



Preliminary Arbitration Hearing

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Preliminary Arbitration Hearing



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Mock Hearing

Presenters:

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What is a Preliminary Hearing?

Apple to Apple

Light Comparison

**FRCP 16(b) conference in
federal court**

or

**Initial Case Management
Conference or Preliminary
Conference in State Court**



American Arbitration Association *aka* “AAA”

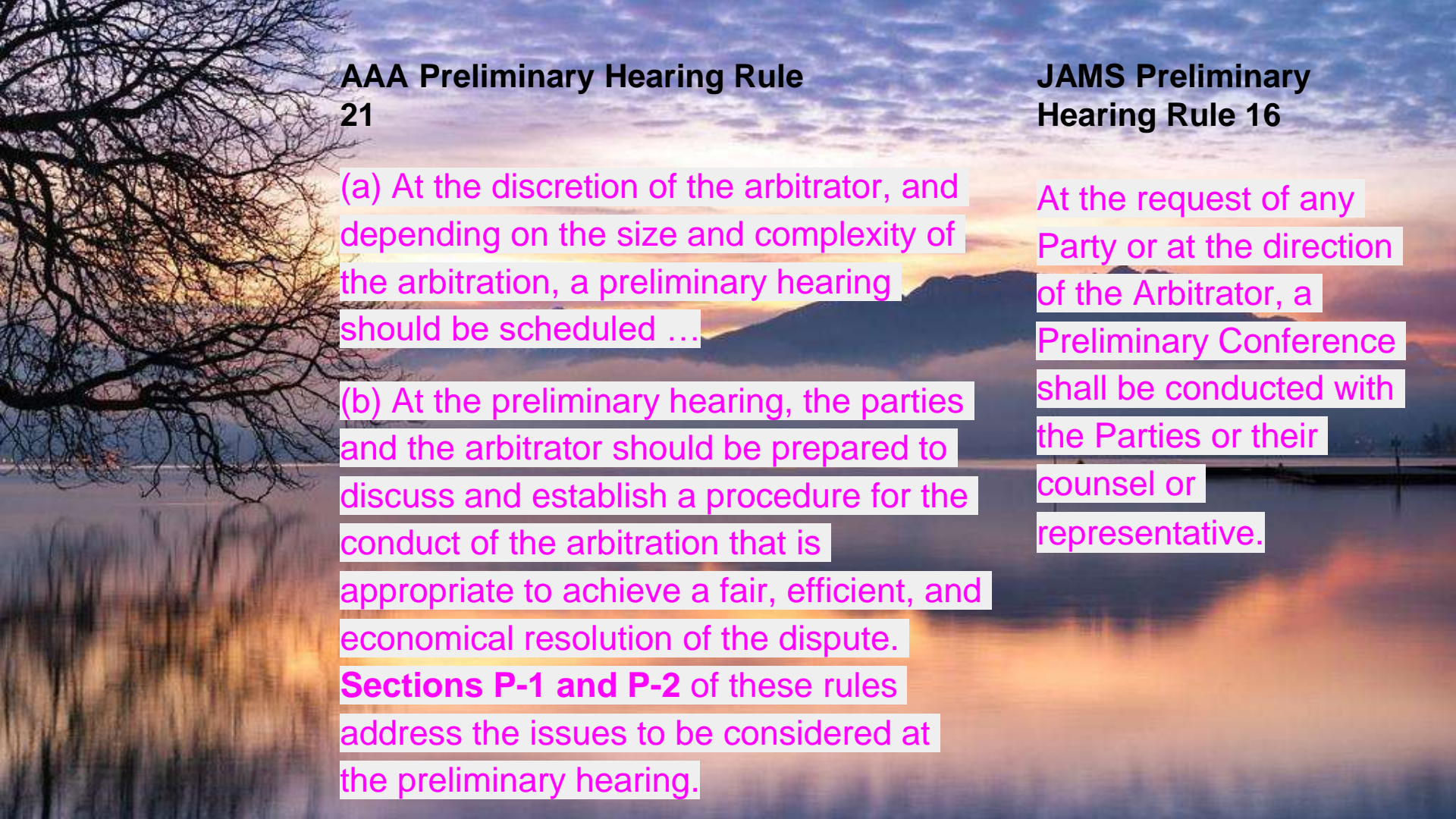
- *AAA Commercial Arbitration Rules and Mediation Procedures*

or

- *AAA Consumer Arbitration Rules*
 - These rules apply by agreement between the parties that *Consumer Arbitration Rules* shall apply. See rule R-1.
- <https://www.adr.org/Rules>

JAMS

- *JAMS Comprehensive Arbitration Rules & Procedures*
- *JAMS Streamlined Arbitration Rules & Procedures*
- <https://www.jamsadr.com/adr-rules-procedures/>



AAA Preliminary Hearing Rule 21

(a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled ...

