



Colorado Mediators & Arbitrators Arbitration Rules of Procedure

November 1, 2013

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Introduction

Colorado Mediators & Arbitrators™ (COMA) provides timely dispute resolution that is affordable. The following procedures were written in simple language and organized in a way that can be easily referenced throughout the tenure of the case. Colorado Mediators & Arbitrators offers an accessible means of resolving disputes by embracing and promoting the traditional values of arbitration: affordability, expediency, and equity.

Administrative Procedures

Rule S-1. Administrative Services

When parties agree to arbitrate utilizing these rules, they thereby authorize Colorado Mediators & Arbitrators to administer all services:

1. Receiving the initial Submission Agreement and responses from the parties
2. Addressing procedural questions and concerns
3. Appointing arbitrator: documentary and teleconference arbitration cases are assigned immediately to the arbitrator for direct case administration; the arbitrator may address parties' procedural questions ex-parte
4. Disbursing the required arbitrator oath and disclosures to the parties
5. Scheduling teleconferences, hearings, and facilities
6. Managing timeliness of fees and hearing deposits; notifying all parties when fees have not been received
7. Delivering award to the parties and/or legal counsel
8. Retaining documentation submitted directly to COMA for one (1) year after the closing of arbitration

Rule S-2. Agreement of the Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement upon submission of their case for arbitration by the Colorado Mediators & Arbitrators. The rules in place at the time of the initial submission agreement shall govern. The parties may vary the procedures set forth in these rules by joint agreement. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

Rule S-3. Limitation of Liability

Colorado Mediators & Arbitrators, its agents and any arbitrator assigned to a matter shall not be liable for any act or omission in connection with a case administered pursuant to these rules.

Rule S-4. Non-use of Legal Proceedings

No party shall, during the arbitration of any matter, prosecute or commence any suit, action, or proceeding against any other party touching upon any of the matters referred to pursuant to these rules.

Rule S-5. Fees

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1. Colorado Mediators & Arbitrators demonstrates fairness and neutrality to the parties beginning with the administrative fees. While other well-known national forums require the entire administrative costs be paid initially by the claimant (putting additional financial stress on the party initiating resolution), COMA's administrative fees are evenly divided between the claimant and respondent.
2. Each party shall bear their own costs of preparing documentation, mailing or delivery fees, process service, photocopying, and printing prior to arbitration, and during each hearing.
3. Fee schedules appear in a supplement to these rules. *The Fee Agreement Terms and Conditions* are incorporated into the fee schedule upon filing the Submission Agreement or Response.
4. If fees have not been paid in full according to the fee agreement terms and conditions, Colorado Mediators & Arbitrators may inform the parties in order that one of them may advance the required payment. If such payments are not made within 10 business days after notification, the case may be suspended or terminated.
5. A mediation initiation fee shall not be charged if parties to a COMA-administered arbitration request mediation in an effort to settle the matter prior to hearing.

Arbitration Rules

Rule A-1. Purpose of Arbitration Proceedings

Arbitration proceedings are meant to be a cost-efficient, fair and decisive way of settling disputes through private venue. Arbitration is binding upon the parties to such proceeding. Arbitration awards cannot be overturned or appealed except under very limited circumstances as provided by governing law.

Rule A-2. Governing Law, Designation of Rules

Arbitration is a creature of contract. Contractual provisions may be extremely vague or very specific about governing law (federal or state), procedural rules, arbitrator appointment process, and identifying which court of jurisdiction for enforcement. It is critical to have a structure for judicial enforcement; therefore Colorado Mediators & Arbitrators utilizes the following guidelines when parties submit their dispute for arbitration.

1. Contract Silent on Governing Law

The arbitration will be conducted under Federal Arbitration Act (FAA) unless parties agree otherwise prior to hearing. Federal District Court has jurisdiction for arbitrations conducted under FAA. The FAA is silent on the issue of punitive damages.

