



American Arbitration Association

Dispute Resolution Services Worldwide

ESD Institute Request for Comments Michigan Green Enterprise Zone Initiative

The American Arbitration Association (AAA) is pleased to provide information to the Request for Comments in response to the Michigan Green Enterprise Zone Initiative.

AAA OVERVIEW

The AAA has been the global leader in conflict management since 1926, and is a not-for-profit (IRS section 501(c)(3)), public service organization committed to the resolution of disputes through the use of arbitration, mediation, conciliation, negotiation, democratic elections, and other voluntary procedures. Our *philosophy* is reflected in our Shared Mission, Vision and Commitment to Diversity Statements.

OUR SHARED MISSION

The American Arbitration Association is dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution. As a not-for-profit organization, our mission is one of service and education.

We are committed to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training, and innovative process knowledge to meet the conflict management and dispute resolution needs of the public now and in the future.

OUR SHARED VISION

The American Arbitration Association will be the global leader in conflict management – built on integrity, committed to innovation and embracing the highest standards of client service achievable in every undertaking.

OUR SHARED COMMITMENT TO DIVERSITY

The American Arbitration Association is the global leader in conflict management with core values of integrity and service. Our integrity demands impartial and fair treatment of all people with whom we come in contact, regardless of gender, race, ethnicity, age, religion, sexual orientation, or other characterization. Our conflict management services put into practice our goal for the resolution of disputes between parties with different perspectives, experiences, and backgrounds.

Because of the breadth of the Association's work and the global reach of its services, we recognize the importance and contribution of a diverse work force, a diverse Roster of Neutrals, a diverse Board, and commit to respect and increase diversity in all our endeavors.

The AAA is more than a service provider. It is an agent for change, focused on developing and improving the art and substance of conflict resolution. Much of the Association's value as an organization is tied to its history - its permanence, its role as a standard setter and its participation in public service activities that foster the understanding and use of mediation and arbitration.

Professionalism is the key to the AAA's services, which explains why so many parties bring cases to the AAA. Many attorneys, companies, businesses, unions and the like use AAA's services because:

- AAA is the Oldest and Largest ADR Provider in the World
- AAA has Time-Tested Procedures
- AAA has Exceptional Neutrals
- AAA Can Deliver Nationally and Internationally
- AAA is the Leader in ADR Education
- AAA is Recognized by the Courts
- AAA's Reputation
- AAA has Integrity, Values, Conflict Management
- AAA has a Strong Interest in Diversity

CASE MANAGEMENT SERVICES

AAA's Case Management Services, as the term suggests, is complete management of the case. All cases filed with the Association are assigned to a case manager. The case manager's function is to facilitate the movement of the case toward its final resolution: settlement, withdrawal or final arbitration hearing with award. The case manager is the day-to-day contact for the parties on the case at hand. Moreover, the AAA's CMCs are divided into specialty areas, meaning that dedicated case managers know specifics about these specialty areas, i.e., labor, employment, commercial, construction, insurance and international.

The AAA's Case Management Services are what truly sets us apart from other ADR service providers. We maintain four (4) Case Management Centers (CMCs) across the United States: Atlanta, GA; Dallas, TX; Fresno, CA; and East Providence, RI. By administering the AAA's national caseloads in these strategic locations, users of our services have seen great uniformity and standardization in the quality of services delivered. However, we also maintain the flexibility to administer certain programs from one national location.

The International Center for Dispute Resolution (ICDR) is the international division of the American Arbitration Association (AAA) charged with the exclusive administration of all of the AAA's international matters. The ICDR's experience, international expertise and multilingual staff forms an integral part of the dispute resolution process. The ICDR has many cooperative agreements with arbitral institutions around the world for facilitating the administration of its international cases.

The AAA also maintains Case Management Centers for our Insurance No-Fault caseloads in Minnesota and New York, as well as Case Management Centers for our Labor caseloads in Massachusetts, Michigan, New Jersey, New York and Pennsylvania.

The substantive and practical comments of the AAA with specificity on two (2) of the five (5) innovations contained in this initiative are as follows:

I. LEGAL RISK MITIGATION

Who Are the Neutrals?

Approximately 8,000 individuals in diverse fields and professions are listed on the AAA's National Roster of arbitrators and mediators. These neutrals represent a broad spectrum of expertise. Many are nominated to the roster by leaders in their industry or profession. Others are invited directly by the AAA.

Participation by business executives and professionals as arbitrators is vital to the system. Because of their specialized knowledge and experience, the parties are not required to spend time educating the arbitrator about relevant industry practices and customs. In labor-management relations, impartial experts arbitrate disputes arising out of the application and interpretation of collective bargaining agreements.

