



Retail Litigation Center’s Comments to AAA Consumer Arbitration Rules

Addendum 1 – Comparison of Proposed Revisions to 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 Rule 1(f)	Proposed Amended 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 30 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 30 90 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>



Proposed Amended Rule 4 – Content of Demand

Existing Rule 2	Proposed Amended Rule 4	RLC Proposed Revisions (additions in red)
<p>The Demand must do the following:</p> <ul style="list-style-type: none"> • Briefly explain the dispute • 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 • Specify the amount of money in dispute, if applicable • Identify the requested location for the hearing if an in-person hearing is requested • State what the claimant wants 	<p>R-4 Filing Requirements and Procedures Filing Requirements</p> <p>iv. Information to be included with any arbitration filing includes:</p> <p>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. The following information must be included Information to be included with any arbitration filing includes:</p> <ul style="list-style-type: none"> a. The name of each party; b. The address of each party and, if known, the telephone number and email address; c. the identifier associated with the disputed transaction, account, or other activity (e.g., account number, purchase ID, customer loyalty number, etc.), when one exists; d. if applicable the name, address, telephone number, and email address of any known representative for each party; e. a statement setting forth the nature of the claim including the relief sought and the amount involved; f. identify the requested location of the hearing if an in-person hearing is requested;



		<p>g. a brief explanation of the dispute and specify the amount of money in dispute, if applicable; and</p> <p>h. state the relief sought.</p>
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Proposed Amended Rule 5(d) – Controlling Arbitration Agreement

Existing Rule sub-part	Proposed Amended 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"> The RLC recommends removing the proposed Rule 5(d): <p>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.</p>

Proposed Rule 11 – Mediation

Existing Rule	Proposed 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	<ul style="list-style-type: none"> Recommend Not Adopting Proposed Rule 11 If AAA goes forward with a new rule on mediation, the RLC recommends adopting the language existing in Mass



	<p>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 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.</p>	<p>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.”</p>
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Proposed Rule 12 – Business Notification and Consumer Clause Registry

Existing Rule 12 (in part)	Proposed Rule 12 (in part)	RLC Proposed Revisions (additions in red)
<p>...The AAA’s review of a consumer arbitration clause and determination whether or not to administer arbitrations pursuant to that clause is only an administrative determination by the AAA and cannot be relied upon or construed as a legal opinion or advice regarding the enforceability of the arbitration clause...</p>	<p>The AAA’s review of a consumer arbitration clause and determination whether to administer arbitrations pursuant to that clause is only an administrative determination by the AAA and cannot be relied upon or construed as a legal opinion or advice regarding the enforceability of the arbitration clause. There is a nonrefundable review fee detailed in the Consumer Arbitration Fee Schedule to register a clause.</p>	<p>(b) Upon receiving the arbitration agreement, the AAA will review the agreement for material compliance with due process standards contained in the Consumer Due Process Protocol and the Consumer Arbitration Rules (see Rule R-1(c)). The AAA’s review of a consumer arbitration clause and determination whether to administer arbitrations pursuant to that clause is only an administrative determination by the AAA and is a binding determination on the question of an agreement’s compliance with AAA’s Consumer Due Process Protocol. That determination cannot be relied upon or construed as a legal opinion or advice regarding the</p>



		<p>enforceability of the arbitration clause under local, state, or federal law. There is a nonrefundable review fee detailed in the Consumer Arbitration Fee Schedule to register a clause.</p>
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Proposed Rule 14 – Fixing of Locale

Existing Rules 20	Proposed Rule 14(c) – Fixing of Locale	RLC Proposed Revisions (additions in red)
<p>If an in-person hearing is to be held and if the parties do not agree to the locale where the hearing is to be held, the AAA initially will determine the locale of the arbitration. If a party does not agree with the AAA’s decision, that party can ask the arbitrator, once appointed, to make a final determination. The locale determination will be made after considering the positions of the parties, the circumstances of the parties and the dispute, and the Consumer Due Process Protocol.</p>	<p>(c) Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days after the AAA sends notice of the filing of the Demand or by the date established by the AAA. Disputes regarding locale shall be determined in the following manner:</p>	<p>(c) Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 60 calendar days after the AAA sends notice of the filing of the Demand or by the date established by the AAA.</p>

