



Motion Practice Under AAA Rules What You Need to Know

May 17, 2017 – 1:00 pm to 2:00 pm ET

PROGRAM SUMMARY

Speakers: J. Timothy Eaton and Stanley P. Sklar

During this 60-minute free webinar, attorney/arbitrators J. Timothy Eaton and Stanley P. Sklar examine how arbitrators and advocates might address motion practice under AAA Rules, including how their effective use may improve the timeliness and cost of reaching an award. With a special focus on how motions are addressed across the full spectrum of AAA Rules.

AGENDA

1:00 p.m.	Welcome and Introduction of Speakers	(5 minutes)
1:05 p.m.	Motion Practice Under AAA Rules <ul style="list-style-type: none">• arbitrator authority to hear motions;• pre-arbitration motions;• consolidation and joinder;• interim relief;• dispositive motions;• summary judgment;• writing interim awards to address motions;• post-arbitration motions;	(45 minutes)
1:50 p.m.	Conclusion and Questions	(10 minutes)
2:00 p.m.	Evaluation	(5 minutes)
2:05 p.m.	Adjourn	



Motion Practice Under AAA Rules - What You Need to Know

Webinar – May 17, 2017 – 1:00 p.m. ET

QUESTIONS FROM THE WEBINAR

Q: Are dispositive motions overused? If so, what can be done about it? Some parties may be of the view that they should file a dispositive motion in every case (in the extreme view, thinking that to not do so would be less than complete representation).

A: Dispositive motions are an important tool available to Counsel. As indicated in the presentation, dispositive motions can be substantive or tactical. Tactical may be used to call the Arbitrators attention to a specific issue such as a “challenge” to the expert witness forcing the arbitrator to pay attention to that testimony even though moving party knows the motion will be overruled. Motions can be restricted to written motions without oral argument to be more efficient. As Arbitrators we have to be careful about a parties’ case. Remember, it is the arbitrator’s function to manage not to take over the case. One tactic would be to limit the number of pages of such a motion. Dispositive motions are generally helpful because they can narrow issues and they also allow the arbitrator to better understand the case earlier which is helpful in deciding discovery issues and preparing for the hearing.

Q: What are the P-1 and P-2 Checklists?

A: See pages 38 and 39 of the Construction Rules (2015) and pages 33 and 34 of the Commercial Rules (2013). Excellent management tool for arbitrators and Counsel.

Q: There is no authority in Section 3 or 4 of the FAA for a federal court to stay an arbitration. Only state courts have that authority. Please confirm.

A: The speakers believe that is correct because their experience with stays has only been with state courts.

Q: Why not let the discovery proceed so that if the arbitration is precluded the discovery results may then be used in court litigation?

A: It all depends on the extent of the discovery. There is an issue that arbitration is confidential and could be raised as defense in litigation (this defense is a possibility, but court discovery rules require more formality so it may not always work).

Q: You mentioned entertaining a motion to appoint a receiver. You should be aware in some states (including New York and New Jersey) arbitrators may not appoint a receiver as a provisional remedy. Only a court can.

A: Thanks for that insight. We know in Illinois arbitrators have that power.

Q: Do you envision any circumstances when a hearing may be needed before an interim order is issued?

A: Often ask Counsel if they wish to have a “hearing” – it is their case to try. However, consider limiting the length of the hearing. We would assume if the interim measure involves something as material as a receiver, that a hearing would be required.

Q: You stated that the panel loses jurisdiction until the fees or deposits are paid. Where in the rules is this?

A: See Rule 6 re Changes of Claim and Rule 57 Remedies for Non Payment of the Commercial Rules (2013) and Rule 6 re Changes of Claim and Rule 59 re Remedies for Non Payment of the Construction Rules. This is more of an administrative procedure but for ultimately reviewing subject matter jurisdiction we do not believe it would apply.

Q: What about bifurcation where that consists of agreeing to make an interim ruling (say on liability) mid-hearing?

A: Always a tactic to be considered where liability is heard first and damages after an award on liability is made. It can be efficient particularly an accounting is being sought.

Q: How do I pose a question to the panel re Motion to Amend? When can new parties be brought in?

A: File a motion to amend under Rule R6 of Commercial Rules and Rule 6 of the Construction Rules. New parties may be added but would require a Motion and explain why the new parties have to be brought in and be sure to show the contractual basis for adding them.

Q: Motions in limine are a waste of time when the arbitrator or panel is the finder of fact and has the expertise to parse out the evidence. Such motions are more appropriate for keeping evidence from a jury.

A: We agree. They may be helpful where relevance is being raised and it may expedite the hearing if certain testimony or topics are excluded.

Q: Curious if the panelists think in a consumer case the arbitrator should wait until the consumer rests before entertaining a motion to dismiss.

A: Yes.

Q: If a party files a motion for leave to file a dispositive motion, what type of order should arbitrator do (detailed as to why or why not granted or do you ask parties if they want reasoned)?