Biographies of neutrals, describing their occupations, qualifications, and availability, are maintained in the AAA's computerized network for submission to the parties.

The AAA has long held its mediators and arbitrators to strict codes of ethics and model standards of conduct to ensure fairness and impartiality in conflict management.

As part of its continuing commitment to ensure that diversity and inclusiveness are part of all activities of the AAA, we have established a new national committee, called the "AAA Advisory Committee on Diversity". This committee has assisted in developing new ways to increase diversity on the National Roster of Neutrals and our Board of Directors. We have made progress in diversifying the Panel. In the past few years, the AAA has been engaged in several projects that respond directly to the diversity challenges. Working with national minority bar associations, with which it has formed strategic alliances, the AAA has identified minority candidates for the AAA roster, promoted leading ADR practices through joint programs and established collaboration between affiliate chapters and the AAA regional offices. We have also created the AAA Diverse Media Bureau, which will provide opportunities to minorities and women to write articles for legal and industry publications and to offer their insights to media outlets for possible inclusion in articles and news broadcasts.

The Advantages of Arbitration and Mediation

Most persons do not want to become involved in lawsuits. Litigation can entail lengthy delays, high costs, unwanted publicity and ill will. Appeals might be filed, causing further delay, after a decision has been rendered. Arbitration, mediation and other ADR processes, on the other hand, are usually faster and less expensive. Arbitration is also conclusive.

Alternative dispute resolution is conducted in a manner that is more businesslike than litigation. Each party tells its side of the story to the arbitrator or the mediator in an atmosphere that is less formal than a court proceeding. Since the parties control the process, they enjoy tremendous flexibility. Hearings might take place at the site of the dispute or during evening hours. Testimony might be taken by telephone.

Some of the key advantages of using an arbitration process are:

- Speed
- Choice and Expertise of Impartial Neutral
- Informality and Flexibility
- Privacy and Confidentiality
- Economy
- Finality

Some of the key advantages of using a mediation process are:

- Parties are directly engaged in the negotiation of the settlement;
- The mediator, as a neutral third party, can view the dispute objectively and can assist the parties in exploring alternatives which they might not have considered on their own;
- As mediation can be scheduled at an early stage in the dispute, a settlement can be reached much more quickly than in litigation;
- Parties generally save money through reduced legal costs and less staff time;
- Parties enhance the likelihood of continuing their business relationship;
- Creative solutions or accommodations to special needs of the parties can become a part of the settlement.

AAA Resolution Services

In addition to arbitration and mediation, the AAA Resolution Services include other options for the parties' consideration. These processes have its specific advantages and offers flexibility, no matter how unique the dispute may be. All of these processes can be tailored to meet the needs of the parties.

Early Neutral Evaluation (ENE) is a non-binding process designed to enable parties to gather additional, pertinent case-related information and receive an assessment of the merits of their case. An AAA neutral, selected for his or her expertise in the parties' industry or business, meets with both sides, evaluates their cases—discussing the relevant facts and law—and then explains the likely outcome of legal proceedings relating to the dispute. With the particulars of the case in hand, the neutral can act as a catalyst, helping the parties to reach an earlier resolution than typically would be the case. ENE is especially valuable when a dispute involves subject matters and issues that are highly specialized.

Advisory Opinions is a process in which the neutral is engaged to give the parties an opinion as to the possible outcome. This process is similar to arbitration, but less formal than arbitration. The decision is non-binding and used more as a tool for settlement negotiations.

Fact-Finding is a process designed to enable the gathering of information from documents, witnesses and other material involved in a dispute in order to identify and clarify the central facts in the conflict. In this process, AAA expert neutrals conduct independent investigations in order to provide parties with a non-binding report on the particulars of their case, which may or may not include recommendations for settlement. Fact-Finding services serve to streamline the discovery process, ultimately giving each party the information needed to structure an optimal resolution—an important step toward facilitating settlement.

Mini-Trial is a settlement process that provides senior executives of the disputing companies with a better understanding of the issues at hand and of each company's position. It also serves as a conduit for communication between the executives from opposing sides, enhancing the likelihood of settlement and potentially enabling the preservation of important business relationships. In Mini-Trials, parties first present their cases in an abbreviated form to the senior executives of the companies involved in the dispute and to an AAA expert neutral charged with chairing the presentation. Following the presentations, executives meet for settlement discussions. If a settlement cannot be reached, the neutral may be empowered to mediate and/or provide a non-binding advisory opinion regarding the likely outcome of the case.