2. Contract Names State Law

The arbitration will be conducted under the state law specified, unless parties agree otherwise prior to hearing. The state district court has jurisdiction for arbitrations conducted under its arbitration act. Punitive damages vary according to state.

3. Contract is Silent on Rules of Procedure

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The arbitration will be conducted utilizing Colorado Mediators & Arbitrator's Rules of Procedure. Where COMA's rules conflict with governing law, the governing law will prevail.

4. Stated Rules of Procedure

Colorado Mediators & Arbitrators may administer an arbitration action utilizing rules specified in the arbitration clause that are different than COMA's rules. Providing a copy of these rules to that arbitrator is the responsibility of the parties. The parties shall indicate their agreement on the appropriate arbitration submission agreement according to the claim amount. Colorado Mediators & Arbitrators shall appoint the arbitrator; the appointed arbitrator shall then utilize the specified rules for all subsequent matters. Where the rules of procedure conflict with governing law, the governing law will prevail.

Rule A-3. Interpretations of Rules and Enforcement

1. The arbitrator shall be empowered to interpret and determine the applicability of all provisions under these rules, including the power to rule on his or her own jurisdiction, and any objections with respect to the existence, scope or validity of the arbitration agreement.
2. Such interpretations and actions to obtain compliance shall be final and binding upon the parties.
3. The arbitrator shall be empowered to determine the existence or validity of a contract which contains an arbitration clause or provision. An arbitration clause shall be treated as a separate agreement, independent of the other terms of the contract.
4. Objections by a party or parties to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim must be in writing and delivered to COMA no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.
5. The arbitrator may grant any legal, equitable, or other remedy or relief as provided by governing law.

Rule A-4. Definitions

An on-line glossary is provided at <http://coma.com/glossary> . The definitions found in the glossary are merely informational.

Rule A-5. Size and Classification of Claim

COMA Procedures endeavor to provide equitable resolution by balancing the size of claim with the parties' need for affordability and expediency. Size of claim refers to the disclosed claim or counterclaim amount of any party exclusive of interest, along with arbitration fees and costs. If a counterclaim exceeds the claim amount for the procedure filed by the claimant, the entire case will be administered under the arbitration procedures based on the amount of counterclaim, and each party shall bear their own increased cost to arbitrate.

1. Claims of \$75,000 and over are considered Large Claims and are determined by Standard Arbitration Hearing.
2. Claims between \$15,000 - \$74,999 are considered Mid-Size Claims and are determined by Teleconference Hearing.
3. Claims of \$14,999 & under are considered Small Claims and are determined by Documentary Hearing.

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Rule A-6. Computation of Time

All time is computed in calendar days, not business days. In computing any period of time under these rules, the day of the act or event from which the designated period of time begins to run shall not be included.

Rule A-7. Service and Filing

1. The completed fee agreement with a valid credit card number shall be submitted to Colorado Mediators & Arbitrators at the time of filing a claim or response. Declined credit cards provided for arbitration fees are deemed invalid.
2. All documents other than the completed fee agreement shall be submitted simultaneously to Colorado Mediators & Arbitrators and served on all parties. Service of the submission agreement to COMA and the respondent(s) may be made by mail or other means where attempt of delivery can be demonstrated. Service and filing are accomplished on the date of mailing utilizing overnight mail service, certified mail, or USPS with a delivery receipt request, email with returned receipt, fax with confirmation of delivery, civil or private process service or in the case of other means of service, on the date of delivery or on the date of electronic filing.
3. A person has notice if the person has knowledge of the notice or has received notice. Failure to receive notification shall not delay arbitration proceedings.
4. A person receives notice when it comes to the person's place of residence or place of business, or at another location held out by the person as a place of delivery for communications, including electronic means such as an active email address or fax number used between claimant and respondent in their business dealings.
5. Unless a person objects to the lack of notice or the insufficiency of notice not later than the beginning of the first preliminary arbitration hearing, a person who appears at the arbitration hearing waives any objection to the lack of notice or insufficiency of notice.