A: The Order should include the basis for the motion and the rationale for granting or denying same. One tactic would be for the arbitrator to ask each side to submit their proposed Order granting or denying the motion including the rationale for the decision. Generally the arbitrator would give a very short explanation as to why he/she denied the motion to file a dispositive motion. On the merits of the dispositive motion itself, give a short explanation of why the arbitrator denied all or part of it but a longer explanation as to why the arbitrator granted all or part of it.

Q: What about motions in limine which serve as sanctions?

A: If I am going to exclude evidence as a sanction I assume that would have to be a fully briefed motion with oral argument and preferably with a court reporter present. It could be a basis for vacating the award if a good record is not made.

Q: Do the panelists think decisions on motions should come with an explanation?

A: Yes, the parties are entitled to know the basis of the ruling. An exception would be with more routine motions such as continuing discovery deadlines etc.

Q: This scenario often arises: at the preliminary conference, the parties agree to a hearing on the merits three months from the conference. A week before the hearing is to begin, the parties notify me that they have agreed to postpone the hearing to ten months from the original date. I don't want to impede counsel's need to prepare, but I don't want to countenance the attorneys' putting their needs ahead of their clients' needs. Any suggestions?

A: Not continuing the hearing could be a basis for vacating the award if you force the parties to proceed. If it is the first time I would allow it but be clear in the order that absent compelling circumstances it should not happen again.

Q: Can an arbitrator put a limit on the number of motions that the parties can make?

A: Not a good idea. By doing so, you are really restricting a on how the parties present their case.

Q: As an arbitrator I have seen 2 ways attorneys attempt to withdraw from a case: (1) Motion to Withdraw (2) Notice of Withdrawal. Is withdrawing from an arbitration by an attorney a matter that requires an order from the arbitrator authorizing the withdrawal OR is it a matter that is accomplished by a Notice filed by an attorney? If an authorization to withdraw is needed, what should the arbitrator do if presented with a Notice of Withdrawal?

A: We think it depends on the timing of the motion to withdraw. If it is to continue the hearing then it should be scrutinized more carefully. Not sure there is any formality required in how you do it.

Q: Please provide the language quoted at the end from CPR on interim awards.

A: See CPR Rule 15.1 which states "The Tribunal may make final, interim and interlocutory and partial awards. With respect to any interim , interlocutory or partial award, the Tribunal may state in its Award whether or not it views the award as final for purposes of any judicial proceedings in connection therewith,. There is nothing we are aware of that precludes using such language in a AAA Commercial Arbitration.



J. Timothy Eaton, Esq.
Taft Stettinius & Hollister LLP

Current Employer-Title	Taft Stettinius & Hollister LLP - Senior Litigation Partner
Profession	Attorney, Arbitrator
Work History	Partner, Taft Stettinius & Hollister LLP, f/k/a Shefsky & Froelich, Ltd. 2005-present; Partner, Ungaretti & Harris, n/k/a Nixon Peabody, 1986-05; Partner, Hinshaw & Culbertson, 1983-86; Partner, Baird, Latendresse, McCarthy & Rowden, 1979-83; Law Clerk to Justice Joseph H. Goldenhersh, Illinois Supreme Court, 1977-79.
Experience	<p>COMMERCIAL LITIGATION EXPERIENCE: Has been a litigator for 38 years concentrating in commercial and appellate litigation. Some experience includes representing:</p> <ul style="list-style-type: none">* A telecommunications company in a contract dispute before the International Centre for Dispute Resolution;* An ESOP in a multi-million dollar ERISA claim in the Northern District of Illinois based upon breaches of fiduciary duties by a former owner and trustee;* A Fortune 500 company in a \$40 million claim in the Commercial Division of Cook County arising from claims of a quasi-joint venture in Poland;* A semiconductor manufacturing company in a \$250 million breach of contract claim in the Northern District of Indiana arising from a quasi-joint venture;* A semiconductor company in a Patent License Agreement bench trial in Chancery Court in Wilmington, Delaware;* A company in a \$7 million claim in the Southern District of New York over the termination of a vendor;* A securities brokerage firm in a bench trial in Chancery Court in Cook County, Illinois involving breach of fiduciary duty and tortious interference with a contract; * A Fortune 100 company in a federal district court bench trial in Boston involving the discharge of a \$6 million claim in bankruptcy. <p>APPELLATE EXPERIENCE:</p> <ul style="list-style-type: none">* A multi-million dollar insurance company in the Seventh Circuit Court of Appeals involving a coverage dispute with another insurer;* A group of companies in the Seventh Circuit Court of Appeals on a plaintiffs' anti-trust claim;* A Fortune 500 company in the Seventh Circuit Court of Appeals in multiple class-action appeals arising from an MDL;* A plaintiffs' class in the Seventh Circuit Court of Appeals from the denial of class certification;* A Fortune 500 company in the Seventh Circuit Court of Appeals in an appeal from a \$70 million breach contract jury verdict;

