

## JAMS Arbitration Administration

### The National Arbitration Committee

Occasionally, an issue may arise that requires decision-making when the arbitrator has not yet been appointed, is not available, or the issue involves the arbitrator and it would be inappropriate to have him or her decide the question. JAMS established a National Arbitration Committee (NAC) to address these issues. The NAC is comprised of the General Counsel, the VP in charge of arbitration and two panelists from each region. In addition each region has one or more associates assisting the NAC for that region.

When an issue arises, either the parties or the case manager writes a brief description of the issue and transmits it to the local designated NAC associate. The NAC associate receives the written issue memo and transmits it to the appropriate members of the NAC, including the General Counsel's office. The local associate and General Counsel either decide the issue or bring it to the designated NAC panelist. If necessary, the issue is brought to the regional NAC members for review. After a decision is rendered, it is communicated to the parties.

### Disclosure Reports

JAMS Ethics Guidelines for Arbitrators require that an arbitrator promptly disclose all matters required by applicable law and any actual or potential conflict of interest or other information that could reasonably lead a party to question the arbitrator's impartiality. JAMS Rules require that such disclosures shall be made within ten (10) calendar days from the date of the appointment.

To assist panelists in complying with their disclosure obligations, JAMSware, JAMS computer system, generates two disclosure reports:

- a. The first is a Generic Disclosure of Client Activity. It lists all parties to the proceeding and the lawyers involved, including the law firms, for the preceding five years<sup>1</sup>. It describes the number of mediations, arbitrations, court references, or other matters in which the panelist has been hired by the parties. No details about the proceedings are included on the report.
- b. The second report is a disclosure of all dispute resolution activity by the panelist for the preceding five years<sup>2</sup> for any case involving the parties or attorneys in the present matter. Unlike the generic report referred to above, this report includes specific details about the prior case,

including the identity of the prevailing party in an arbitration or reference, the amount of the award (where available), and the identity of all other parties and

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<sup>1</sup>(or longer period, if requested by the panelist or a client.)

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lawyers involved in that prior case. Both reports include a standard disclosure concerning each panelist's economic interest in JAMS overall financial success.

In addition, California and Washington D.C. ADR provider organizations, such as JAMS, must disclose all of their arbitrations and mediations with parties involved in consumer arbitrations. JAMS complies with this regulation with respect to all consumer arbitrations, no matter where they are filed.

### Minimum Standards for Employment Cases

If an arbitration is based on a clause or agreement that is required as a condition of employment, JAMS will accept the assignment only if the proceeding complies with JAMS Minimum Standards of Procedural Fairness for Employment Arbitrations. The standards require the use of a panelist arbitrator, limits on the employee's costs, reasonable discovery, a written decision, no limits on the types of damages recoverable, and bilateral enforcement. All employment cases are pre-screened for compliance with the Minimum Standards by the local NAC associate. The Minimum Standards do not apply if the agreement to arbitrate was individually negotiated by the employee and the employer, and the employee was represented or advised by counsel during the negotiations.

The Minimum Standards can be obtained from any JAMS Case Manager, or by visiting the "Rules" section of the JAMS website, at [www.iamsadr.com](http://www.iamsadr.com).

### Minimum Standards for Consumer Cases

Minimum Standards of Fairness for Consumer Arbitrations are applicable when a company systematically places an arbitration clause in its agreements with individual consumers, and there is minimal, if any, negotiation between the parties as to the procedures or other terms of the arbitration clause. A consumer is defined as an individual who seeks or acquires any goods or services, including financial services, primarily for personal, family, or household purposes.

All consumer matters are pre-screened for compliance with the Minimum Standards by the local NAC associate. Any consumer matter that contains a bar against class actions must be reviewed in advance by the General Counsel or

Associate General Counsel because the law concerning enforceability of these agreements varies from state to state.

The Minimum Standards can be obtained from any JAMS Case Manager, or by visiting the "Rules" section of the JAMS website, at [www.iamsadr.com](http://www.iamsadr.com).

