

Rules and Procedures (2014)

1. Initiation of Arbitration: After the parties and their attorneys have reviewed the above Rates and these Rules and Procedures and agree amongst themselves that Haggerty Arbitrations shall serve as the arbitrator in a particular case: **(a)** each of the parties and their attorneys shall review, complete, and sign the Arbitration Service Contract (a clean copy of which is attached hereto); **(b)** each attorney/self-represented party shall complete an Arbitration Questionnaire (a clean copy of which is attached hereto); and **(c)** the parties/attorneys shall send to Haggerty Arbitrations: (i) the originals of the above Arbitration Service Contract and each Arbitration Questionnaire response; (ii) a copy of the applicable pre-incident contractual arbitration clause or post-incident agreement/stipulation to arbitrate; and (iii) a cover letter, stating that each attorney/self-represented party has been sent a copy of the signed, completed Arbitration Service Contract and a copy of each completed Arbitration Questionnaire.

Within 10 days after Haggerty Arbitrations receives the above documents, it will: **(a)** review the contractual arbitration clause/agreement/stipulation to arbitrate to confirm that it provides for a final resolution of the case by arbitration; **(b)** review the responses to the Arbitration Questionnaires to determine if any conflict of interest exists that might preclude Haggerty Arbitrations from serving as arbitrator; and **(c)** inform the attorneys/self-represented parties whether or not the Questionnaire responses indicate that such a conflict exists. If none exists, Haggerty Arbitrations will proceed to schedule an arbitration hearing. (**Note:** No party may move to disqualify Haggerty Arbitrations from serving as arbitrator based on any person, fact or circumstance that was not disclosed in any party's response to the Arbitration Questionnaire.)

2. No Ex Parte Communications: Other than at a properly scheduled hearing or telephone conference (at which all of the attorneys/self-represented parties have agreed to appear), Haggerty Arbitrations will not communicate with any of the parties or their attorneys by telephone or in-person. Other than at a properly scheduled hearing or telephone conference, all communications between Haggerty Arbitrations, its staff, the parties, prospective parties and/or their attorneys (including all scheduling and other administrative communications) shall be in writing, sent by e-mail, facsimile, overnight delivery, or U.S. mail. Each such communication shall include a written confirmation that each attorney/self-represented party in the case has simultaneously been sent a copy of the communication.

3. High-Low Binding Arbitration: Since the decisions that Haggerty Arbitrations renders are final and binding, parties are invited to consider also agreeing to a high-low arbitration. In high-low arbitrations the parties agree that a plaintiff shall receive at least a certain amount, and that a defendant shall not be required to pay more than a certain amount, notwithstanding what the arbitrator decides.¹ High-low arbitration agreements enable parties to further shape a final resolution of their case. It is recommended that neither the parties nor their attorneys disclose the existence or contents of any such agreement to Haggerty Arbitrations since such agreements do not constitute evidence of liability or damages.

¹ For example, in a \$100,000/\$200,000 high-low arbitration, the plaintiff will receive no less than \$100,000, even if the arbitrator finds no damages, and the defendant will not have to pay more than \$200,000, even if the arbitrator finds damages of \$300,000. However, if the arbitrator finds damages of \$150,000, then the defendant must pay \$150,000.

4. Scheduling of Hearings: Promptly after it has received a signed Arbitration Service Contract, Haggerty Arbitrations will send a letter to each of the attorneys/self-represented parties suggesting dates for a hearing, based on the data received in the Questionnaire responses and its own calendar. (Enclosed with that letter will be a duplicate of the Arbitration Service Contract, signed by Haggerty Arbitrations.) Haggerty Arbitrations is willing to conduct hearings on Saturdays and into the evening if all of the attorneys/self-represented parties agree. The hearing will be conducted on the premises of Haggerty Arbitrations unless all of the attorneys/self-represented parties agree otherwise. When this scheduling process is complete, Haggerty Arbitrations will serve a Notice of Hearing on all of the attorneys/self-represented parties.

5. Advance Payment of Arbitration Fees: Enclosed with the Notice of Hearing will be an invoice for advance payment of the hearing, hearing brief review, and opinion drafting fees pursuant to the above Rate schedule. The parties shall pay that invoice within 15 days of the date on the Notice of Hearing. Haggerty Arbitrations will not conduct any hearings or review any briefs until that invoice is paid in full. The parties and attorneys shall not inform Haggerty Arbitrations of who is actually paying these fees. If Haggerty Arbitrations receives a check for the total fees from one party, it will not assume that that party is actually paying all of the fees.