J. Timothy Eaton, Esq.
Neutral ID : 153903

- * A public transportation company in the Illinois Supreme Court involving a pension-related issue;
- * A plaintiffs' class in the Seventh Circuit Court of Appeals on a forum issue in a class action products liability case in federal court;
- * A major oil company in the Illinois Supreme Court involving an environmental cleanup issue;
- * A major bank in the Illinois Supreme Court in an alleged fraudulent tax shelter scheme;
- * An association of school districts in an insurance coverage dispute regarding allocation of loss among multiple insurance carriers in the Illinois Appellate Court and Seventh Circuit Court of Appeals;
- * A major gas company in a claim involving mercury contamination in an appeal before the Illinois Supreme Court;
- * A major railroad company in an appeal from a Surface Transportation Board in the Seventh Circuit Court of Appeals;
- * All Illinois law schools in the Illinois Supreme Court on the issue of a cy pres award in class action litigation;
- * A semiconductor company in a patent license dispute in an appeal before the Supreme Court of Delaware;
- * A major state university in the Seventh Circuit in cases involving employment-related claims under Title 7 and Section 1983;

Alternative Dispute Resolution Experience

Fellow, College of Commercial Arbitrators. National Academy of Distinguished Neutrals; General Chair, ADR Committee, Seventh Circuit Bar Association; Member, CPR Arbitration Committee. Has served as sole arbitrator, panel arbitrator and panel chair for the American Arbitration Association in over 70 arbitration cases involving contract disputes, insurance coverage, ERISA, securities, utility agreements, attorneys' fees, banking practices, employment law, lawyer partnership agreements, products liability, warranties, coal supply agreements, covenants not to compete, distribution agreements, mining agreements and vendor disputes. Willing to serve in out-of-town arbitrations.

Alternative Dispute Resolution Training

Faculty, AAA The Nuts and Bolts of an Arbitration Hearing: Procedure Evidence and Practicalities, 2016; AAA eDiscovery - Arbitration in a Digital World (ACE012), 2016; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA Dispositive Motions in Arbitration: Best Practices for Advocates & Arbitrators, 2016; AAA Panel Dynamics - Staying On Course When Things Don't Go As Planned, 2015; AAA Arbitrator Subpoenas: Are They Worth the Paper They're Printed On?, 2015; Faculty, AAA Imposing Sanctions in Arbitration: Just How Far Can You Go?, 2015; AAA An Arbitrator's Guide to Successfully Resolving e-Discovery Disputes, 2015; Faculty, AAA, Imposing Sanctions in Arbitration: Just How Far Can You Go?, 2015; AAA It's Not Just "Litigation Lite"-Making Rulings on Evidentiary Objections, 2015; Faculty, AAA Motion Practice in Arbitration: Worthwhile or an Expensive Distraction?, 2014; Co-Presenter, AAA Webinar, Writing Arbitration Awards - A Guide for Arbitrators, 2014; AAA Introducing New Commercial Rules, 2014; CBA Program, Arbitration: A Detailed Guide, 2013; ABA Litigation Section ADR Committee, Dealing with Attorneys Who Don't Play Well in the Sandbox: Identifying Tactics Intended to Derail Your Arbitration and How Best to Thwart Them, 2013; AAA Developments In

J. Timothy Eaton, Esq.
Neutral ID : 153903

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Arbitration Law: Disclosure, Vacatur, Sanctions, and Arbitrator Authority, 2013; AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012; AAA/ICDR Neutrals Conference, 2012; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; AAA Webinar, Ethics 101: Mediators, Arbitrators, Attorneys, 2011; CPR Advanced Arbitration Training, 2011; CPR Institute Regional CLE Series: Chicago, Topics in Mediation and Arbitration, 2011; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2010; CPR Advanced Arbitrator Training, How to Conduct Efficient Hearings and Avoid Common Pitfalls, 2009; AAA Webinar, Electronic Discovery in Arbitration: What you Need to Know, 2009; AAA Arbitrator Ethics & Disclosure (ACE003), 2009; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2009; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2009; AAA/ICDR Neutrals Conference, 2009; AAA Arbitration Roadmap: The Standard for Efficient and Cost Effective Arbitration, 2008.

Professional Licenses	Admitted to the Bar: Illinois, 1977; U.S. District Court: Central, Southern, and Northern Districts of Illinois; U.S. Court of Appeals: Seventh Circuit; U.S. Supreme Court.
Professional Associations	Chicago Bar Association (Past-President); Illinois State Bar Association (Past President); American Bar Association (Board of Governors); Appellate Lawyers Association (Past President); Lawyers Trust Fund of Illinois (Past President); Seventh Circuit Bar Association (Board of Governors); American Academy of Appellate Lawyers.
Education	Miami University (BA, Political Science-1973); Southern Illinois University (JD-1977); Washington University (LLM-1979).
Publications and Speaking Engagements	Author of over 60 law review articles and bar publications on appellate, litigation and arbitration practice.
Citizenship	United States of America
Languages	English
Locale	Chicago, Illinois, United States of America

J. Timothy Eaton, Esq.
Neutral ID : 153903

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.