Rule A-8. Representation

All parties shall have the right to representation by persons of the party's choice or legal counsel at any stage of the proceedings. Legal counsel shall file an entry of appearance with COMA and all parties within two (2) days of being retained, but not less than five (5) days prior to a scheduled teleconference or hearing. A teleconference or hearing shall be rescheduled if the entry of appearance is filed within five (5) days. The arbitrator may, in his or her sole discretion, assign all associated costs of rescheduling resulting from untimely entry of appearance to the party(s) retaining such counsel.

Rule A-9. Arbitrator Appointment

COMA shall appoint a single neutral arbitrator to hear the testimony and evidence presented by the parties, and to decide all claims. COMA may replace an appointed arbitrator with another arbitrator if the appointed arbitrator resigns, withdraws, or is otherwise unable or unwilling to hear and decide the case promptly and in an expedited manner.

Rule A-10. Type of Hearing Determined by Amount of Claim

1. Large Claims

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Hearings consist of one or more pre-hearing teleconferences followed by a hearing attended in person by the parties and their attorneys, when represented. The necessary hearing time is determined by the parties.

2. Mid-size Claims

Hearings consist of the presentation of documents, electronic evidence, and testimony by teleconference. A flat fee is offered when total teleconference time does not exceed three hours. Total teleconference time includes all Initial Pre-Hearing Conferences and Teleconference Hearings.

3. Small Claims

Documentary Hearing. The dispute is decided by the arbitrator's examination of the written claims and responses, contract, and evidence submitted by the parties. A brief 15-30 minute teleconference may be scheduled at the discretion of the arbitrator to clarify documentary evidence.

Rule A-11 Objection to Documentary or Virtual Hearing

Any party may demand a physical hearing of the evidence regardless of the claim amount. The party demanding the physical hearing shall pay all additional fees for such hearing for all parties involved. The arbitrator may shift these costs in the award at his or her discretion.

Rule A-12. Cause to Remove an Arbitrator

1. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party or its experts or counsel may not serve as an arbitrator.
2. Arbitrators shall supply the parties with a current resume and a completed arbitrator disclosure checklist after a case has been filed and answered. The Arbitrator shall make disclosures of any actual, apparent or likely conflicts of interest or bias that the arbitrator may have. In small and mid-size claims, this disclosure shall be made directly to the parties. In large claims, the disclosure shall be made by the arbitrators to Colorado Mediators & Arbitrators' Case Administrator, who will then make the disclosures known to the parties. Arbitrators have a continuing duty to disclose.
3. The parties shall decide, within three (3) days of receipt, whether the arbitrator is acceptable to them and if not, COMA will appoint another Arbitrator to hear the case.

Rule A-13. Acknowledgment of Oath of Arbitrator

At the commencement of proceedings the arbitrator shall acknowledge if s/he has taken the *Oath of Arbitrators* administered by COMA.

Rule A-14. Communications between Parties and Arbitrator

1. **Large Claims:** Parties have a duty to read all arbitration procedures upon submission and response of the case. Parties may not communicate with the arbitrator outside the presence of all parties (ex-parte

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communication.) Procedural questions may be clarified in the presence of all parties at the Initial Pre-Hearing Conference.

2. **Documentary and Teleconference Claims:** Parties have a duty to read all arbitration procedures upon submission and response of the case. Procedural questions may be submitted to the arbitrator via email with a carbon copy to all parties involved. The arbitrator has no responsibility to respond to questions that are plainly addressed in the procedural rules. Questions that are not addressed in the procedural rules shall be addressed by the arbitrator with a carbon copy to all parties involved.

Rule A-15. Initiation of Arbitration by Claimant

The claimant shall initiate arbitration by filing with COMA the required paperwork according to the claim amount. Claimant shall concurrently serve, by certified mail or other means where attempt of delivery can be demonstrated, upon the respondent(s) one copy of the arbitration submission agreement and one copy of the statement of claim. The submission agreement must be signed by the claimant with written or electronic signature.

