



## **SUMMARY OF REVISIONS TO CONSTRUCTION ARBITRATION RULES**

**JAMS Engineering and Construction Arbitration Rules, Amended and Effective November 15, 2014.**

### **Rule 1. Scope of Rules**

Rule 1(c) was amended to clarify that the duties and authority of JAMS under the rules and the Parties' arbitration agreement may be carried out by the JAMS National Arbitration Committee or JAMS General Counsel's office, or their designees.

### **Rule 2. Party Self-Determination**

Rule 2 was revised to confirm that where an arbitration provision provides the arbitration will be non-administered or administered by an entity other than JAMS or in accordance with rules other than JAMS rules, the Parties may agree to modify such procedures to provide for JAMS administration and/or application of JAMS rules.

### **Rule 5. Commencing an Arbitration**

Revised Rule 5 clarifies the contents and use of the JAMS' Commencement Letter. The issuance of the Commencement Letter indicates JAMS has received what it needed in order to move forward with the administration of a new arbitration. The rule now specifically references Respondent's failure to object to JAMS administration as a basis upon which JAMS may commence an arbitration assuming all other requirements have been met.

### **Rule 7. Number and Neutrality of Arbitrators, Appointment and Authority of Chairperson**

Rule 7 was revised to establish when a sole arbitrator will be appointed versus a tripartite panel of arbitrators. Where the case involves disputes arising from residential construction, or with respect to any disputes, whether residential or commercial construction and the collective claims and counter-claims are, in the aggregate less than \$2 million dollars, a sole arbitrator will be appointed, unless the parties agree otherwise. In all other disputes, a tripartite panel of arbitrators will be appointed.

In addition, the title of this rule was changed to better reflect the contents of the rule.

### **Rule 8. Service**

Subparagraph (b) no longer requires inclusion of a signing attorney's bar number given that this practice is not consistent across jurisdictions. The last sentence of subparagraph (e) was deleted as unnecessary. Previously if Parties served documents by electronic mail or facsimile that service needed to be followed by service by one other means in order to become effective. Service of case documents is controlled by the Arbitrator and agreement of the parties and this sentence was no longer necessary.

### **Rule 9. Notice of Claims**

Rule 9 was modified in order to remove confusion regarding a Party's notice of claim versus a demand for arbitration. Consistent with the requirements of Rule 5, a Party's Demand for Arbitration constitutes the notice of claim under Rule 9. No additional notice of claim is required where the Demand for Arbitration includes a reasonable and timely notice of the Party's claims, including a short statement of the factual basis for the claim and a statement of the remedies sought. A Party may attach and incorporate a previously filed Complaint in lieu of an additional statement.

Subparagraph (f) has been added to avoid delay in raising jurisdictional and arbitrability objections. Under revised Rule 9(f) Parties must raise jurisdictional or arbitrability challenges in a response to a Demand or counterclaim or as soon as circumstances first suggest. Failure to do so will result in waiver of the objection.

### **Rule 11. Interpretation of Rules and Jurisdictional Challenges**

Subparagraph (b) was deleted and the substance of the rule moved to Rule 1.

### **Rule 12. Representation**

The former Rule 12 allowed a Party to be represented by counsel or any other person of the Party's choice. Revised Rule 12 clarifies this applies to all Parties, whether natural persons or legal entities.

### **Rule 13. Withdrawal from Arbitration**

Following a Party's request to withdraw a claim or counterclaim without prejudice, the opposing Party now has 7 days - instead of 14 days - to request the Arbitrator condition the withdrawal.

### **Rule 14. Ex Parte Communications**

This rule was revised to clarify parties may not have *ex parte* communications with any neutral arbitrator except as provided for in the rule.

### **Rule 15. Arbitrator Selection, Disclosure and Replacement**

Previously where a Party failed to respond to a strike and rank list for arbitrator selection, the Party was deemed to have accepted all proposed candidates. Subparagraph (e) has been revised to clarify that, in addition to a complete failure to respond, if a Party fails to follow instructions with respect to the arbitrator selection process (for example, where a Party refuses to follow instructions and instead strikes all proposed candidates), that will also be deemed an acceptance of all proposed arbitrator candidates.

Subparagraph (h) now requires Parties and their representatives to disclose any circumstance likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence including any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Disclosure obligations of the Arbitrator, the Parties and the representatives continues throughout the case.

## **Rule 22. The Arbitration Hearing**

Subparagraph (g) was revised to permit hearings to be conducted videographically as well as telephonically.

Subparagraph (h) clarifies the close of the hearing is determined by the Arbitrator in order to allow for post-hearing submissions as needed. In addition, the close of the hearing is the later of the receipt of final briefs or closing arguments.

Subparagraph (i) provides that where an Arbitrator reopens a hearing the Arbitrator's time to render the final award is calculated from the date the reopened Hearing is declared closed by the Arbitrator.

Subparagraph (k) (iii) was amended to add the words "if possible" with respect to ensuring there is a stenographic or other record of a hearing where the parties have agreed to use the Optional Arbitration Appeal Procedure. The rule was revised in order to account for the fact that parties do not have to agree to use the procedures prior to the Hearing, therefore a recording of the hearing may not always be possible or practicable.

## **Rule 24. Awards**

Subparagraph (e) was revised to allow an interim award or a partial final award in connection with the award of interim relief.

Subparagraph (j) now makes clear that the time a Party has to request a correction runs from the date of service of a partial final or final Award (not an interim award) issued by JAMS. The rule also now specifically identifies as permissible correction requests on the grounds of the effect of an offer to allow judgment. Such requests were previously allowed under this rule, but the revision eliminates any confusion in this regard.

## **Rule 28. Settlement and Consent Award**

Rule 28(b) was revised to allow the parties to agree to seek the assistance of the Arbitrator in reaching settlement where such agreement is confirmed in writing and the parties agree such efforts will not disqualify the Arbitrator from continuing service as the Arbitrator if the matter does not settle. In addition, the parties must agree such efforts will not be argued as the basis for vacating or modifying any Award.

## **Rule 29. Sanctions**

The revised rule clarifies that an Arbitrator may order appropriate sanctions not only for the failure to comply with obligations under these rules, but also for a failure to comply with an order of the Arbitrator.

## **Rule 31. Fees**

Subparagraph (b) clarifies that JAMS may require the deposit of fees at various times through the proceedings and prior to the Hearing. This has been JAMS practice, but the rule has been amended to

clarify that deposits may be required in connection with the hearing, or at other times during the proceedings.

**Rule 34. Optional Arbitration Appeal Procedure**

Rule 34 now allows parties to agree to use the JAMS Optional Arbitration Appeal Procedure at any time. The revision removes the previous requirement that an agreement to use the Optional Appeal Procedures had to be made prior to the Award becoming final.

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*The information contained in this document is presented in summary form and is intended to provide general knowledge only. For complete information and all changes, please see the full text of the Rules at <http://www.jamsadr.com/rules-construction-arbitration/>.*