## Model ADR Clauses

To assist our clients as they incorporate dispute resolution methods into their business agreements, JAMS provides a Guide to Dispute Resolution Clauses for Commercial Contracts. The Guide is available online or from any JAMS Resolution Center. It contains a selection of simple sample dispute resolution clauses, providing for negotiation, mediation or arbitration, which clients may tailor to their individual needs.

## Administrative Procedure

In furtherance of our effort to provide consistent case management in every resolution center, JAMS has created a uniform administrative procedure for arbitrations which should be used in conjunction with the appropriate JAMS Rules. These procedures are reviewed and updated periodically by the Arbitration Administrative Committee (AAC), which is comprised of two associates from each region and a member of the General Counsel's office. All associates who administer arbitrations follow the same administrative procedures. These are updated regularly and describe every step of an arbitration, from the filing of a demand through issuance of an award. A reference copy is available in each JAMS Resolution Center.

## Fees

JAMS requires parties in an arbitration proceeding to post all fees for the hearing in advance of the cancellation deadline, and may remove a case from the calendar if the fees are not deposited in a timely manner. JAMS also requires the parties to deposit a retainer for estimated reading and award preparation time, so it is important for a panelist to provide an accurate estimate of this time to his or her Case Manager. JAMS will not issue an Award until all fees are paid, so it is preferable to collect this money in advance of the hearing.

## Rules

JAMS offers a wide selection of specialized arbitration rules including Comprehensive, Streamlined, Employment, Engineering & Construction, and International. These rules are available in all of JAMS Resolution Centers or online

at [www.iamsadr.com](http://www.iamsadr.com). The date of the most recent update to each set of rules is listed on the Internet. An explanation of each change is also posted. JAMS also offers supplementary Class Action Procedures.

## AAA and Other Providers

JAMS panelists are occasionally asked to serve either as the sole arbitrator or as one of a panel of arbitrators in cases administered by the American Arbitration Association (AAA). Every AAA administered case is entered into JAMSware to satisfy

JAMS and the panelist's current and future disclosure obligations. JAMS does not charge a CMF in AAA arbitration cases unless the parties use our facilities, in which case, the standard CMF applies. In AAA mediation cases, the standard CMF always applies. The standard cancellation and prepayment policies apply to AAA cases. JAMS Case Managers work with the AAA case administrators to ensure that all fees are collected in advance.

Sometimes cases are initiated through CPR, UNCITRAL, or other sources, which assist with the selection of a neutral and then leave the administration to the neutral and the parties. These matters are sometimes deemed "non-administered" or "ad hoc". Because JAMS Case Managers are generally called upon to perform all of the same tasks as with a case that specifies JAMS Rules, JAMS adheres to its policy of charging a Case Management Fee (CMF) in these matters. If a panelist is contacted directly about any assignment, ad-hoc or otherwise, they should refer the matter to their Case Manager, who can discuss rates, collection and cancellation policies, and the requirement that fees are deposited in advance. In most cases, JAMS will roll-up the CMF into the Panelist's hourly or daily rate. The local Business Manager should be consulted in these matters.

## International Court of Arbitration Protocol

The International Court of Arbitration (ICC) is a panelist provider organization that resolves international disputes through arbitration. The ICC headquarters and administrative offices are in Paris, France. The majority of cases resolved by the ICC are heard in Europe, but there are an increasing number of cases heard in the United States.

JAMS panelists are appointed to ICC cases in two ways. They are party-appointed or they are selected as the third arbitrator by the party-appointed arbitrators. In either case, the JAMS panelist serves as a panelist arbitrator. JAMS has created internal procedures for the administration of ICC matters, and these are available from any JAMS Case Manager. They are incorporated into the general administrative policies.

## Optional Appeal Procedure

JAMS Comprehensive Rules provide that at any time before the award becomes final, the parties may agree to use the Optional Arbitration Appeal Procedure (Procedure). All parties to the dispute must agree in writing for the Procedure to be effective.

The Procedure, a copy of which is available online or in any JAMS Resolution Center, requires a three arbitrator appeal panel and provides an expedited process for preparing the record and briefing the case for appeal. The Appeal Panel applies the same standard of review that the first-level appellate court of the jurisdiction would apply in an appeal. The Appeal Panel has the power to affirm, reverse, or modify an award.

