



**APPELLATE
DISPUTE RESOLUTION
RULES AND PROCEDURES**

(effective 9/18/2019)

NAM (National Arbitration and Mediation)
990 Stewart Avenue, First Floor
Garden City, NY 11530
Phone: 1-800-358-2550
Fax: 516-794-8971
www.namadr.com

RULE NO.1: APPLICATION OF RULES

As a general rule, the arbitration process is used by parties to obtain a final and binding decision/award without any right of appeal. However, there are some instances where the right of an appeal is desired by the parties. To balance the benefits of arbitration (which include both cost and time efficiencies) with the benefits of appellate review, NAM has created the following dispute resolution rules of appellate procedure for those instances where the parties agree to arbitrate with the option for appellate review.

As more fully set forth herein, an appeal of an arbitration decision/award is 1) optional and 2) a matter of agreement between the parties. The agreement to permit an appeal must be in writing and can be contained in a pre-dispute agreement to arbitrate OR agreed to at any time during the pendency of the arbitration proceeding. Parties are free to adopt the following rules of appeal in their entirety or modify some or all of the rules in their agreement, subject to the approval of NAM.

These rules shall also apply to instances where the parties agree to submit an appeal of a state or federal trial/lower court decision to a NAM appellate panel, in lieu of pursuing an appeal through the court system, or to submit an appeal from an arbitration decision, even if the underlying arbitration proceeding did not occur at NAM.

RULE NO. 2: PRIVACY/CONFIDENTIALITY

All documents and materials submitted to or filed with NAM shall remain confidential and are not subject to public scrutiny. All communications, whether oral or written, shall remain confidential and inadmissible in any other judicial or alternative dispute resolution proceeding.

RULE NO. 3: EXCLUSION OF LIABILITY

- A. Neither NAM, nor its Officers, Directors, employees, representatives, Arbitrators, Mediators or Neutrals shall be liable for any act or omission in connection with any Appeal conducted under these Rules or any other rules and procedures mutually agreed upon by the parties.
- B. Neither NAM, nor its Officers, Directors, employees, representatives, Arbitrators, Mediators or Neutrals is a necessary party in any further alternative dispute resolution or judicial proceeding and may not be called to testify at any subsequent proceeding.
- C. The parties agree not to make any claims against NAM for damage, loss or injury and hereby waive any cause of action or other remedy against NAM, its employees, Arbitrators/Mediators/Neutrals, and/or agents.

RULE NO. 4: REPRESENTATION

Parties may act on their own behalf or may be represented by a person with authorization to act on their behalf. The name, address and contact information of such persons shall be communicated to NAM and all other parties upon filing the Request for Appeal or the Response to the Request for Appeal.

RULE NO. 5: ADJOURNMENTS

The Appellate Panel may, in its discretion, grant a party's request for an adjournment/ postponement of a scheduled In-Person/Oral Argument, conference (in-person or telephonic) or the date fixed for the receipt or exchange of briefs, the record or any other submission required by these rules or the Appellate Panel.

RULE NO. 6: FEES

The parties shall pay those fees set forth in the then current Fee Schedule in effect at the time of the filing of the claim which is subject to NAM's Appellate Dispute Resolution Rules and Procedures. The Fee Schedule is incorporated by reference herein and made part of these Rules. If the administration of a matter extends beyond a one-year period, NAM may, in its sole discretion, charge the most current fees set forth in the then existing Fee Schedule for additional time expended on the matter beyond the one year period, and each subsequent one year period, if applicable.

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. 7: MODIFICATION OF RULES

NAM reserves the right to modify these Rules at any time without prior written notice to the parties. The version of the Rules in effect at the time the Request for Appeal is filed with NAM will govern the Appeal Process, unless the parties mutually agree to another version. 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 appeal, subject to the approval of NAM. However, NAM's Fee Schedule is not subject to such modification or amendment except in the sole discretion of the NAM Administrator.

NAM, in its sole discretion, shall interpret and/or enforce these rules as it deems necessary.

RULE NO. 8: ENFORCEABILITY OF RULES

If the provisions of these Rules are held invalid or unenforceable by a court of law, the parties shall not be deemed to have waived any of their rights, privileges or remedies to submit their appeal to the applicable court of law or to avail themselves of any other legal rights, privileges or remedies.