Stanley P. Sklar, Esq.
Stanley P. Sklar

- Current Employer-Title** Dispute Resolution Services - Principal; DePaul University, College of Law, Centre for Dispute Resolution - Director of Arbitration Studies
- Profession** Attorney, Arbitrator, Mediator
- Work History** Principal - Dispute Resolution Services 2008-present; Director for Arbitration Studies, DePaul University, College of Law Centre for Dispute Resolution, 2008-present; Member, Bell, Boyd & Lloyd LLP 1995-2008; Partner, Schain, Firsell & Burney, 1994-95; Partner, Pretzel & Stouffer, Chtd., 1982-94; Partner, Mann, Cogan, Sklar & Lerman, 1970-82; Associate, Fein & Pesman, 1964-70.
- Experience** Executive Director for Arbitration Studies and Adjunct Professor, DePaul University College of Law, Commercial Arbitration; Visiting Adjunct Professor, Pepperdine University, Commercial Arbitration;; LEED Green Associate Training Course (2011); Over 35 years' experience specializing in real estate and construction representing owners, design professionals, lenders, contractors, subcontractors, and title insurance companies handling contract negotiations relating to EPC contracts, metallurgical coke heat recovery plant and associated facilities, construction claims, commercial lease disputes and workouts. Adjunct Professor, Graduate Real Estate Program, John Marshall School of Law teaching Construction Law (1998-2008). Instructor, Oakton Community College, Architectural Technology Program teaching Construction Law.(1992-1998). Master Teacher, Illinois Institute for Continuing Legal Education. Attorney, Northbrook Park District (1971-80) and Northbrook Zoning Board of Appeals (Chair, 1973-99). Recipient, ABA Forum on Construction Industry Cornerstone Award, 2004. Member of Lambda Alpha Honorary Land Economics Society and Leading Lawyer Network - Construction. Listed in "Chambers USA Leading Lawyers," Construction, Alternate Dispute Resolution.; Illinois Commercial Arbitrator 2015-2016.
- Served as advocate in more than 100 arbitrations involving construction disputes and real estate related disputes since appointment as a AAA Neutral
- Served as an arbitrator and mediator in numerous construction disputes with claims valued up to \$63,000,000.
- Served on panel of three neutral arbitrators in a \$300,000,000 construction related dispute regarding the defective construction of a power plant in Panama. Among the issues raised were delay, owner interference, defective design and design changes impacting scheduling and mutual breaches of fiduciary duty. The hearing process included the use of the Chess Clock and the use of computer monitors for Live Note testimony and exhibits.

Stanley P. Sklar, Esq.
Neutral ID : 36736

Served on a panel of three neutral arbitrators in a \$50,000,000 construction dispute regarding the construction of transit tunnels under existing rivers for mass transit rail system adjoining adjacent communities. Among the issues raised were significant cost overruns by the contractor, undue owner interference with the construction process by consortium of owner representatives, design deficiencies and differing site conditions.

Served as sole arbitrator in \$8,000,000 dispute between owner, contractor and subcontractors relating to the decontamination of nuclear waste materials and contractors failure to follow appropriate nuclear safety recommendations. I managed the process and encouraged the use of the Chess Clock which was successful in making the process more efficient and cost effective.

Served as Chair of tri partite panel regarding the acquisition of multiple shopping center construction in Japan involving claims of \$10,000,000 and counter claims of \$2,500,000 focusing on representations inducing sale and attempts to rescind the contracts. Use of interpreters for certain witnesses.

Serve as party appointed neutral arbitrator on tri partite panel in non administered arbitration. Owner claims of \$62,800,000 for defective construction of chemical production facility against Design Builder including claims for contractor failure to meet industry standards and cross claim by contractor for non payment of balances due contractor for work performed.

Chair of Panel regarding \$22,000,000 claim by Owner against Design Builder for its failure to properly design, engineer and construct a fully functioning steel mill processing plant pursuant to Turn Key Construction Contract. Counter claim of Design Builder in excess of \$3,000,000 for unpaid contract balance.