Conciliation involves a process in which the neutral helps the parties clarify and narrow differences. The neutral also makes recommendations for the parties' consideration. Generally, the neutral does not actively help the parties settle.

Partnering is a process intended to prevent disputes or address them at an early stage. This process brings all parties on a construction (or other) project together before the project begins to avoid future disputes. Partnering is a commitment by all parties to work together to meet individual and common goals. This process is commonly referred to as a "dispute avoidance technique".

Dispute Review Boards/On-Site Neutrals is a process where one or more neutrals, are regularly involved in the project to observe problems, attend periodic meetings, review essential project documents, and offer solutions on a long-term project (usually construction). These neutrals are "part of the project". This process is commonly referred to as a "dispute avoidance technique".

On-Line Mediation is another method of resolving disputes through a skilled mediator. A mediator will explore the issues in question, will discuss a variety of settlement options and offer specific settlement proposals through a chat room. This service is designed to resolve 2-party disputes involving less than \$10,000. This is a great option for relatively small disputes where cost and travel are particular issues for the parties.

Various Service Options Offered by the AAA

- **AAA Video Conferencing**

AAA Video Conferencing, offered in conjunction with Courtroom Connect – a leading provider of advanced communication services to the legal industry – supplies high-quality, high-definition video and sound, eliminating the grainy, slow motion or choppy video and audio typical of the first generation of the technology. You will get the kind of clarity that allows participants to read facial expressions and mannerisms as well as to hear vital elements in the case.

What's more, you get superior technical support from Courtroom Connect to ensure that your video conference goes smoothly.

AAA Video Conferencing helps you to move your dispute along faster and lets you deal easily with clients all over the world.

- **AAA WebFile**

The AAA's WebFile provides you with convenient internet-based access to case filing and administrative services through www.adr.org.

AAA WebFile gives you access to online tools that help you efficiently manage cases in conjunction with AAA's CM Staff.

By using AAA WebFile, you are able to:

- File commercial, employment, insurance, international and labor cases;
- Share and manage documents;
- Select neutrals;
- Access AAA Rules and Procedures;
- Schedule hearings.

- **Fast Track Procedures for all Caseloads**

The Fast Track Procedures were designed for cases involving claims of no more than \$75,000 and can also be applied when all parties agree. These procedures can be applied to commercial, construction and labor cases. **Some of the highlights of this system are:**

- a 60-day "time standard" for case completion;
- an expedited arbitrator appointment process, with party input;
- requirement of a hearing within 30 calendar days of the arbitrator's appointment;
- a one-day of hearing in most cases;
- an award in no more than 14 calendar days after completion of the hearing.

- **Documents Only**

The Documents Only procedures is a process that allows the parties the opportunity to resolve the smaller claim very expeditiously. **Some of the highlights of this system are:**

- Claims do not exceed \$10,000
- Parties reserve the right to request an oral hearing
- The arbitrator establishes a fair and equitable procedures for the submission of documents

- **Procedures for Large, Complex Disputes**

Unless the parties agree otherwise, the Procedures for Large, Complex Disputes will be applied to all cases administered by the AAA in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs.

The key features of these procedures include:

- mandatory use of the procedures in cases involving claims of \$500,000 or more;
- a highly qualified, trained Panel of Neutrals, compensated at their customary rates;
- a mandatory preliminary hearing with the arbitrators, which may be conducted by telephone;
- broad arbitrator authority to order and control discovery, including depositions;
- presumption that hearings will proceed on a consecutive or block basis.

- **Enhanced Neutral Selection Process**

The Enhanced Neutral Selection Process is designed to give parties in AAA arbitrations who use the Procedures for Large, Complex disputes greater flexibility and control in selecting the most appropriate arbitrator for their case. Under this process, parties agree to use one or more screening and/or selection methods to assist them in choosing an arbitrator. **The screening methods that are available are:**

- Representative sample review
- Oral or written interviews of the arbitrator candidates
- Pre-screening for arbitrator disclosures and availability
- Expanded resumes
- Block listing

Additional AAA services include the design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms, and the courts.

II. LABOR/MANAGEMENT RELATIONS

Every year, labor and management enter into thousands of collective bargaining agreements. Virtually all of these agreements provide for arbitration of unresolved grievances. For decades, the AAA has been a leading administrator of labor-management disputes.

What do you get from AAA Labor Services that no one else can provide?

Simply this: Choices. Whether you represent union or management, or whether your or your clients' needs are for full-service or non-administered resolution options—**AAA Labor Management Dispute Resolution Services** can accommodate you or your clients with flexible, customizable solutions at cost-effective rates.

