

Arbitrator Challenge Review Procedures

For Non-Administered Arbitrations
By the Administrative Review Council
Of the American Arbitration Association®



AMERICAN ARBITRATION ASSOCIATION®

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Arbitrator Challenge Review Procedures for Non-Administered Arbitrations by the Administrative Review Council of the American Arbitration Association



These Procedures apply to non-administered cases in which the parties agree to submit objections or challenges to the arbitrator(s) continued service to the AAA®'s Administrative Review Council ("Council") for determination. The Council may include internal, divisional and corporate executives, or external members such as retired AAA executives, AAA board members or other individuals with arbitration expertise. The Council may also include additional non-voting members as determined by the chairperson. A member of the legal department will also serve as a non-voting liaison to the Council.

1. Agreement of Parties

Whenever parties mutually agree to have their objections to the arbitrator's continued service decided by the Council, these Procedures, as amended and in effect as of the date of filing of a submission for decision, shall apply.

2. Submission of Arbitrator Objection to Administrative Review Council

Parties to an arbitration may submit their dispute regarding an arbitrator's continued service by providing a Submission of Arbitrator Objection to Administrative Review Council form (available on www.adr.org) to arc@adr.org along with the administrative fee set forth below. The party transmitting the Submission to Council form shall copy all parties (the arbitrator(s) shall not be copied) on the communication and provide the following information:

- The names, email addresses, and telephone numbers of all parties to the dispute and representatives, if any.
- The name and contact information for the arbitrator appointed to the arbitration.
- All parties' contentions regarding the continued service of the arbitrator and any supporting documentation they want the Council to consider including the

arbitrator written disclosures.

- Each party's contentions to the Council may not exceed ten (10) pages in length, excluding attachments or exhibits. Only documents directly relevant to the challenge or response should be included as an attachment or exhibit. Parties should refrain from submitting duplicate documents.

3. Requests for Additional Information

The Council may request additional information from the parties and the arbitrator. The party, from whom additional information is sought, shall have five (5) business days from the transmittal date of the request for additional information to file their response with the Council.

Absent approval from the Council, any supplemental filing may not exceed ten (10) pages in length, excluding attachments or exhibits. Only documents directly relevant to the supplemental request should be included as an attachment or exhibit. Parties should refrain from providing duplicate documents that were already provided to the Council.

4. Standard for Disqualification of Arbitrator

Arbitrators may be subject to disqualification for:

- i. partiality or lack of independence,
- ii. inability or refusal to perform his or her duties with diligence and in good faith, and
- iii. any grounds for disqualification provided by applicable law.

5. Council Decision Standards

Upon objection of a party to the continued service of the arbitrator, and the submission of all contentions of the parties, the Council shall determine as expeditiously as possible whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be deemed administrative and final. The Council decision shall be based on the Council Review Standard for Disqualification as outlined in Paragraph 6.

Council decisions shall be made based on the written submissions only, and without oral argument or presentations.

6. Council Decision Making

Decisions will be made by a panel of at least three (3) panel members in accordance with the following Standards for Disqualification:

a. Partiality or Lack of Independence

As part of its consideration, the Council utilizes a four-part test in determining whether an arbitrator's disclosure, purported conflict or other objection related to the arbitrator's continued services 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 Council's administrative determination is based upon whether the disclosure, purported conflict or other objection creates, to a reasonable person, the appearance that an award would not be fairly rendered.

b. Inability or Refusal to Perform His or Her Duties with Diligence and in Good Faith

c. The Council'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.

1. Decisions will be by a majority vote of the designated panel of Council members assigned to a case.
2. All decisions of the Council will be confirmed to the parties in writing and include the following:
 - a. Issue presented
 - b. Date of the Council meeting
 - c. Unreasoned decisions
3. The Council's deliberative process is confidential and parties may not attend Council sessions.

7. Termination of Authority

The AAA's authority to address objections to the continued service of the arbitrator or involvement in the arbitration in any way, terminates upon the issuance of the Council decision. While the arbitrator's obligation to make

disclosures is ongoing for the duration of his or her appointment, the AAA will have no authority under this service to address subsequent challenges to an arbitrator's continued service unless re-submitted to the Council in accordance with these Procedures.

8. Future Administration

The AAA reserves the right, at its sole discretion, to decline to administer disputes submitted according to these Procedures.

9. Exclusion of Liability

Neither the AAA nor any Council member is a necessary or proper party in judicial proceedings relating to the arbitration.

Parties to an arbitration submitting to the Council under these Procedures shall be deemed to have consented that neither the AAA nor any Council member shall 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.

10. Jurisdiction

The AAA reserves the right, at its sole discretion, to decline to administer any dispute submitted to these Procedures.

Administrative Fees

The administrative fee for submitting a dispute under these procedures is \$3,500 per arbitrator objection.