1. An executed *Standard Arbitration Submission Agreement* shall be submitted for claims from \$75,000 & over, with a statement of claim of the controversy in dispute, a copy of the signed contract at issue, and the required filing fee. The statement of claim shall specify the relevant facts and the remedies sought.
2. An executed *Teleconference Arbitration Submission Agreement* shall be submitted for claims between \$15,000 - \$74,999, with a statement of claim of the controversy in dispute, a copy of the signed contract at issue, together with all documents and exhibits in support of the claim, and the required filing fee. The statement of claim shall specify the relevant facts and the remedies sought.
3. An executed *Documentary Arbitration Submission Agreement* shall be submitted for claims of \$14,999 or less, with a statement of claim of the controversy in dispute, together with all documents and exhibits in support of the claim, and the required filing fee. The statement of claim shall specify the relevant facts and the remedies sought.

Rule A-16. Response to Claim

1. The party or parties upon whom an arbitration submission agreement has been served may, within ten (10) calendar days after the service of a Documentary or Teleconference Arbitration Claim and within thirty (30) calendar days after the service of a Standard Arbitration Claim, file a written response utilizing mail or email, to the claim by completing and signing the COMA response form and providing an answering statement that specifies all relevant facts and available defenses to the statement of claim submitted. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim and the remedy sought. The response shall be filed with COMA along with the required filing fee and one copy shall simultaneously be mailed or emailed, with a delivery confirmation requested, directly to the claimant at the address shown on the submission agreement.
2. If no response is filed within the time limits stated in Rule A-16.1, the claim will be treated as having been denied by the respondent. Failure to file an answering statement shall not serve to delay the arbitration nor relieve the respondent's obligation of their portion of the arbitration costs and fees (see Rule S-5.)

Rule A-17. Response to Counterclaim

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Claimant may, within ten (10) calendar days after service of the response and counterclaim, file a written response to the counterclaim. If such a response is filed, a copy shall be filed with COMA and one copy shall be mailed or emailed, with a delivery receipt requested, directly to respondent at the address shown on the counterclaim. If no response is filed, the counterclaim shall be deemed to be denied by the claimant.

Rule A-18. Change of Claim or Counterclaim or Adding New Claims

Once a claim or counterclaim has been filed, it cannot be increased in amount and no new claims may be added without the consent of the arbitrator.

Rule A-19. Settlements

1. Parties may agree to settle their dispute at any time prior to the delivery of the award.
2. If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred according to the fee schedule.
3. The terms of a settlement agreement do not need to be disclosed to the arbitrator. However, if the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally between all parties.
4. The parties may request that the arbitrator incorporate the settlement into an award.

Rule A-20. Postponements

Except in extraordinary circumstances, COMA or the arbitrator may grant a party no more than one seven (7) day extension of time to respond to the demand for arbitration or counterclaim.

Rule A-21. Subpoena

The arbitrator and any counsel of record to the proceeding shall have the power to subpoena witnesses and subpoena documents as provided by law. All parties shall be given a copy of a subpoena upon its issuance.

Rule A-22. Exchange of Exhibits and Information

1. *Standard and Teleconference Arbitration Claims:* An initial pre-hearing teleconference shall be scheduled between the arbitrator and the parties to address the parties' procedural questions, and establish a schedule for discovery, document, and exhibits exchange dates. At the request of any party or at the discretion of the arbitrator, the arbitrator may direct both the production of documents and other information and the identification and subpoena of any witnesses. The arbitrator shall resolve all disputes concerning the exchange of exhibits and/or information. A scheduling order shall be forwarded to the parties by the arbitrator with the established dates and procedural decisions after the initial pre-hearing teleconference takes place.
2. *Small Claims:* The claimant shall submit copies of all documents and exhibits they wish the arbitrator to consider at the time of filing the submission agreement or response to counterclaim. The respondent in his/her response and answer shall submit copies of all exhibits they wish to the arbitrator to consider at the time of response to COMA and to the claimant.