The AAA offers a range of choices.

Full Service Dispute Resolution

Five Labor Case Management Centers around the country can provide full service, dedicating an AAA staff member to supervise and shepherd your case through the entire arbitration process—from case filing, arbitrator selection, scheduling of hearings, document exchange and on to award. This efficiency frees the arbitrator from administrative duties to concentrate on hearing and deciding the case—and therefore, may save the parties money in additional arbitrator fees.

Customized ADR Solutions

- **Expedited Procedures**—when speed and cost are of utmost importance, cases can be scheduled promptly and awards rendered no later than seven days after hearings.
- **List Only and Appointment Only Services**—when AAA case administration is not required.
- **Grievance Mediation** (in person or online).

There are several specific AAA Rules in the Labor Industry. These rules are:

- Labor Arbitration
- Pension Plan Arbitration
- Employee Benefit Plan Arbitration
- Union Fees Arbitration
- Grievance Mediation

Risk Mitigation

Unforeseen problems can derail arbitrations under the best of circumstances, contributing to delays and increased costs—and sometime irreconcilable differences. The AAA keeps the case moving by handling inevitable complications, including scheduling issues and postponement requests. An example: On discharge cases, the AAA, at the request of either party, will appoint another arbitrator if the original arbitrator cannot offer hearing dates within 90 days of appointment.

Timely Hearings and Awards

Under AAA Rules, awards must be issued in 30 days. Our arbitrators understand the importance of compliance with these rules.

Other service options available for labor disputes are:

- **AAA WebFile (referred to in the Legal Risk Mitigation Section)**
- **AAA Video Conferencing (referred to in the Legal Risk Mitigation Section)**

The AAA also offers a variety of other services to the labor-management industry. Some of those services include:

- **AAA Labor Publications**

The AAA's *Labor Publications Package* was created to provide attorneys, arbitrators, educators and public-policy professionals with variety and perspective related to important labor awards, both in the private and public sectors.

- **AAA Labor Awards**

AAA has launched a new online database containing AAA labor awards. The AAA, through a cooperative agreement with LexisNexis, is offering access to full text of all labor awards issued during the period 2003 to the present. The awards are in redacted form: party name and identifying geographical factors have been deleted; arbitrator and advocate names have been retained. The parties continue to retain the right, within 30 days of the date an award is issued, to object to publication of the award.

- **AAA's Election & Survey Services**

Election and survey administrators of the American Arbitration Association (AAA) are responsible for the planning, strategic management and ongoing supervision of the elections process so that the highest standards of quality, fairness and integrity are maintained.

Each election and survey is tailored to the specific needs of the organization and carefully designed to conform to existing bylaws, constitutions, general policies and standards. Our clients can choose from one or more voting methods:

- Touch-Screen Voting
- Telephone Voting
- Internet Voting
- On-Site Voting
- Mail Ballot Voting

We offer expertise backed by time-tested and client-acclaimed success. The AAA's relationship with the labor-management community dates back to the Association's earliest days. In its eighty-three year history, the AAA has established a solid reputation for permanence and a thorough commitment to optimal service.

- **Training and Education**

Dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution, the American Arbitration Association (AAA) is committed to its mission of service and education. As the world's leading provider of conflict management services, the AAA offers more than 83 years of experience in addressing the education and training needs of businesses, law firms, unions and professional associations.

Whether your organization faces conflict in the workplace or a lack of effective communication and negotiation skills, AAA Education Services can provide you with a customized solution for your specific needs.

Working with America's leading companies, organizations and their employees, the AAA offers a wide array of tailor-made educational programs to provide attorneys, executives, labor and management with the skills they need to succeed at minimizing and effectively managing disputes in the workplace.

No matter what your ADR training requirements may be, the Association provides expert faculty for every education program. Some of the training programs offered are:

- Advocacy Skills Training
- Communication & Negotiation Skills Training
- Grievance Processing
- Interest-Based Negotiations
- Webinars – “Understanding & Addressing Bias in the Workplace”; “Old School vs. New School...America’s Aging Workforce”; “Successful Strategies in Employment ADR”, etc.

CONCLUSION

The AAA would welcome the opportunity to discuss with you further the work of the Michigan Green Enterprise Zone Initiative. With our 83 years of leadership, achievements and accomplishments in the field of ADR, it is opportunities such as this that allow the AAA to continue our investments in innovation, infrastructure, technology and human capital. We look forward to hearing from you.

Respectfully Submitted,

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