Alternative Dispute Resolution Experience

Chaired panels concerning claims in excess of \$25 million on several Large Complex Case panel matters, including AAA International Centre for Dispute Resolution and International Chamber of Commerce panel assignments regarding international construction disputes. Arbitrator and mediator in construction contract disputes, delay claims, and failure claims; breach of energy consulting and management contract regarding fixed/variable energy purchase agreements; design defects; change order disputes; insurance coverage disputes and surety claims; common area maintenance contributions under multiple shopping center leases; underground tunneling project involving trenchless technology; concrete defects in high rise office building; concrete defects in parking deck and garage structures; alkali silica deterioration for commercial pavers in office complex, concrete failures, geotechnical disputes relating to curtain wall water intrusion and dewatering process, structural steel failures; defective construction relating to HUD financed retirement facilities; marine structures including breakwater construction for lake erosion protection; delay claims and defective construction relating to hydro electric processing plant; energy supply contract disputes involving coal mines and public utility; supply contracts for coal forced steam generating plant; energy savings performance contracts; circulating fluidized bed steam generators (coal burning) for power plant, floating casinos, hospital and health center retrofitting and new construction, waste water treatment plant construction disputes,

Stanley P. Sklar, Esq.
Neutral ID : 36736

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

power plant construction defects, EPC contract disputes, condominium defect claims, lease workletter disputes and workouts; fluidized bed projects; catalytic reduction systems; demolition and disposal of nuclear waste materials; multi-party mediations regarding insurance coverage for construction defects; and title insurance coverage disputes, earth retention systems, cofferdams, geotechnical issues relating to dewatering disputes, disputes relating to public agencies, land contract disputes, commercial lease disputes, commercial contract disputes, real estate broker disputes, commercial loan default disputes and workouts. Member of the AAA Large Complex Case Panel for Commercial and Construction Disputes; AAA National Construction Disputes Rules Committee; AAA National Commercial/Construction Arbitrator Training Faculty; instructor for ACE courses on Ethics, Chairing the Arbitration Panel. Arbitrator, Circuit Court of Cook County Mechanics Lien Section. Mediator, Circuit Court of Cook County Court Annexed Mediation. CPR List of Distinguished Neutrals; ICC assignments.. Fellow, American College of eNeutrals.

Alternative Dispute Resolution Training

AAA What Advocates Can Learn From Walking In An Arbitrator's Shoes, 2016; Faculty, AAA Vacatur and Enforcement of Arbitration Awards, 2016; AAA/CCA Arbitration from A to Z - For Both Advocates and Arbitrators, 2016; AAA Gamesmanship in Mediation: When Does Deception Become Unethical?, 2016; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA Arbitrating in a Digital World; Fair & Expeditious Management of Electronic Discovery, 2015; Faculty, AAA Imposing Sanctions in Arbitration: Just How Far Can You Go? 2015; Faculty, AAA Motion Practice in Arbitration: Worthwhile or an Expensive Distraction?, 2014; AAA Interim Awards, Partial Final Awards and Functus Officio: Tailoring Flexible Accessories to Suit a Strict Doctrine, 2014; AAA Developments in Arbitration Law: Non-Signatories, Discovery and Vacatur, 2014; AAA Managing ESI Exchanges in Arbitration- Preparing Yourself for the New Landscape and New Challenges- Part 1, 2014; Faculty, AAA Using Experts Effectively in Arbitration, 2013; ABA Section of Dispute Resolution, ABA Annual Meeting, 2012; AAA 2011 Year End ADR Law & Policy Update, 2011; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; AAA What's a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration, 2011; AAA Ethics 101: Mediators, Arbitrators, Attorneys, 2011; AAA Advanced Mediator Training: Managing the Dynamics of a Multi-Party Case, 2011; Faculty, AAA Managing Your First Arbitration, 2011; LEED Green Associate Training Course, 2011; ABA Forum on the Construction Industry/TIPS Fidelity & Surety Law Committee Mid-Winter Joint Meeting, 2011; AAA Managing Your First Arbitration, 2010; Faculty, AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2010; AAA/ICDR Neutrals Conference, 2010; College of Commercial Arbitrators Annual Meeting, 2011, 2010, 2008; AAA Fall Construction Conference: Planning Resolution Strategies, 2010; Faculty, AAA Construction Conference: Maximizing ADR Advocacy for Today's Economy, 2009; Faculty, DePaul University, College of Law, Center for Dispute Resolution, Cost Effective Arbitration, 2009; AAA Arbitration Roadmap: The Standard for Efficient and Cost Effective Arbitration, 2008; Faculty, AAA Construction Conference: ADR Works, 2008; ICDR, ADR After NAFTA, 2008; ABA Dispute Resolution Section Annual Meeting, 2008; Society of Illinois

