C) At the time of submission to arbitration, the submitting party shall provide a complete disclosure to CBAAS of all possible witnesses, including identification of organizations by which those persons are employed, and their addresses and of persons or parties in interest, with similar affiliation information and addresses, who may possibly be involved in the proceedings. Following service of the submission on the opposing party or counsel, that party shall make the same type of disclosures within fourteen (14) days. These disclosures need not be served on opposing counsel as they will be used by potential arbitrator(s) for purposes of conflict checking and disclosures to the parties of any past or present relationship of the arbitrator(s) with any such persons named, the parties or counsel. Following selection of arbitrator(s), counsel for each party shall make a disclosure of any such potential conflict relationships to the selected arbitrator(s). **The obligation to disclose is a continuing one with any doubt being resolved in favor of disclosure.**
- (D) If the parties require more than one (1) arbitrator the same selection procedures shall be followed. The panel of arbitrators shall select an individual to chair the board of arbitration. In all cases, the chair of the panel shall be an attorney. When a panel is employed, any reference in the rules to an arbitrator shall refer to a panel of arbitrators, and reference to an award or decision of an arbitrator shall refer to a majority of a panel.

PROCEDURE VII. Expense of Arbitration

- (A) Fees shall not be based upon the amount in controversy.
- (B) The parties shall be required to deposit fees and expenses with CBAAS in an amount estimated by the arbitrator within ten (10) days of receipt of the CBAAS's estimate which will be delivered after the preliminary meeting described in Rule 3(A), and shall include a percentage described by the schedule for CBAAS administrative fees. All fees shall be paid in advance of any scheduled hearing dates. Each party shall deposit such fees in equal amounts, subject to reallocation by the arbitrator in the award. Any party may pay the fees or expenses or both ON BEHALF of any other party or parties who do not pay their fees or expenses in a timely manner. The arbitrator or arbitrators may order reimbursement of such payments as part of the arbitrator's award. Any unearned fees shall be refunded at the conclusion of the arbitration. Awards shall only be issued provided all fees and expenses have been paid by the parties or advanced as provided in this paragraph.
- (C) Once any hearing date is scheduled, there may be fees for postponement or cancellation. Unless agreed otherwise, the party seeking a postponement or cancellation shall be liable for these fees.
- (D) All administrative and arbitration charges are subject to approval by CBAAS, and all compensation is to be distributed by CBAAS.
- (E) CBAAS shall invoice for all of its and the arbitrator's fees and expenses. The parties shall pay CBAAS and shall not make payment to the arbitrator directly.
- (F) Interim re-estimates and billing may occur at the discretion of the arbitrator and CBAAS.
- (G) The parties shall arrange and pay for any stenography or other services they desire .

PROCEDURE VIII. Disqualification of Arbitrator as Witness; Exclusion from Liability

No arbitrator or CBAAS personnel shall be called as a witness or expert in any proceeding related to the claims or arbitration, nor shall any notes or other materials relating to the arbitration award be subject to subpoena or discovery. The parties agree that the arbitrators and CBAAS shall have the same immunity from liability for any act or omission in connection with the arbitration as judges would have under federal or state law.

RULES

Rules may be modified or waived by all parties to a particular claim or dispute.



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RULE 1. Statement of Claim

To initiate an arbitration under these rules, the claimant shall submit to CBAAS a demand for arbitration using the form prescribed by CBAAS (the "Demand") along with a copy of the agreement or submission described under Procedure II. The claimant shall serve copies on the opposing party, the respondent, along with a copy of these Procedures and Rules. Each respondent shall have twenty (20) days after receipt of the Demand to file cross-claims or counterclaims. A Demand, cross-claim, or counterclaim shall include a short description of the claim including, at a minimum, the theory of liability and the relief sought. There is no obligation to file an answer and, if no answer is filed, the opposing party shall be deemed to have denied the allegations of a Demand, cross-claim, or counterclaim.