## Operational Guidelines

### Shared Risk

Normally our panelists are paid for their services regardless of whether JAMS collects the fees billed. There are certain circumstances where payment is delayed until the fees are collected. These are shared risk cases. Some examples of when a case becomes a candidate for shared risk are listed below:

- ☐ When a party or representative in a case is deemed a credit risk ("purple barred") in JAMS operational software ("JAMSware") and JAMS has not collected the fees prior to the case going forward.
- ☐ When a party objects to all or part of the fees in a case, or JAMS receives notification prior to any services being rendered that a party will not pay.
- ☐ A party or its representative refuses to take responsibility for the fees and/or refuses to sign a fee agreement.
- ☐ The client is a sole practitioner or a pro se/pro per whose fees have not been collected in advance of the hearings. In-house corporate counsel without outside representation should be treated as a pro se/pro per client.
- ☐ Fees for an arbitration have not been collected in full and the Interim Order, Interim Award, or Award has been rendered and is ready to be served on the parties.

- ❑ A panelist unilaterally serves any type of order or award without first going through the case manager to ensure that all fees are collected.
- ❑ Court reference cases that have an insufficient or exhausted retainer on account or the parties are not paying outstanding fees previously billed.
- ❑ A panelist unilaterally changes payment arrangements with the clients or payment arrangements are changed because of a settlement, order, or award.
- ❑ In all instances, time on a pro bono case is heard on shared risk.
- ❑ A panelist significantly exceeds his/her estimate of time for a matter and does not bring this to the attention of his/her case manager.
- ❑ A panelist delays submitting time. Billing entered two months after the service was performed is considered late and is a potential credit risk.

Once the local resolution center determines that a case should be heard on a shared risk basis, the panelist is notified. Final decision rests with the panelist. If the panelist does not agree to hear the case on shared risk, the case is removed from calendar.

### Reserved and Unused Time

Reserved and unused time is defined as time scheduled on a panelist's calendar which is subsequently cancelled after a pre-determined deadline ("cancellation window"). All fees billed are non-refundable and the panelist is compensated once fees are collected. If time is rescheduled with another matter, that portion of the hearing fees is refunded to the client. This is calculated based on the rate that was charged and confirmed in the last time case.

In the event the time subject to cancellation is rebooked, the amount paid by the canceling party will be refunded. Accordingly, the panelist must be willing to accept other cases to fill the dates that are subject to the cancellation. This policy is essential to maintaining good client relations.

### Waiver of Professional Fees Policy

From time to time a panelist may wish to waive professional fees charged to a client. This typically occurs if there has been a client service issue, or when more time is booked than is necessary to resolve a case, or when a case is cancelled so that Reserved and Unused time is charged.

Since the waiver of hearing fees affects not only the panelist's compensation but also JAMS revenue, it is important that both the individual panelist and JAMS confer on this issue before any representations are made to a client.

If a panelist or associate wishes to waive all or a portion of fees charged to a client, the person requesting the waiver should consult with the local Business, General Manager or DO before any representation is made to the client. If the person requesting the waiver, the panelist, and the local Business or General Manager do not agree on whether a waiver is appropriate, the VP or DO shall make the final decision.

If a decision is made to waive all or part of the fees, the local Business or General Manager, DO, or VP, depending on who made the decision, shall initial the timesheet submitted by the panelist. The reduction in the fee shall be clearly indicated on the timesheet. If time is submitted electronically, case notes will reflect the decision.

### Timesheet Submission

The timely receipt of panelists timesheets is necessary to make sure that all billing gets processed by month end. These are the following guidelines for both online and manual timesheets.

