

Alert Litigation/ Arbitration

American Arbitration Association (AAA) releases Optional Appellate Arbitration Rules, effective November 1, 2013

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As of November 1, 2013, parties to arbitral proceedings may choose to implement the AAA's new Optional Appellate Arbitration Rules, which enable parties to appeal arbitral awards within the arbitral process.

Whereas, previously, arbitral awards could only be set aside by courts based on narrow, statutorily defined grounds, the AAA's new rules allow parties to appeal arbitral awards on broader grounds while remaining exclusively within the arbitral process. According to the AAA, the new rules "are consistent with the objective of an expedited, cost-effective and just appellate arbitral process." The Rules are targeted at parties engaged in large, complex cases who desire a broader ability to appeal arbitral awards.

Some critical features of the new rules include:

- The Rules only apply when the parties to a dispute agree to their application, whether by contract or by stipulation;
- The Rules may be invoked regardless of whether the underlying arbitration was an AAA or ICDR arbitration;
- Parties may appeal an arbitral award on the grounds that the underlying award is based on errors of law that are "material and prejudicial" and/or on factual determinations that are "clearly erroneous"; and
- Appeals will generally be determined based on written submissions only, without oral argument.

The filing of a Notice of Appeal under the rules means that the parties agree not to consider the underlying award final for purposes of court actions to modify, enforce, correct, or vacate the award. Additionally, the time period for commencement of judicial enforcement proceedings is tolled during the pendency of the appeal. The parties further agree to stay any already-initiated judicial enforcement proceedings until the conclusion of the appeal process. Once an appeal is taken under consideration by the appeal tribunal, the tribunal may (1) adopt the underlying award as its own; (2) substitute its own award for the underlying award (incorporating those aspects of the underlying award that are not vacated or modified); or (3) request additional information and notify the parties of the tribunal's exercise of an option to extend the time to render a decision, not to exceed 30 days. The appeal tribunal may not order a new arbitration hearing or send the case back to the original arbitrator(s) for corrections or further review.

The AAA anticipates that the appeals process can be completed in “about three months.” The Appellate Panel that will decide appeals is made up of former federal and state judges and neutrals with “strong appellate backgrounds.”

To learn more about the Optional Appellate Arbitration Rules, please visit: <http://go.adr.org/AppellateRules>.

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