6. Hearing Briefs: At least 14 days before the hearing date the attorneys/self-represented parties shall serve their hearing briefs (along with a proof of service) on the arbitrator and the other attorneys/self-represented parties by personal service, e-mail, overnight delivery, or U.S. Express Mail (but not by facsimile). A hearing brief may not exceed 20 pages (not counting exhibits) unless the arbitrator agrees or directs otherwise.

7. Governing Law and Procedures: Unless all of the parties and their attorneys have, in a signed writing, agreed otherwise, the arbitration shall be conducted, and the case shall be decided, pursuant to: **(a)** the substantive and procedural law of California (including the California Arbitration Act, C.C.P. §§ 1280-1294.2); **(b)** any contractual clauses/agreements/stipulations of the parties pertaining to their case and/or its arbitration; **(c)** the above-referenced Arbitration Service Contract; and **(d)** these Rules and Procedures. Only to the extent that any of these Rules or Procedures is inconsistent with an applicable law/contract/agreement/stipulation shall it be denied effect; each of the remaining Rules and Procedures shall retain their full effect and govern. The arbitrator's determination of the applicability, meaning, validity, and effect of all of the above laws, contracts, agreements, stipulations, Rules and Procedures shall be final and binding on all of the parties.

8. Supplemental Briefs: If the parties and/or the arbitrator agree to the submission of supplemental briefs, such briefs may not exceed 10 pages (not counting exhibits) and must be served in the same manner as a hearing brief. (See Rule 6, above.) A check in payment of the Supplemental Brief Review Fee (\$250) must be included with the supplemental brief.

9. Requests to Produce And Subpoenas: Upon the written request of any party or attorney, served at least 20 days before the hearing, the other parties shall produce witnesses and documents within their employ or control at the hearing without the need for a subpoena. When a party fails to comply with such a request, the arbitrator may make adverse evidentiary and issue determinations against that party. To the fullest extent permitted by the applicable law (e.g., C.C.P. § 1282.6) and/or contract/agreement/stipulation, the arbitrator shall, upon the request of an attorney/self-represented party, issue a subpoena to compel the attendance of witnesses

and/or production of documents at the arbitration hearing. (See also Rule 15, below, re any pre-hearing discovery motions.) It shall be solely the responsibility of the parties and their attorneys to complete, serve, and obtain any court orders necessary to enforce, any such subpoena.

10. Conduct of The Hearing: Arbitration hearings shall begin promptly at the time and place set forth in the Notice of Hearing (see Rule 4, above) even if one or more of the parties/attorneys is not present. The hearing shall address the claims and defenses set forth in the parties' responses to Question No. 8 of the Arbitration Questionnaire. The arbitrator shall determine: how the hearing will proceed (e.g., the order of witnesses, protection of confidential information, who may be present, recesses, etc.); what will be admitted into, and excluded from, evidence; and what information is privileged/protected (after an *in camera* review if necessary). Witnesses shall testify under oath unless all of the attorneys and self-represented parties agree otherwise. Depositions and declarations will be admitted into evidence if they contain admissible hearsay or all of the attorneys and self-represented parties agree. If any party, attorney, witness, or other person behaves at the hearing in a manner that the arbitrator determines to be disorderly, abusive, and/or offensive, the arbitrator shall inform that person that if such behavior continues: (a) the arbitrator will direct that person to leave the premises; and (b) the hearing will proceed without that person. If such behavior nevertheless continues, the arbitrator shall direct the person to leave the premises pursuant to Penal Code section 602(o) (re trespassers) and the hearing will proceed without that person. When the arbitrator has determined that all relevant evidence and arguments have been presented, the arbitrator will declare the hearing concluded and the case submitted. Each of the above determinations of the arbitrator as to the conduct of the hearing shall be final and binding on all of the parties and their attorneys.

11. Re Court Reporters/Stenographers/Recordings: Unless all of the attorneys/self-represented parties have in a signed writing agreed otherwise, the arbitration hearing may not be recorded by a court reporter, stenographer, videotape, audiotape, or any other means. The parties shall be solely responsible for selecting, hiring, and paying for any such court reporters, stenographers, etc., to which they have agreed.