- ❑ All timesheets for time through the 20<sup>th</sup> of the month must be received in the Irvine Resolution Center by the 25<sup>th</sup> of the month. If sheets are not received and come in after the 25<sup>th</sup>, they will only be processed if time permits. Otherwise, they will be processed the following month, delaying payment to you.
- ❑ Untimely submission of timesheets creates collection risk. Once time is submitted after two month ends have posted, it is billed on shared risk.
- ❑ All timesheets for time after the 20<sup>th</sup> of the month and prior to the last business day must be submitted to Irvine by 1:00pm local time on the last day of the month.
- ❑ From 1:00pm to 4:00pm local time on the last business day, the Billing department will only accept time for that business day. No time will be accepted after 4:00pm local time.

It is simple if you submit your time daily. We prefer to issue only one invoice to a client each month, so we will wait until the panelist tells us "no more billing expected" before an invoice is released.

## Online Timesheets

Panelists have the opportunity to submit their time via the Panel Net accessed from the JAMS website. The format of the online timesheet is the same as the format in JAMSware. This online process allows panelists to send information to the billing department and the Case Manager simultaneously from anywhere in the world.

To utilize online timesheets, panelists must log into the JAMS website via the Panelist Calendar icon at the bottom of the home page to view a list of their open files. The panelist will then select a file, enter billing information, case instructions, etc. The panelist will click "SUBMIT" and two things will happen:

- a The timesheet will be sent to the billing department in Irvine.
- a The Case Manager will receive a system-generated e-mail from the panelist showing case information, billing submitted, and any specific case instructions (i.e. call the parties, set up new date, case settled, etc.). The subject line of this e-mail will read "E-Timesheet submitted by panelist".

## Expense and Reimbursement Procedures

One of the benefits of being known as The Resolution Experts is that JAMS panelists receive opportunities to speak, or train organizations on ADR, legal, and related topics. On occasion, these business development opportunities arise from contacts made by JAMS or as a result of the relationship or reputation the panelist has within

the community.

JAMS is committed to supporting its panelists in their personal, promotional, and business development efforts. However, JAMS at the same time has to act in a business responsible manner with fiscal integrity while recognizing panelists as independent contractors. JAMS provides the following reimbursement procedures to ensure equality to all panelists throughout the company.

JAMS will reimburse the panelist when:

- a Speaking engagements are secured by JAMS and/or the panelist is asked to attend a sponsored event on behalf of JAMS.
- Travel and entertainment expenses incurred are discussed in advance of the event with the VP or Director of Operations (DO).

JAMS will typically reimburse the following expenses:



- ❑ Coach Airfare - It is requested that airfare is reserved with a minimum 21day advance and/or the airfare is purchased at the lowest possible fare. First Class tickets will not be reimbursed.
- ❑ Hotel Room - Reasonable hotel expenses will be reimbursed.It requested that panelists stay at the conference site (as discounted rates are generally secured). In other circumstances, a hotel room rate up to \$250 is permitted. If the hotel rate is more than \$250 per night, the VP or DO must approve the room rate prior to the event.
- ❑ Meals - Reasonable meal expenses for the panelist will be reimbursed.
- ❑ Entertainment - All reimbursed entertainment must have a business purpose and costs must be reasonable.
- ❑ Car Rental or Taxi Services - Transportation costs to and from airport/train station, hotel, event, and meat locations will be reimbursed.
- ❑ Tips to Hotel or Event Staff - Reasonable tips for hotel bell boy and maid service will be reimbursed.

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Reimbursement Requests for the following expenses will likely be rejected:

- ❑ Costs for spouse or significant other;
- ❑ Mileage, tolls;
- ❑ Dry cleaning, valet services;
- a Movie charges;
- ❑ Other non-room or meal hotel charges.

When speaking engagements are secured by the panelist, the following guide will be applied for reimbursement:

- ❑ The opportunity is discussed in advance with local VP or DO and Chief Marketing Officer, who agrees that the event complements JAMS marketing and business goals and initiatives.
- ❑ The panelist promotes JAMS as well as his/her own practice.

