



New Rules Issued for Construction Industry Arbitration and Mediation

Legal Blogs and Updates

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As arbitration provisions are the mainstay of many of our construction contracts, I want to share with you the Revised Construction Industry Arbitration and Mediation Procedures released by the American Arbitration Association. The revised Rules took effect on July 1, 2015. The complete newly revised rules can be viewed [here](#).

Some of the topics included in the rule changes are:

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Consolidation or Joinder: Rule 7 provides that all requests for consolidation or joinder must be made prior to the appointment of an arbitrator or within 90 days of the date the American Arbitration Association (AAA) determines all administrative filings have occurred, whichever is later. A response to a request for consolidation is due within 10 days and a response to a request for joinder is due within 14 days. The AAA can stay the arbitration while the request is pending. Hopefully, this will make for a more efficient process where all related claims can be determined in one forum. To effectively utilize this provision, some changes to your standard contract language may be required.

Mediation: Rule 10 provides that in any cases where a claim or counterclaim exceeds \$100,000, the parties shall mediate their dispute. The mediation will take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings.

Preliminary Management Hearing: As part of the preliminary hearing, which is to be scheduled as soon as practicable after the appointment of the arbitrator, Rule 23 provides some guidance as to what should be discussed and addressed in the hearing with a 20-item checklist to help bring about a fair, efficient, and economical resolution of the dispute.

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Pre-Hearing Exchange and Production of Information: Rule 24 addresses discovery as part of the arbitration process. The arbitrator has more involvement over the exchange of information and can limit same with a view toward achieving an efficient and economical resolution, while also balancing each party's ability to present their case.

Dispositive Motions: Rule 34 specifically provides that upon prior written application, the arbitrator may permit motions that dispose of all or a part of a claim, or narrow the issues in a case. This should lower the costs of arbitration and avoid unnecessary testimony, when there are clear issues that can be decided upon the contract and related documents.

Emergency Measures of Protection: Rule 39, which is of great interest to me, as we all have encountered critical time-sensitive disputes on a project that jeopardize the schedule. For contracts that have been entered into on or after July 1, 2015, Rule 39 will enable parties to have an arbitrator appointed within 24 hours of the request to AAA to hear applications for emergency relief.

Hopefully these new Rules will further assist in our goal of the fair, efficient, and economical resolution of construction disputes.

If you need any assistance in modifying your standard form contracts to make the best use of the new Rules or if you need any assistance in a construction matter or arbitration, do not hesitate to contact **Connell Foley's New York Construction Law Group**