



Diaz Mediation & Arbitration Center

GENERAL RULES FOR ARBITRATION Prepared by Rene Diaz, Arbitrator Adapted from the AAA Arbitration Rules

Unless specified otherwise by either the applicable arbitration agreement or by the court order of referral to arbitration, then the following rules shall apply to the arbitration, unless changes to these rules are agreed to in writing and signed by all parties to the arbitration:

R -1. Authority to Conduct the Arbitration

All Arbitrations must be conducted by written agreement of the parties or by court order.

R-2. No Ex Parte Communications

Neither a party nor the attorney representing a party shall be allowed to have ex parte communication with the Arbitrator concerning the subject matter of the arbitration, unless agreed upon by both sides.

R-3. Communications with Arbitrator

Any correspondence from an attorney, or party, to the Arbitrator must be furnished to the adverse party (or counsel).

R-4. No Contact with Parties

The Arbitrator shall have no contact with a represented party, (unless with permission of counsel for both sides).

R-5. Stenographic Record or Recording

No court reporter shall be present for any Arbitration Hearing, nor shall the same be recorded, unless agreed to by the parties. If agreed to, the party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript 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.

R-6. Interpreters

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

R -7. Payment of Fees

The costs of any Arbitration session or sessions shall be advanced equally by each party, subject to a different assessment at the conclusion of the Arbitration, if appropriate.

R- 8. Hearings

Requests for Hearings are always granted, with at least three (3) days notice, if possible (or less for good cause). In this regard, I will always attempt to schedule hearings when convenient to both attorneys, and sometimes hearings can be accomplished by letter agreement or conference telephone calls. Hearings on substantive matters require reasonable notice (unless in an emergency) to the other party as to the matters in controversy (e.g. pleadings; a letter setting out the issues); hearings on drafting disputes do not require full 3 days notice.

R-9. Attendance at Hearings

The arbitrator 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 person other than a party and its representative.

R-10. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and give the name and address of the representative at least three calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates arbitration or responds for a party, notice is deemed to have been given.

R-11. Oaths

Before proceeding 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-12. Postponements

The arbitrator for good cause shown may postpone any hearing upon agreement of the parties, upon request of a party, or upon the arbitrator's own initiative.

R-13. 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-14. Conduct of Proceedings

- (a) The claimant shall present evidence to support its claim. The respondent shall then present evidence supporting 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. 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.
- (c) The parties may agree to waive oral hearings in any case.

R-15. 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. Strict conformity to legal rules of evidence shall not be necessary.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value compared to the time and expense involved. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where: 1) any of the parties is absent, in default, or has waived the right to be present, or 2) the parties and the arbitrators agree otherwise.
- (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-16. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

- (a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

- (b) 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, unless otherwise agreed by the parties and the arbitrator, shall be served upon the arbitrator, with exact duplicates submitted to all counsel or designated party representative. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-17. Inspection or Investigation

The arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall so advise the parties. The arbitrator shall set the date and time after consultation with 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-18. 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 be taken in 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-19. Closing of Hearing

When satisfied that the presentation of the parties is complete, the arbitrator shall declare the hearing closed.

If documents or responses are to be filed as provided in Section R-16, 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 documents, responses, or briefs. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties and the arbitrator, upon the closing of the hearing.

R-20. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by 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.

R-21. 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-22. Extensions of Time

The parties may modify any period of time by mutual agreement. The agreement must be in writing and filed with the arbitrator in order to be enforced. The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The parties shall be notified of any applicable extension.

R-23. Serving of Notices

- (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 thereto has been granted to the party.
- (b) The arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (email), or other methods of communication.
- (c) Unless otherwise instructed by the arbitrator, any documents submitted by any party to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-24. 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 date of the delivery of the final statements and proofs to the arbitrator.

R-25. Form of Award

- (a) Any award shall be in writing and signed by the arbitrator. It shall be executed in the manner required by law.
- (b) The arbitrator shall provide a concise, written breakdown of the award.
- (c) If requested in writing by all parties, the arbitrator shall provide a reasoned opinion or a written explanation of the award, which shall be subject to an additional hourly fee as provided in the applicable fee schedule furnished to the parties. If the arbitrator believes it is appropriate to prepare a reasoned opinion or an explanation of the award on his own initiative, then it shall be furnished at no additional cost to the parties.

R-26. 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, equitable relief and specific performance of a contract.
- (b) In addition to the 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 fees, expenses, and compensation as provided in Sections R-32, and R-33. 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 may include interest at such rate and from such date as the arbitrator may deem appropriate; and an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-27. Award Upon Settlement

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.

R-28. 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 the last known address, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-29. Modification of Award

Within twenty calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

If the modification request is made by a party, the other parties shall be given ten calendar days to respond to the request. The arbitrator shall dispose of the request within twenty calendar days after transmittal to the arbitrator of the request and any response thereto.

If applicable law provides a different procedural time frame, that procedure shall be followed.

R-30. Release of Documents for Judicial Proceedings

Upon the written request of a party, the arbitrator shall furnish to the party, at its expense, certified copies of any papers in the arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

R-31. 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) The arbitrator in a proceeding under these rules is not a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to 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 arbitration under these rules shall be deemed to have consented and stipulated as a pre-condition to the arbitration that arbitrator shall under no circumstances 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.

R-32. 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 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-33. Arbitrator's Compensation

Arbitrators shall be compensated a rate consistent with the arbitrator's stated rate of compensation in the Fee Schedule provided to the parties. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator and confirmed to the parties.

R-34. 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.

R-35. Suspension for Nonpayment

If arbitrator compensation has not been paid in full, the arbitrator may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings.

R-36. Amendments of the Rules

Amendments to these rules may be made by agreement of the parties, subject to the approval of the arbitrator.