Proposed Rule 18 - Vacancies

Existing Rules 20	Proposed Rule 18 - Vacancies	RLC Proposed Revisions (additions in red)
<p>If for any reason an arbitrator cannot or is unwilling to perform the duties of the office, the AAA may declare the office vacant. Any vacancies shall be filled based on the original procedures used to</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. (b) In the event of a vacancy in a panel of neutral arbitrators,</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>appoint the arbitrator. If a substitute arbitrator is appointed, the substitute arbitrator will decide if it is necessary to repeat all or part of any prior ruling or hearing.</p>	<p>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>(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 a party requests otherwise.</p>
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Proposed Rule 22 - Date, Time, Place, and Method

Existing Rules 22	Proposed Rule 22	RLC Proposed Revisions (additions in red)
<p>The arbitrator will set the date, time, and place for each hearing within the locale as determined in R11. A hearing may be by telephone or in person. For their part, the parties commit to (1) respond promptly to the arbitrator when he or she asks what dates the parties are available to have the hearings; (2) cooperate in the scheduling of the hearing on the earliest possible date; and (3) follow the hearing schedule set up by the arbitrator. The AAA will send a notice of the hearing to the parties at least 10 days before the hearing date, unless the parties agree to a different time frame.</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 and 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>

Proposed Rule 31 – Motions

Existing Rules 33 and 24	Proposed Rule 31 - Motions	RLC Proposed Revisions (additions in red)
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<p>Rule 33 Dispositive Motions 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>Consumer R-24. Written Motions The arbitrator may consider a party’s request to file a written motion (except for Dispositive Motions— see R-33) only after the parties and the arbitrator conduct a conference call to attempt to resolve the issue that gives rise to the proposed motion. Only after the parties and the arbitrator hold the call may the arbitrator consider a party’s request to file a written motion. The arbitrator has the sole discretion to allow or deny the filing of a written motion and his or her decision is final.</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.</p> <p>(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 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>Subject to differing terms in the parties’ agreement:</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.</p> <p>(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 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>
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Proposed Rule 33 – Written Statements and Post-Hearing Evidence

Existing Rule 35	Proposed Rule 33	RLC Proposed Revisions (additions in red)
<p>(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit rather than in-person testimony but will give this evidence only such credence as the arbitrator decides is appropriate. The arbitrator will consider</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</p>	<p>(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit 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</p>



<p>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>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>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>
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Proposed Rule 42 – Confidentiality

Existing Rule	Proposed Rule 42 - Confidentiality	RLC Proposed Revisions
<p>N/A</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</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>



	witnesses will be removed from awards that are published.	
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Proposed Rule 43 – Majority Decision

Existing Rule	Proposed Rule 43 – Majority Decision	RLC Proposed Revisions
N/A	<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>(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>	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.

Proposed Rule 57 - Sanctions

Existing Rule	Proposed Rule 57 - Sanctions	RLC Proposed Revisions
N/A	(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	(a) The arbitrator may, upon a party’s request, order appropriate sanctions where a party, counsel to a party, or other party representative fails to

	<p>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 making any determination regarding the sanctions application.</p>	<p>comply with its their 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 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,</p>
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		<p>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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Proposed Rule 58 - Appeals

Existing Rule	Proposed Rule 58 - Appeals	RLC Proposed Revisions
<p>N/A</p>	<p>If the parties' arbitration agreement provides for the appeal of an arbitration award, the AAA will administer the appellate arbitration process only if it complies with the Consumer Due Process Protocol and the filing and arbitrator fees in connection with the appellate arbitration process are borne and allocated in accordance with the Consumer Arbitration Fee Schedule. In such cases, the AAA will administer the appellate arbitration process pursuant to these Rules.</p>	<p>If the parties' arbitration agreement provides for the appeal of an arbitration award, the AAA will administer the appellate arbitration process only if it complies with the Consumer Due Process Protocol and the filing and arbitrator fees in connection with the appellate arbitration process are borne and allocated in accordance with the Consumer Arbitration Fee Schedule. In such cases, The AAA will administer the its own appellate arbitration process pursuant to these Rules if the parties' arbitration agreement provides for the appeal of an arbitration award and if the appellate arbitration filing and arbitrator fees are borne and allocated in accordance with the Consumer Arbitration Fee Schedule.</p>