12. Re Continuances, Rescheduling Hearings, And Recesses: An arbitration hearing shall not be continued or rescheduled unless all of the attorneys/self-represented parties have in a signed writing agreed to such a continuance or rescheduling. In other words, the sudden, unexpected unavailability of a witness, party, or attorney, subsequent to the Notice of Hearing, shall not serve as a basis for granting a continuance. If a hearing is not completed by the date it was scheduled to conclude, the arbitrator, after consulting with the attorneys/self-represented parties present, shall: (a) recess the hearing on that date; and (b) inform those attorneys/parties of the date, time, and place on, and at, which the hearing will resume.

13. Written Decision (Award) And Opinion: Promptly, within 30 days after the conclusion of the hearing and within any time required by any applicable law/contract/ agreement/ stipulation, the arbitrator shall serve on each attorney/self-represented party, by mail, facsimile, and/or overnight delivery, duplicate-originals of: (a) the arbitrator's *decision* (also commonly referred to as the arbitrator's "*award*") and (b) the arbitrator's *opinion*, setting forth the legal and factual bases of the decision. The arbitrator's decision and determinations of each issue of fact and law in the case shall be final and binding on all of the parties. If all of the attorneys/self-represented parties agree, in a signed writing, that an *opinion* is not required, the arbitrator will not draft, serve, or charge a fee for, any opinion.

14. (Optional) Tentative Opinion Procedure: Haggerty Arbitrations also offers parties the option of agreeing to first receive a *tentative opinion* from the arbitrator within 15 days of the conclusion of the hearing. The parties may then, within 15 days, submit supplemental briefs, suggesting revisions to the tentative opinion. Within 15 days after the supplemental briefs are submitted, the arbitrator will serve a final decision and opinion.

15. Pre-Hearing Matters: If, in addition to conducting an arbitration hearing and issuing a decision, an arbitration agreement provides for the determination of pre-hearing matters (e.g., a discovery/summary judgment motion, an information exchange, etc.), Haggerty Arbitrations will determine those matters pursuant to California law unless the parties have agreed in writing that another law shall apply. The arbitrator's determination of each such matter shall be final and binding on all of the parties and their attorneys.

16. Pre-Hearing Correspondence: In the Notice of Hearing the arbitrator will also set forth in more detail: (a) what the arbitrator would like the hearing briefs to contain; (b) how the arbitration hearing will proceed; and (c) how the arbitrator will handle evidentiary issues. After the arbitrator has reviewed the hearing briefs, the arbitrator may also send the attorneys and self-represented parties a follow-up letter seeking to narrow and focus the issues that need to be addressed at the hearing.

17. Confidentiality And Privacy: Haggerty Arbitrations shall not disclose any information it has received during the arbitration proceedings or its decision and opinion of the case to any persons other than the parties and their attorneys unless it is required to do so by law. Nor shall Haggerty Arbitrations use any such information for any purpose other than conducting the arbitration and resolving the case. To protect the confidentiality of any trade secret, proprietary, sensitive, or other information subject to a right of privacy (the relevance of which required that information to be disclosed in an arbitration proceeding) the arbitrator may, upon the request of a party, issue orders to the parties, their attorneys, and witnesses, directing them not to disclose that information to any person. The Arbitration Services Contract provides that all parties and their attorneys shall obey any such orders.

18. Finality Of Arbitrator's Decision (Award): The arbitrator's decision (award)--including each of the arbitrator's determinations of fact, law, contract, rules, and procedure--is final and binding on all of the parties. Neither that decision nor any ruling, holding, or finding, made by the arbitrator at the arbitration hearing or any related proceeding, shall be subject to appeal or review by any trial or appellate court except under the limited circumstances set forth in the California Arbitration Act (at C.C.P. §§ 1284, 1285-1288.8) or the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) as grounds for correcting, modifying, or vacating an award. The award shall be final as soon as the time within which the award may be corrected, modified, or vacated under the applicable arbitration statute or agreement has expired. A judgment upon the award may then be entered by any court having the appropriate jurisdiction.

Attachments:

Arbitration Service Contract
Arbitration Questionnaire