RULE NO. 9: SERVICE OF DOCUMENTS

- A. Service of documents may be completed by any one of the following methods: e-mail, facsimile, delivery by messenger service, overnight delivery service by a nationally recognized courier company or by certified mail. The party must obtain a record of the transmittal thereof. Service by any of the aforementioned means is considered effective upon the date of deposit or transmittal of the document. Documents shall be served to the last known address of the party or its representative for whom same are intended.

- B. The NAM case manager and/or the Appellate Panel may also communicate with the parties and/or each other, and/or serve any document, by electronic fax transmission (fax), electronic mail (email) and U.S. mail.
- C. The time periods fixed under NAM's Rules shall begin to run on the next day after service is effected by one of the methods described herein. Official holidays and non-business days are included in the calculation of the time period. However, if the last day of a time period is a holiday or non-business day in the country where the responding party is located, the time period shall expire on the next business day.

RULE NO. 10: INITIATING THE APPEAL

- A. The Request for Appeal must be in writing and sent to the opposing party within twenty-one (21) **calendar** days of the service of the decision/award from which the appeal is being taken.
- B. The Request for Appeal form can be obtained from NAM's website at www.namadr.com or by contacting the NAM Appeals Administrator.
- C. To initiate the Appeal, the filing party must file all of the following with the Appeals Department at NAM- 990 Stewart Avenue, Garden City, NY 11530 Att: Appeals Dept:
 - 1. A completed, signed Request for Appeal which must identify the Decision/Award from which the appeal is being taken, the date thereof and the issuing court or tribunal; the basis for the Appeal and if the Appeal is from the entire decision/award or a specific part thereof;
 - 2. A copy of the Decision/Award from which the appeal is being taken;
 - 3. A copy of the applicable written agreement providing for the right of appeal;
 - 4. Proof of service on the opposing party(ies); and
 - 5. The required filing fee per NAM's Fee Schedule.
- D. In the event that any party to the appeal wishes to file a Request for Cross-Appeal, the form for the Request for Cross-Appeal can be obtained from NAM's website at www.namadr.com or by contacting the NAM Appeals Administrator. The Request for Cross-Appeal must be in writing and sent to the opposing party and to NAM within seven (7) days of service of the Request for Appeal.
- E. The party filing the Cross-Request for Appeal must file all of the following with the Appeals Department at NAM- 990 Stewart Avenue, Garden City, NY 11530 Att: Appeals Dept.:
 - 1. A completed, signed Cross-Request for Appeal which must identify the Decision/Award from which the Cross-Appeal is being taken, the date thereof and the issuing court or tribunal; the basis for the Cross-Appeal and if the Cross-Appeal is from the entire decision/award or a specific part thereof;
 - 2. A copy of the Decision/Award from which the cross-appeal is being taken;

3. A copy of the applicable written agreement providing for the right of appeal;
4. Proof of service on the opposing party(ies); and
5. The required filing fee per NAM's Fee Schedule.

RULE NO.11: THE RECORD ON APPEAL

- A. The Record on Appeal shall be jointly submitted by the parties to NAM and **shall** consist of the following:
 1. All previously marked exhibits that were accepted into the record of the Arbitration Hearing/Court by the Arbitrator/Judge;
 2. Any stenographic or other record of the Arbitration Hearing/Court;
 3. Any affidavits or transcripts accepted into the record of the Arbitration Hearing/Court by the Arbitrator/Judge.
- B. Any disputes concerning whether a document is part of the record on appeal shall be determined by the Appellate Panel.

RULE NO.12: BRIEFS

- A. The party initiating the Appeal (the "Appellant") shall serve on the other party and file with NAM its brief and the Record on Appeal by no later than 30 days after the service of the Request for Appeal.
- B. The Responding party (the "Respondent") shall serve on the other party and file with NAM its brief by no later than 30 days after the service of the Appellant's brief.
- C. The Appellant may serve and file with NAM a Reply Brief by no later than 15 days after the service of the Respondent's Brief.
- D. In the event a Request for Cross-Appeal is filed, the Respondent/Cross-Appellant's brief shall be served and filed with NAM simultaneously with the service of the Respondent's brief as set forth in (B) above.
- E. The same time frames for the service of the Respondent's brief and the Appellant's Reply brief on the Cross-Appeal shall apply following the service of the Respondent/Cross-Appellant's brief.

RULE NO. 13: THE APPELLATE PANEL

The Appellate Panel shall consist of three (3) NAM Neutrals selected from NAM's Roster of Neutrals. However, if the parties agree, a single (1) NAM Neutral may preside over the Appeal.