Stanley P. Sklar, Esq.
Neutral ID : 36736

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Construction Attorneys, Improving the Efficiency of the Arbitration Process, 2008; Juris Conferences, Best Practices in Commercial Arbitration, 2007; ABA Section on Dispute Resolution, 9th Annual Spring Conference, 2007; Faculty, AAA Neutrals Conference, 2006, 2003; AAA Arbitrator Ethics & Disclosure (ACE003), 2004, 2005; ALI ABA Course on Special Masters in Federal Courts, 2005; AAA Practical Tips for Dealing with Delay Tactics (ACE004), 2005; Faculty, AAA Construction Arbitrator II Training: Advanced Case Management Issues, 2005; AAA International Arbitration Symposium, 2003; AAA Arbitrator Update 2001; AAA Construction Train the Trainer Course, 2000; AAA Mediator Conference Workshop, 2000; AAA Continuing Education, Concrete Deterioration, 2000; AAA Continuing Education, Sticks and Stones and Managing the Process of Arbitration, 2000; AAA Continuing Education, Scheduling Damages and Discovery Management in Arbitration, 2000; Presenter, AAA National Mediator Conference, 2000; Harvard Law School Advanced Mediation Workshop, 2000; Faculty, AAA Commercial Arbitrator Training, 1998; AAA Construction Law Seminar, 1998; Faculty, AAA Construction Industry Arbitrator Training, 1997; Faculty, AAA Construction Mediator Workshop, 1997; Constructive Resolutions, Inc., Mediation Training; Faculty, Chicago Region Arbitrator Training Programs; various other ADR training. Adj. Prof. DePaul University College of Law, Commercial Arbitration; AAA Midwest Master Mediator Panel .

Professional Licenses

Admitted to the Bar: Illinois, 1964; U.S. District Court, Northern District of Illinois, 1965; U.S. Court of Appeals, Seventh Circuit, 1965; U.S. Supreme Court, 1968.

Professional Associations

College of Commercial Arbitrators (President 2011); American College of Real Estate Lawyers; Elected Fellow, American College of Construction Lawyers (Past President); Society of Illinois Construction Attorneys (Past President); Chicago Bar Association (Past Chair of Real Property Committee, Alternative Dispute Resolution Committee; Construction and Mechanic's Lien Subcommittee); American Bar Association (Forum on Construction, Board of Governors); Builders Association of Greater Chicago (Board of Directors 1988-91); American Subcontractors Association 1970-2000 (Board of Directors 1971-81; Construction Financial Management Association (Chicago Chapter, Legal Counsel 1980-1984); Lambda Alpha Honorary Land Economics Society; Pepperdine University, Straus Institute for Dispute Resolution, Council of Distinguished Advisors, International Mediation Institute (IMI) Certified Mediator, Distinguished Fellow, International Academy of Mediators.

Fellow and Past President, American College of Construction Lawyers, Fellow and Past President, Society of Illinois Construction Attorneys, Fellow and Past President, College of Commercial Arbitrators,

Education

University of Illinois (BS, Industrial Administration-1960); Northwestern University (JD-1964).

Publications and Speaking Engagements

Speaker, "Achieving Justice Through 21st Century Arbitration," ABA Annual Meeting, 2012; panel, "The Great Debate: Litigation v. Arbitration," ABA Annual Meeting, 2012; speaker, "Arbitration v. Litigation," ABA Forum on the

Stanley P. Sklar, Esq.
Neutral ID : 36736

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Construction Industry/TIPS Fidelity & Surety Law Committee Mid-Winter Joint Meeting, 2011; "Green Construction: Risk, Damages and Alternative Dispute Resolution," Practising Law Institute, 2010; contributing author, "Construction Liens" and "Arbitration," chapters, CONSTRUCTION LAW, Matthew Bender, 2001; EFFECTIVE USE OF ADR IN REAL ESTATE DISPUTES, ALTERNATE DISPUTE RESOLUTION FOR LAWYERS, Illinois Institute for Continuing Legal Education, 2001; THE ALLOCATION OF RISK IN THE NEW MILLENNIUM, Aspen Law Publishers, 2000; lead editor, ILLINOIS CONSTRUCTION LAW, Illinois Institute Continuing Legal Education, 1997; THE FIFTY STATE PUBLIC CONSTRUCTION CONTRACTING, 1996; contributing author, "Illinois," THE FIFTY STATE CONSTRUCTION LIEN AND BOND LAWS; contributing author, "Illinois," THE TROUBLED CONSTRUCTION LOAN, Wiley Law Publishers, 1991; "Selecting the Correct Construction Delivery System," CONSTRUCTION LAW HANDBOOK; "Special Problems in the Construction Loan Workout," American College of Real Estate Lawyers American Bar Association Papers; "Construction Damages," JOURNAL OF REAL ESTATE DEVELOPMENT; "Pass Through Liquidation Agreements," THE CONSTRUCTION LAWYER, American Bar Association; "The Psychology of Incompetence in the Construction Industry," THE CONSTRUCTION LAWYER, American Bar Association; "An Overview of Architect and Contractor Agreement," ALI-ABA; A GUIDE FOR CONSTRUCTION LENDERS, Practising Law Institute; numerous articles relating to construction and ADR. College of Commercial Arbitrators, Protocols for Efficient and Cost Effective Commercial Arbitration sponsored by DePaul University.

A Brief Rejoinder to Arbitrator Directed Arbitration and the Samurai Arbitrator, Journal of the American College of Construction Lawyers, Summer 2014.

