

# Updates to Mass Arbitration Rules: Scope and Anticipated Impact

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On January 15, 2024, the American Arbitration Association (“AAA”) introduced updates to its [Mass Arbitration Supplementary Rules](#) and its fee schedules, including for [consumer](#) mass arbitrations (collectively referred to as the “Updates”). The Updates consist of a flat initiation fee to lower the cost of initiating arbitrations, the new requirement of counsel to affirm that the information they provide is not frivolous when initiating the arbitrations and an increased and expansive role of a Process Arbitrator to ensure fair and consistent administrative procedures. A more detailed overview of these revisions can be found below.

Although the Updates may mitigate some of the more abusive practices common to mass arbitrations, they do not fully eliminate the risks posed by mass arbitrations recently brought by the privacy plaintiff’s bar. As such, businesses identifying the AAA as the third-party arbitrator in their consumer agreements should review the Updates and consider their impact.

## **Signed Affirmation Requirement**

Mass arbitration claims must now “include an affirmation that the information provided for each individual case is true and correct to the best of the [counsel’s] knowledge.” See Mass Arbitration Supplementary Rules, MA-2. Particularly, this revised rule addresses the issue of counsel filing cases that are fictitious, duplicative, or inaccurate—it now allows arbitrators to conclude that counsel do not knowingly file false or unverified claims. A similar requirement extends to responses, counterclaims, and amended Demands for Arbitration. As such, the court may impose Rule 11-type sanctions if those types of claims are filed.

## **Changes to Mediation Procedures**

Further, the Updates include an expanded mediation requirement. Under the prior rules, mediation had to take place within 120 days of the deadline for answers to the Demands for Arbitration, following resolution of any threshold challenges, and that is still the case. As it remains in place the option that any party may unilaterally opt out of the mediation. However, with the new revision in place, even if a party opts out of mediation, the AAA can still, *sua sponte*, try to resolve the dispute by appointing a mediator to facilitate the discussions between the parties.

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## Updated Fee Schedule

The Updates also include a new fee schedule, which affects Process Arbitrator fees, arbitrator appointment fees, Merits Arbitrator's compensation, and hearing fees as summarized below.

### Initiation Fee

The Updates introduce a new fee schedule that significantly lowers the costs of initiating an arbitration by introducing a flat initiation fee, which minimizes the up-front costs that businesses must pay at the forefront of the case when there are a large number of claimants. This flat fee covers the costs of an administrative review of the filing, an administrative conference call with the AAA, and the appointment of a Process Arbitrator/Global Mediator (the role of these arbitrators will be explained further below).

#### Before:

- Individuals paid \$75 or 125 per case.
- Businesses paid \$100, \$175, \$250, or \$325 per case.

#### Now:

- Individuals pay a flat initiation fee of \$3,125 for all cases.
- Businesses pay a flat initiation fee of \$8,125 for all cases.

### Filing Fee

After the initiation of the arbitration, the new rules still use a “per case” basis for filing fees and remain mostly unchanged. However, the Updates raised the filing fee by \$25 for claimants:

Number of Cases	1-500	501-1,500	1,501-3,000	3000+
Individual (Claimant) Filing Fee:	\$125	\$75	\$75	\$75
Business Filing Fee:	\$325	\$250	\$175	\$100

Further, once cases are ready for Merits Arbitrator selection, the AAA will levy an arbitrator appointment fee for each case. This new fee replaces the previous case management fee of \$1,400 and is now split between claimants and businesses. For consumer cases, if the AAA appoints an arbitrator directly, the business pays \$450 and each claimant pays \$50, but if the AAA uses the list and rank process, the business pays \$600 and the individual claimants each pay \$75.

When it comes to the compensation that Merits Arbitrators are paid for consumer cases, whereas they used to get paid on a flat fee basis—\$2,500 per case per day for virtual or in-person hearings and \$1,500 for desk arbitrations—Merit Arbitrators now receive \$300 per hour across the board. Following this, the former hearing fee—incurred when the arbitrator schedules the evidentiary hearing—is now called the “Final Fee” and is set at \$600 per case for consumer cases. Noteworthy mention is that the Updates provide that virtual hearings are the preferred method of evidentiary hearings for new cases filed, leveraging technology for increased efficiency and accessibility.

## **Introduction of Process Arbitrator**

As discussed above, the flat initiation fee covers the costs of a Process Arbitrator. Under the Updates, the Process Arbitrator may decide threshold administrative issues pertaining to the filings. For example, the Process Arbitrator can hear challenges to the propriety of filings to determine compliance with the AAA's filing requirements or whether the filing requirements of the parties' contracts have been met. **Below, you will see more administrative matters that the Process Arbitrator may decide:**

- Which rules apply;
- Which cases should be excluded from the mass arbitration;
- The determination of payment of administrative fees, arbitrator compensation, and expenses;
- The selection process for Merit Arbitrators;
- For cases under the Consumer Arbitration Rules:
  - Whether the cases should be closed and proceed in a small claims court; and,
  - Whether the Merit Arbitrator(s) must proceed by documents or whether to hold hearings;
- The type and location of the Merit Arbitrator's hearings;
- Whether any previously issued rulings by the Process Arbitrator are binding on subsequent cases.

## **Conclusion**

Moving forward, these Updates enhance protections for businesses confronting the risk of mass arbitrations. Particularly, the Updates reduce the fees to begin the arbitration process, lower the risk of counsel's filing frivolous arbitrations with duplicative or fictitious claims, and it allows the Process Arbitrator to ensure the consistency and uniformity of AAA administrative procedures.

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