RULE NO. 14: SELECTION OF THE APPELLATE PANEL

- A. Unless both parties agree otherwise or the NAM Administrator determines, in its discretion, that another method for the selection of the Appellate Panel is appropriate for the case, the parties shall select the Appellate Panel in the following manner:
1. Within 14 days of NAM's receipt of a Request for Appeal, the NAM Administrator shall forward to the parties, identical lists containing at least eight (8) names of Neutrals with bios;
 2. After receipt of the list, each party may strike up to two (2) names from the list. Each party shall number the remaining names in the order of their preference and return their list to the NAM Administrator within 15 days of service of the list.
 3. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party.
 4. The NAM Administrator shall appoint the Appellate Panel from among the names remaining on the list and in accordance with the order of preference indicated by the parties;
 5. If, for any reason, the appointment cannot be made according to this procedure, the NAM Administrator may exercise his/her discretion in appointing the Appellate Panel. In making the appointment, NAM shall secure the appointment of independent and impartial Neutral(s). No Neutral shall act as an advocate for any party and no Neutral, whether before or after appointment, shall advise any party on the merits or outcome of the Appeal.
 6. In the event that an Appellate Panel Neutral becomes unwilling or unable to serve on the panel, NAM shall, in its sole discretion, determine the method for the appointment of a substitute panel member.

RULE NO. 15: IN-PERSON ORAL ARGUMENT/HEARING

- A. Following the submission of Briefs as set forth in Rule No. 12 above, the NAM Administrator shall schedule an In-Person Oral Argument/Hearing before the Appellate Panel UNLESS all parties stipulate, in writing, to the submission of the Appeal upon the Record and the briefs filed by the parties.
- B. The NAM Administrator shall determine and set the location of the In-Person Oral Argument/Hearing. Each In-Person Oral Argument/Hearing will be scheduled for a minimum of one hour. However, the Oral Argument/Hearing may be scheduled for more than one hour if agreed to by the parties, the panel and/or in the discretion of the NAM administrator.

RULE NO. 16: THE UNDERLYING DECISION/AWARD

- A. Once NAM has accepted the filing of a Request for Appeal, the parties shall not seek to have the underlying decision/award which is the subject of the appeal judicially enforced, modified or vacated. The parties expressly stipulate, consent and agree that the time period for the commencement of judicial enforcement proceedings of the underlying decision/award shall be tolled during the pendency of the appeal at NAM.
- B. If the Appeal is withdrawn at any point prior to the issuance of the Appellate Panel's decision, the underlying decision/award shall be deemed final as of the date of the withdrawal.

RULE NO. 17: THE APPELLATE PANEL'S DECISION/MISCELLANEOUS

- A. A party may not present for the first time on appeal an issue or evidence that was not raised during the prior arbitration/court proceeding.
- B. The Appellate Panel may affirm, reverse or modify a Decision/Award and may apply the same standard of review that an appellate court in the jurisdiction would apply to an appeal.
- C. The Appellate Panel will render a decision, in writing based upon a majority vote of the panel, as applicable. The decision of the Appellate Panel will be final for the purposes of judicial review once served upon the parties.
- D. If a Party to the Appeal fails to serve and file a Brief or fails to appear at an In-Person/Oral Hearing after receiving due notice thereof, the Appellate Panel may continue with its determination of the appeal in that party's absence.
- E. The Appellate Panel shall not base its Decision solely on the failure of the non-appearing or defaulting party to comply in the above circumstances. The Appellate Panel shall require the submitting or attending party to present its oral arguments.
- F. The Appellate Panel shall have the power to rule on its own jurisdiction, including any ruling on the validity and/or enforceability and/or scope of the right to appeal or the agreement to permit an appeal.
- G. NAM, in its absolute discretion, may cease the administration of an appeal in the event one or more of the parties fails to remit payment of fees, and/or not release the decision until such time as all outstanding NAM fees are paid.
- H. The Appellate Panel has the power to assess the costs of the appeal, and/or to re-apportion the costs of the appeal.
- I. Each party is responsible to pay the fees billed to them by NAM directly to NAM. Pursuant to Rule No. 17 (H) above, if the Appellate Panel re-assesses or re-apportions the costs among the parties, such reimbursement is to be made between/among the parties after NAM has been paid in full and without the involvement of NAM.