Rule A-23. Dismissal of Proceedings

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1. At any time during the course of arbitration, the arbitrator may, at the request of a party for good grounds, dismiss the proceeding and refer the parties to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party.
2. The arbitrator may dismiss a claim, defense, or proceeding with prejudice for willful and intentional material failure to comply with an order of the arbitrator.

Rule A-24. Confidentiality

1. A written, audio, video or visual record of arbitration hearing or teleconference shall not be made.
2. Arbitration awards shall not be published by Colorado Mediators & Arbitrators.

Rule A-25. Failure to Appear

If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing session, the arbitrator may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

Rule A-26. Opening Statements

Generally the claimants proceed first in opening statements, followed by the respondent's opening statement, with no rebuttal argument being permitted. The hearing procedures may be varied at the discretion of the arbitrator provided all parties are allowed a full and fair opportunity to present their respective cases.

Rule A-27. Presentation of Case

Generally the claimants present their case first, followed by the respondents. This practice may be varied to allow each witness to be examined and cross-examined in one period of time so that such witness would not have to be recalled for presentation in another party's case. The hearing procedures may be varied at the discretion of the arbitrator, provided all parties are allowed a full and fair opportunity to present their evidence.

Rule A-28. Oaths of Witnesses

All testimony shall be under oath or affirmation.

Rule A-29. Rules of Evidence

The arbitrator shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules of evidence unless the parties have designated such rules in their arbitration agreement.

Rule A-30. Closing Arguments

The claimant generally proceeds first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may be varied in the discretion of the arbitrator to provide all parties with a full and fair opportunity to present their respective cases.

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Rule A-31. Reopening of Hearing

In extraordinary circumstances, the hearing may be reopened by the arbitrator on their own motion or at the discretion of the arbitrator upon application of a party at any time before the award is rendered.

Rule A-32. Time and Form of Award

1. Simple Written Awards for Mid-size and Small Claims.

The arbitrator may render an oral bench decision if comfortable doing so, followed by a simple, written award. The arbitrator shall endeavor to render a simple award within ten (10) days of the close of a teleconference hearing or within ten (10) days of the receipt of all submissions and evidence for a documentary hearing. All awards shall be in writing and signed by the arbitrator in such manner as is required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.

2. Large Claim Awards.

- a. A simple, written award shall be delivered unless the parties expressly request a reasoned award. The arbitrator shall endeavor to render a simple award within ten (10) days from the date the record is closed. If the parties have requested a reasoned award, the arbitrator shall endeavor to render the reasoned award within thirty (30) days from the date the record is closed.
- b. Unless the governing law directs otherwise, all awards rendered pursuant to these rules shall be deemed final. Although there is voluntary compliance with the majority of awards, parties may need to motion the court having appropriate jurisdiction to confirm, clarify, or vacate the award.
- c. The award shall contain the names of the parties and their counsel, if any; a summary of the issues in controversy; the damages and other relief awarded; the names of the arbitrator; and the signature of the arbitrator concurring in the award.
- d. All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear statutory interest from the date of the award:
 1. if not paid within thirty (30) days of receipt,
 2. if the award is the subject of a motion to vacate which is denied, or
 3. as specified by the arbitrator in the award.
- e. Interest shall be assessed at the statutory rate in the state where the award was rendered, or at a rate set by the arbitrator.
- f. COMA will serve a copy of the award on each party or the representative of the party. Delivery of the award shall be by any method available and convenient to the parties and that is reasonably expected to cause the award to be delivered to all parties or their counsel on the same day. Methods COMA may use include, but are not limited to, registered or certified mail, hand delivery, and facsimile or other electronic transmission, including email.
- g. Colorado Mediators & Arbitrators' services are concluded upon delivery of the arbitration award.

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