RULE 2. Service

Service of the initial Demand may be accomplished in any method authorized for the service of a summons as provided under the Ohio Rules of Civil Procedure, and proof of such service shall be filed with CBAAS within a reasonable time after the Demand is filed. Parties are required to make service of any papers subsequent to the Demand upon counsel for all represented parties and upon any unrepresented parties. Service shall be permitted by the methods authorized under the Ohio Rules of Civil Procedure, and the parties shall include a certificate of service on such papers evidencing the manner of service.

RULE 3. Pre-Hearing Activities and Discovery

- (A) The arbitrator shall conduct a preliminary meeting or conference call with counsel or representatives of the parties to determine such schedules for the management of the arbitration as the arbitrator in his or her sole discretion shall deem appropriate, such as, for example, deadlines for the disclosure of witnesses and exhibits and the conduct of discovery. The arbitrator shall have the discretion to limit discovery or require exchange of documents and/or to request submission of particular documents or information at any time prior to issuance of a final award and likewise to limit or allow the taking of depositions.
- (B) Any modifications to any schedules shall be in the arbitrator's sole and exclusive discretion.

RULE 4. Ex Parte Communications

Except as agreed to by all parties to the arbitration and the designated arbitrator, no party, nor anyone acting on their behalf, shall have any ex parte communication with any arbitrator with respect to any matter relating to the arbitration. All communications with any arbitrator outside of arbitration hearing shall be in writing only, with copy to opposing counsel; by conference call with all counsel; or via CBAAS.

RULE 5. Interim Measures

The arbitrator is authorized to render an order necessary for the interim protection of a party, including the imposition of injunctive relief to prevent irreparable harm or to protect property. The arbitrator may condition interim relief on the provision of adequate security from the party who requests such relief. In the absence of a specific agreement by the parties precluding a court from considering the imposition of injunctive relief, nothing in this rule or an agreement to submit a dispute to arbitration shall preclude a party from seeking interim injunctive relief in court.

RULE 6. Witnesses and Evidence for Arbitration Hearing

- (A) The parties shall make available for any hearing any witnesses within their employ or control. The arbitrator may issue subpoenas pursuant to the Act. At the request of any party or in the exercise of his or her sole discretion, the arbitrator shall require any witnesses to testify under oath. In the arbitrator's sole discretion, parties may be permitted to present testimony by affidavit, subject to the arbitrator's determination as to the weight any such affidavit shall be accorded.
- (B) The parties recognize that the voluntary exchange of documents is important to prepare for an arbitration. In accordance with the schedule to be determined by the arbitrator under Rule 3, the parties shall conduct pre-hearing document exchanges with the objective of providing each other, and the arbitrator, with the documents that each party believes necessary for an effective presentation.

RULE 7. Scheduling and Conduct of Arbitration Hearing

- (A) The arbitration hearing shall be scheduled on consecutive business days unless agreed otherwise by all parties.
- (B) The Ohio Rules of Evidence shall be utilized as guidelines only and applied as the arbitrator in his or her discretion determines appropriate and providing whatever weight to evidence the arbitrator deems appropriate.
- (C) The arbitrator shall resolve all contested issues, including amendments to claims, and other procedural or substantive matters.
- (D) 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. The arbitrator shall

entertain motions, including motions that dispose of all or part of a claim or that may expedite the proceedings, and may also make preliminary rulings and enter interlocutory orders.

RULE 8. Award

All decisions shall be final and binding. The arbitrator shall issue the award in writing, but in the absence of the parties' agreement, there shall be no obligation to provide a reasoned opinion as a basis for any decision. Subject to the payment of all fees as required under the Procedures, awards shall be issued within thirty (30) days of close of the record, which shall be the later of the close of the hearing or the final submission of any post-hearing briefing. The arbitrator, however, may issue interim awards or orders. Within fourteen (14) days after the transmittal of an Award, any party, upon notice to the other party, may make application to the arbitrator(s) to correct any clerical, typographical, technical or computational error in the Award. The arbitrator(s) is prohibited, however, from re-determining the merits of any claim already decided. Once a modification request is made by a party, the other party shall have seven (7) days to respond to the request and the arbitrator(s) must rule on the request within fourteen (14) calendar days after the receipt of the request for modification or it shall be deemed denied.

RULE 9. Privacy

The arbitration proceedings shall be private and confidential, except as limited by operation of law.

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