- ☐ The panelist allows the marketing department to assist at the event, when appropriate, and assist in the development of the materials disseminated at the event.
- ☐ The panelist secures, whenever possible, an attendance list of participants at the event. The practice development manager might be able to assist in this regard.
- ☐ The panelist appropriately represents JAMS by actively participating in the event and networking with attendees.
- ☐ Panelist actively participates in the follow-up procedures after the event for the benefit of both JAMS and the panelist. The practice development manager may, as appropriate, assist the panelist with this process.
- ☐ Shortly after the event the panelist should draft a brief note outlining what happened at the event, including the panelist's assessment of possible additional opportunities for further speaking engagements or cases, and other relevant information that can further JAMS and the panelist's business development initiatives. The practice development manager will facilitate the internal dissemination of this document on behalf of the panelist.

JAMS strongly supports and encourages panelists' active involvement in their legal community and in doing so, seeks to assist them with their personal business development efforts while enhancing the JAMS brand.

### Document Retention Policy

It is JAMS policy that 30 calendar days after the termination of any matter, the following documents submitted (physical and electronically) by all parties are destroyed:

- ☐ Briefs                      ☐
- Exhibits
- ☐ Evidence                  a
- Transcripts

The only documents we will NOT destroy include:

- a. Arbitrations:
  - ☐ Stipulation, court order, if any
  - ☐ Final Award
  - ☐ Disclosures
- b. Mediations:
  - ☐ Confidentiality Agreement
  - ☐ Settlement Agreement, if any
  - ☐ Fee Agreements (if there is an issue)

The parties are advised of this policy and must contact JAMS as soon as possible if they wish to collect their documents. Once they notify JAMS of their intention to collect their documents, they have 30 days to do so. "Termination" of a case is defined as any of the following:

- ☐ Resolution of a matter.
- ☐ Mutual agreement to close the matter.
- ☐ Withdrawal from ADR process.
- ☐ Time period of one year elapses without any resolution and no future dates on calendar.
- a Notice from JAMS that the matter has been closed.

Each JAMS panelist has his or her own policy regarding destruction of documents that are not in the official JAMS file. JAMS recommends that panelists follow the policy JAMS sets for its own files.

### Panelist Compensation

Compensation is paid in accordance with the provisions of Exhibit C-1 , C-3, and C-4 of the Service Agreement. Compensation is based on hearing revenue billed and heard during each month. By the 7<sup>th</sup> business day of the subsequent month, panelist's compensation reports are available at each panelist's home Resolution Center. JAMS recognizes revenue by hearing location, so it is possible that panelists could receive multiple panel compensation statements depending on where they worked during any given month.

The compensation is administered as follows:

- ❑ Each plan begins with the assumption that a panelist's hearing revenue for the year will be equal to the previous year's production. That hearing revenue number will determine the assumed percentage going forward.
- ❑ Hearing revenue will be reviewed after six months (June 30) to determine if the projected percentage rate should be increased or decreased based upon the panelist's first six months actual hearing revenue.
- ❑ If the six month review increases a panelist's compensation percentage, then this new higher percentage will be applied retroactively to the beginning of the year and additional cumulative compensation owed will be paid to the panelist no later than July 31 .
- ❑ Similarly, if the six month review results in a decreased revenue and projected compensation percentage for the year, the panelist's compensation will be adjusted in the last half of the year to reflect the overpayment of compensation in the first half of the year and the new lower revenue and projected percentage for the balance of the year.
- ❑ At the end of the year (December 31), JAMS will review actual revenue for the year and make any adjustments in compensation that is indicated, retroactive to the beginning of the year. Overpayments will be adjusted over the first months of the next year.

At any time during the year a panelist may ask for a rate adjustment. All reasonable requests will be reviewed.

### Electronic Funds Transfer Payment

JAMS offers the option of "Electronic Funds Transfer" to its panelists. On the 7<sup>th</sup> business day JAMS panelists will receive an envelope with remittance advice and a compensation summary showing the exact amount that will be credited to their account by the 9<sup>th</sup> or 10<sup>th</sup> business day.

The first electronic fund transfer will be for \$10 and panelists will receive a live check for the remainder of their compensation. Panelists will continue to receive live checks until they confirm to the JAMS CFO, in writing, that the money has been credited correctly into their account.

If a panelist wishes to be included in this program, the "Request for Electronic Funds Transfer Payment" form can be obtained from the JAMS CFO to begin the process.