Awards and Honors

Recipient, ABA Forum on Construction Industry Cornerstone Award, 2004. Member of Lambda Alpha Honorary Land Economics Society and Leading Lawyer Network - Construction. Listed in "Chambers USA Leading Lawyers," Construction. Lifetime Achievement Award, American Subcontractors Association.

Citizenship

United States of America

Languages

English

Locale

Northbrook, Illinois, United States of America

Stanley P. Sklar, Esq.
Neutral ID : 36736

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

If you plan on listening to the audio portion through your computer speakers, please make sure your speakers are turned on for the beginning of the webinar.

If you are using the telephone for audio:

1. Dial 1-877-668-4493
2. Enter access code: 666 267 489 #
3. Enter # when it asks for your attendee ID
4. Turn off your computer speakers so you don't hear an echo.

There will be silence on the line until the webinar begins.





MOTION PRACTICE UNDER AAA RULES

What You Need to Know



Webinar
May 17, 2017

Disclaimer

This presentation is © 2017 American Arbitration Association, Inc. All rights reserved. No part of this document may be reproduced, transmitted or otherwise distributed in any form or by any means, electronic or mechanical, including by photocopying, facsimile transmission, recording, rekeying or using any information storage and retrieval system, without written permission from the American Arbitration Association, Inc. Any reproduction, transmission or distribution of this form or any of the material herein is prohibited and is in violation of US and international law. American Arbitration Association, Inc. expressly disclaims any liability in connection with use of this presentation or its contents by any third party.

The views expressed by panelists in this webcast are not necessarily those of the American Arbitration Association, Inc. The American Arbitration Association, Inc. assumes no responsibility for the content and materials presented by speakers during the webcast.



Speakers



Stanley P. Sklar, Esq.
Dispute Resolution Services
Chicago, IL



J. Timothy Eaton Esq.
Taft Stettinius & Hollister LLP
Chicago, IL



**Authority of the
Arbitrator to Hear
Motions and Enforce
Orders**



Arbitrator Authority

- **Jurisdiction**
 - AAA Commercial Arbitration Rules – R-7
 - AAA Employment Arbitration Rules – R-6
 - AAA Construction Arbitration Rules – R-9
 - AAA Consumer Arbitration Rules – R-14
- **Interpretation and Application of Rules**
 - AAA Commercial Arbitration Rules – R-8
 - AAA Construction Arbitration Rules – R-8
 - AAA Employment Arbitration Rules – R-48
- **Management of Proceedings**
 - AAA Commercial Arbitration Rules L-3(a)



Arbitrator Authority

• Enforcement Powers of the Arbitrator

- AAA Commercial Arbitration Rules R-23
- AAA Consumer Arbitration Rules – R-23
- AAA Employment Arbitration Rules – R-9
- AAA Construction Arbitration Rules – R-25



Arbitrator Authority

• Dispositive Motions

- AAA Commercial Arbitration Rules – R-33
- AAA Consumer Arbitration Rules – R-33
- AAA Construction Arbitration Rules – R-34
- AAA Employment Arbitration Rules – R-27

• Emergency Measures of Protection

- AAA Commercial Arbitration Rules – R-38

• Interim Measures

- AAA Consumer Arbitration Rules – R-37
- AAA Construction Arbitration Rules – R-38
- AAA Employment Arbitration Rules – R-32
- AAA Commercial Arbitration Rules – R-37



Arbitrator Authority

• Modification of Award

- AAA Commercial Arbitration Rules – R-50
- AAA Construction Arbitration Rules – R-51
- AAA Consumer Arbitration Rules – R-47
- AAA Employment Arbitration Rules – R-40



• Sanctions

- AAA Commercial Arbitration Rules – R-58
- AAA Construction Arbitration Rules – R-60
- No Provision in Consumer or Employment (Inherent)



Arbitrator Authority

- **But see Rule 24 of Consumer Rules**
 - The arbitrator may consider a party's request to file a written motion except (except for Dispositive Motions-See R-33) only after the parties and the arbitrator conduct a conference call to attempt to resolve the issue that gives rise to the proposed motion. Only after the parties and the arbitrator hold the call may the arbitrator consider a party's request to file a written motion. The arbitrator has the sole discretion to allow or deny the filing of a written motion and his or her discretion is final.



Motions

Pre-Arbitration



Audience Polling Question



Only a court of competent jurisdiction can determine arbitrability and jurisdiction.

- A. True
- B. False



Preliminary Hearing Contemplated Motions P-2 Checklist



• Motions Regarding Arbitrability

- AAA Commercial Arbitration Rules R-7(a) – Jurisdiction
The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

• Motions Regarding Existence or Validity of the Contract

- AAA Commercial Arbitration Rules R-7(b) – Jurisdiction
The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.



