



**MASS FILING SUPPLEMENTAL  
DISPUTE RESOLUTION  
RULES AND PROCEDURES**

*(Effective 12/21/2021)*

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## **SCOPE OF RULES**

### **RULE NO. 1: APPLICATION OF RULES**

All rules set forth herein are NAM's (National Arbitration & Mediation) Mass Filing Supplemental Dispute Resolution Rules and Procedures (hereinafter "Supplemental Rules") and shall apply to the administration of disputes that are classified as part of a "Mass Filing" pursuant to the criteria set forth herein and that are administered by NAM by the parties' mutual agreement. These rules supplement NAM's Comprehensive Dispute Resolution Rules and/or NAM's Employment Rules and Procedures, as applicable, in instances in which there has been a Mass Filing. In the event of an inconsistency between these Supplemental Rules and any other applicable NAM rules, these Supplemental Rules shall govern.

These Supplemental Rules are designed to secure the most expeditious, private and cost-effective resolution and determination of multiple cases, whether in law or equity.

Terms not defined herein are as defined in the applicable NAM rules.

### **RULE NO. 2: DEFINITION AND CRITERIA OF "MASS FILING"**

"Mass Filing" shall be defined as the filing of twenty-five (25) or more similar Demands for Arbitration ("Demand(s)") against the same party or related parties and representation for the parties is consistent or coordinated across all cases. The 25 or more Demands need not be filed simultaneously. The determination of whether or not a Demand/Demands is/are part of a "Mass Filing" is in NAM's sole discretion; however, either party can request the appointment of a Procedural Arbitrator pursuant to Rule No. 7 if they do not agree with NAM's determination. In addition, the applicability and/or interpretation of these Supplemental Rules shall be in NAM's sole discretion.

### **RULE NO. 3: MODIFICATION OF RULES**

NAM reserves the right to modify these Supplemental Rules at any time without prior written notice to the parties. If the parties have entered into an Arbitration or Mediation Agreement, the version of the rules in effect at the time the Demand is filed with NAM will govern the Arbitration or Mediation, unless the parties mutually agree to another version. If the parties have not entered into an Arbitration or Mediation Agreement, the version of the rules in effect at the time the parties file the joint submission with NAM will govern the proceedings. Subject to NAM's final review and acceptance, the parties are free at any time to enter into a written agreement to amend or modify any of NAM's rules for the purpose of their case. However, NAM's Fee Schedules are not subject to such modification or amendment except in the sole discretion of NAM.

### **RULE NO. 4: ENFORCEABILITY OF RULES**

If the provisions of these Supplemental Rules are held invalid or unenforceable by a court of law, the parties have not waived any of their rights, privileges or remedies to submit their claims, counter-claims and cross-claims to the applicable court of law or to avail themselves of any other legal rights, privileges or remedies.

### **RULE NO. 5: INITIATION OF ARBITRATION**

Parties shall initiate Arbitration in accordance with the applicable rules. A separate Demand must be filed for each case.

At such time as the filing party has filed 25 Demands, in addition to the filing of the individual Demands, the filing party shall also submit to NAM and all other parties, a complete listing (“The List”) of all cases filed which shall include cases 1-25 as well any additional filings beyond the initial 25 filings. The List shall include the caption of the case and any previously assigned NAM case number. The first 25 cases filed shall hereinafter be referred to as the “Initial Filing”. It is the responsibility of the filing party to supplement The List for each and every filing subsequent to the Initial Filing.

#### **RULE NO. 6: RESPONSE AND COUNTERCLAIM**

The Respondent shall file a Response to the Demand (hereinafter “Response”) with NAM (and send a copy to Claimant) within 45 days of service of the Demand, or in the event a Procedural Arbitrator is appointed under Rule No. 7 herein, within 45 days from the date of the final written determination of such Procedural Arbitrator, whichever is later.

#### **RULE NO. 7: PROCEDURAL ARBITRATOR**

- A. In the event a party does not agree with NAM’s determination that a Demand(s) should or should not be classified as part of a Mass Filing, or believes that a Demand(s) has/have not been filed in accordance with the underlying contractual arbitration provision, and prior to the appointment of the Arbitrator(s) who will determine each case, either party, within five (5) business days of being notified by NAM that such Demand(s) has/have been filed and/or NAM’s determination of whether or not the Demand(s) is/are part of a Mass Filing, may file a Request for Appointment of a Procedural Arbitrator with NAM and copy the other parties to the matter.
- B. The Procedural Arbitrator’s review shall be limited to: (1) whether or not a particular Demand(s) is/are part of a Mass Filing as defined herein and the applicable rules, procedures or requirements based on that determination and/or (2) if a Demand(s) is/are categorized as part of a Mass Filing, whether or not the particular Demand(s) was/were filed in accordance with the terms and conditions of the underlying contractual arbitration provision.
- C. With respect to a challenge(s) made concerning more than one Demand against a party/related parties, one (1) Procedural Arbitrator shall be appointed to determine the challenge(s) for all such Demands; provided that, in certain circumstances where specific challenges are similar or dissimilar and it is determined by NAM, in its sole discretion, that it would be more efficient to resolve such challenge(s) in sub-groups, multiple Procedural Arbitrators may be appointed.
- D. The Procedural Arbitrator may allow for streamlined discovery by the parties, if necessary, to assist the Procedural Arbitrator in making his/her determination. Any other issue(s) shall be determined by the Merits Arbitrator once appointed in accordance with Rule No. 8.
- E. Upon receipt of a Request for Appointment of a Procedural Arbitrator, NAM will provide a panel of three (3) potential Procedural Arbitrators to the parties. The filing party shall make the first Arbitrator strike from the panel and advise both NAM and the responding party of its strike within five (5) business days of issuance of the panel. Thereafter, the responding party shall make the second Arbitrator strike from the panel and advise both NAM and the filing party of its strike within five (5) business days of the filing party’s strike. The remaining Arbitrator will be appointed to serve as the Procedural Arbitrator.