• Timing of Ruling on Jurisdiction

- AAA Commercial Arbitration Rules R-7(c) – Jurisdiction
A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim 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.
- AAA Construction Arbitration Rules – R-9
- AAA Employment Arbitration Rules – R-6
- AAA Consumer Arbitration Rules – R-14



Pre-Arbitration

- Motions to Stay Arbitration
 1. Circuit Court
 2. Arbitration
 - A). Other arbitration proceedings
 - B). Other Court proceedings
 - C). Need Additional Parties



Pre-Arbitration

- Motions for Interim Measures
 - AAA Commercial Arbitration Rules – R-37
 - AAA Construction Arbitration Rules – R-38
 - AAA Employment Arbitration Rules – R-32
 - AAA Consumer Arbitration Rules – R-37
 - AAA Commercial Arbitration Rules R-38 – Emergency Motions for Protection



Motions

During Arbitration



During Arbitration

• Pleadings – Motion to Amend

- AAA Commercial Arbitration Rules – R-6 – Changes of Claim
- AAA Commercial Arbitration Rules – E-2 – Expedited
- AAA Consumer Arbitration Rules – R-8 – Changes of Claim
- AAA Employment Arbitration Rules – R-5 – Changes of Claim
- AAA Construction Arbitration Rules – R-6 – Changes of Claim or Counterclaim



During Arbitration

• Consolidation and Joinder

- AAA Commercial Arbitration Rules – R-8
- AAA Employment Arbitration Rules – R-48
- AAA Construction Arbitration Rules – R-7



During Arbitration

• Bifurcation

- AAA Commercial Arbitration Rules – R-8
- AAA Employment Arbitration Rules – R-48
- AAA Construction Arbitration Rules – R-7



Audience Polling Question



An arbitrator may not consider motions in limine.

- A. True
- B. False



During Arbitration

Discovery/Motions to Compel

- AAA Commercial Arbitration Rules – R-23 – Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case.

- AAA Consumer Arbitration Rules – R-23
- AAA Employment Arbitration Rules – R-9
- AAA Construction Arbitration Rules – R-25



During Arbitration

Dispositive Motions

- AAA Commercial Arbitration Rules R-33 – Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

- AAA Construction Arbitration Rules – R-34
- AAA Employment Arbitration Rules – R-27
- AAA Consumer Arbitration Rules – R-33 – Dispositive Motions

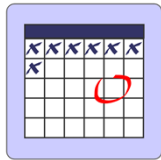
The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.



During Arbitration

• **Continuances**

- Discovery
- Hearings



During Arbitration

• **Motion in Limine**

- AAA Commercial Arbitration Rules – R-34(b) – Evidence
The arbitrator shall determine what evidence to be admitted, what evidence is relevant, and what evidence is material to the case. The arbitrator may also exclude evidence that the arbitrator decides is cumulative or not relevant.
- AAA Construction Arbitration – Rules – R-35
- AAA Employment Arbitration – Rules – R-30
- AAA Consumer Arbitration Rules – R-34



During Arbitration



• **Privilege**

- AAA Commercial Arbitration Rules – R-23 – Enforcement Powers of the Arbitrator
- Also Evidence Provision under all Rules



• **Disqualification of Arbitrator**

- AAA Commercial Arbitration Rules – R-18 – Disqualification of Arbitrator
- AAA Consumer Arbitration Rules – R-19
- AAA Construction Arbitration Rules – R-20
- AAA Employment Arbitration Rules – R-20



During Arbitration

- Sanctions

- AAA Commercial Arbitration Rules – R-58 – Sanctions
- AAA Construction Arbitration Rules – R-58 – Sanctions
- No Provisions in Employment or Consumer – Inherent Powers



- Sanctions

- AAA Commercial Arbitration Rules – R-58 – Sanctions



(a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order or arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.

(b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.



Motions

Post-Arbitration



Post-Arbitration

- **Modifications/Clarification of the Award**

- AAA Commercial Arbitration Rules – R-50 - Modification of Award
- AAA Construction Arbitration Rules – R-51 - Modification of Award
- AAA Consumer Arbitration Rules – R-47 - Modification of Award
- AAA Employment Arbitration Rules –R-40 - Modification of Award



AMERICAN ARBITRATION ASSOCIATION®

Education Services | 31

Audience Polling Question



Parties should prepare arbitration motions the same way they do litigation motions.

- A. Yes
- B. No
- C. Maybe



AMERICAN ARBITRATION ASSOCIATION®

Education Services | 32

Tips on How to Advise Parties to Brief Motions



AMERICAN ARBITRATION ASSOCIATION®

Education Services | 33

Briefing Motions

- Letters
- Formal Motion Practice
- Exhibits
- Responses
- Replies



Writing Interim Awards

Addressing Motions



Addressing Motions

- Simple Grant or Denial
- Ruling with Explanation
 - Discovery Motions
 - Dispositive Motions
 - Doctrine of Functus Officio
 - Interim Award
 - Make Sure it is Clear That It is Not Final Award



Questions



Concluding Remarks



Thank you for attending. Please visit our website at www.aaa.org to see additional program offerings.