- F. If, for any reason, the remaining Arbitrator is unable or unwilling to serve as the Procedural Arbitrator, NAM will issue another panel of three (3) potential Procedural Arbitrators and the strike process as set forth in paragraph (E) above will be repeated until such time as the Procedural Arbitrator is appointed.
- G. The Procedural Arbitrator will render a determination of the challenge(s) based on the parties' written submissions. However, the Procedural Arbitrator shall have the discretion and authority to schedule a hearing(s) or conference(s) on the applicable challenge(s), which hearing(s) or conference(s) may be in-person, via telephone or virtual.
- H. The Procedural Arbitrator will render a final and binding determination, and the reasons therefore, in writing. Copies of the determination shall be forwarded by NAM to all parties upon payment of all outstanding fees. The authority of the Procedural Arbitrator shall terminate after the issuance of his/her determination. Notwithstanding the foregoing, in the event a dispute arises as to whether or not a subsequent Demand(s) should be included as part of a previously determined Mass Filing, NAM may, in its discretion, appoint the prior Procedural Arbitrator to determine said dispute or provide the parties with a panel of arbitrators for selection in accordance with paragraph (E) above. Any other procedural or administrative issues may be addressed by the subsequently appointed Arbitrator who will determine the merits of each case.

#### **RULE NO. 8: ARBITRATOR ON THE MERITS**

The selection and appointment of the Arbitrator who will determine the merits of each matter shall be in accordance with the applicable rules governing the matter. Unless the parties agree otherwise, an Arbitrator will be appointed for each individual matter. NAM may appoint the same Arbitrator to multiple matters comprising the Mass Filing if said Arbitrator is selected pursuant to NAM's Arbitrator Selection Process as set forth in the applicable rules. In such instance, and absent agreement of the parties otherwise, each case will proceed on an individual basis.

#### **RULE NO. 9: FEES**

- A. Mass Filing Fees are due and payable by the parties as more fully set forth in the Mass Filing Fee section of the Consumer Fee Schedule or the Employment Fee Schedule in effect at the time of the filing of the Demand(s), whichever is applicable. NAM's Consumer Fee Schedule and Employment Fee Schedule are incorporated herein by reference and made a part of these Supplemental Rules.
- B. If a Procedural Arbitrator is appointed pursuant to these Supplemental Rules, administrative and hourly fees are due and payable by the parties as more fully set forth in the Mass Filing Fee section of the Consumer Fee Schedule or the Employment Fee Schedule in effect at the time of the filing of the Demand(s), whichever is applicable. In the event that the party seeking the appointment of the Procedural Arbitrator is the Business/Employer, all fees for the Procedural Arbitrator are to be paid by the Business/Employer. However, if the party seeking the appointment of the Procedural Arbitrator is the Consumer/Employee/Independent Contractor, all fees for the Procedural Arbitrator shall be shared equally between the parties. The Procedural Arbitrator may determine, in his/her discretion or in certain circumstances (i.e., bad faith conduct by a party), that all or a portion of the fees for the time incurred by the Procedural Arbitrator be apportioned otherwise as between the parties.

- C. NAM may direct the parties to make one or several advance, interim or final payments for the costs associated with the Procedural Arbitration process. Such deposits shall be made to NAM. The Procedural Arbitrator(s) shall not proceed with the Procedural Arbitration until receiving confirmation that all outstanding payments have been made to NAM by the parties.
- D. In the event that a party fails or refuses to provide any deposit/payment as directed by NAM, NAM may direct the other party or parties to effect a substitute payment to allow the Procedural Arbitration to proceed. In such circumstances, the party paying the substitute payment may be entitled to recover that amount from the defaulting party.
- E. NAM may, in its sole discretion, modify the fees for specific case types or programs and may refund or waive all or a portion of the fees in cases of extreme economic hardship.

**RULE NO. 10: MEDIATION**

- A. In the event the parties' underlying agreement provides for mediation of each case and/or a representative number of matters that are determined to be part of the Mass Filing, NAM will, upon request by either party, provide a list of three (3) potential mediators to the parties in accordance with the time frames set forth in the parties' agreement. Each party will list the mediators in order of preference and return same to NAM, who will then appoint the mediator based upon the parties' preferences.
- B. In the event the parties' agreement does NOT provide for mandatory mediation of any of the matters comprising the Mass Filing, the parties may by mutual agreement, opt to mediate at any point during the Arbitration process. Upon notice to NAM that the parties have mutually agreed to mediate, NAM will provide a list of mediators for selection of a mediator as set forth in (A) above, and will assist the parties in coordinating the mediation. The mediation will not result in a stay of the Arbitration process unless the parties mutually agree to same.