(b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute.

Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

JAMS Preliminary Hearing Rule 16

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representative.

Preliminary Hearing - **The Pleadings**

Rule P-2(a) - AAA Commercial Rules

(iii) whether a party will seek a more detailed statement of claims, counterclaims or defenses;

(iv) whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;

Rule - 16 JAMS Comprehensive Rules

(c) The pleadings of the Parties and any agreement to clarify or narrow the issues or structure the Arbitration Hearing;

Preliminary Hearing - **Discovery & Related Issues**

Rule P-2(a) - AAA Commercial Rules

(vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;

(viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;

(ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;

(x) whether any measures are required to protect confidential information;

(xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;

(xv) whether any procedure needs to be established for the issuance of subpoenas;

Rule - 16 JAMS Comprehensive Rules

- (a) The exchange of information in accordance with Rule 17 or otherwise;
- (b) The schedule of discovery as permitted by the Rules, as agreed by the Parties or as required or authorized by applicable law;

Rule - 17 JAMS Comprehensive Rules

(d) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute.

Preliminary Hearing - **Dispositive Issues**

Rule P-2(a) - AAA Commercial Rules

- (i) the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;
- (ii) whether all necessary or appropriate parties are included in the arbitration;
- (vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation,
 - (a) any preconditions that must be satisfied before proceeding with the arbitration;
 - (b) whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
 - (c) consolidation of the claims or counterclaims with another arbitration; or
 - (d) bifurcation of the proceeding.

Rule - 16 JAMS Comprehensive Rules

- (f) The scheduling of any dispositive motion pursuant to Rule 18;

Preliminary Hearing - **Procedure for the “Trial” Hearing**

Rule P-2(a) - AAA Commercial Rules

(xii) whether, according to a schedule set by the arbitrator, the parties will

(a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;

(b) exchange and pre-mark documents that each party intends to submit; and

(c) exchange pre-hearing submissions, including exhibits;

(xiii) the date, time and place of the arbitration hearing;

(xiv) whether, at the arbitration hearing,

(a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;

(b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;

Rule - 16 JAMS Comprehensive Rules

(d) The scheduling of the Hearing and any pre-Hearing exchanges of information, exhibits, motions or briefs;

(e) The attendance of witnesses as contemplated by Rule 21;

(g) The premarking of exhibits, the preparation of joint exhibit lists and the resolution of the admissibility of exhibits;

Preliminary Hearing - **Procedure for the “Trial” Hearing**

Rule P-2(a) - AAA Commercial Rules

(xvii) whether post-hearing submissions will be filed;

(xviii) the form of the arbitration award;

Rule - 16 JAMS Comprehensive Rules

(h) The form of the Award;

Preliminary Hearing - **What Rules, Law Applies and Other Items**

Rule P-2(a) - AAA Commercial Rules

(v) which

(a) arbitration rules;

(b) procedural law; and

(c) substantive law govern the arbitration;

(xix) any other matter the arbitrator considers appropriate or a party wishes to raise.

P-2 (b)

The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Rule - 16 JAMS Comprehensive Rules

(i) Such other matters as may be suggested by the Parties or the Arbitrator;

The Preliminary Conference may be ... resumed from time to time as warranted.

Preliminary Hearing - **Rules Other than AAA Commercial or JAMS Comprehensive**

AAA Consumer Rules - R-21 Consumer Rules

If any party asks for, or if the AAA or the arbitrator decides to hold one, the arbitrator will schedule a preliminary management hearing with the parties and/or their representatives as soon as possible. ...

During the preliminary management hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of issues and claims, scheduling of the hearings, and any other preliminary matters.

The arbitrator shall promptly issue written orders that state the arbitrator's decisions made during or as result of the preliminary management hearing. The arbitrator may also conduct additional preliminary management hearings if the need arises.

JAMS Streamlined Rules

The rules are silent as to whether a party can request a preliminary hearing. However, consider ...

Rule 6 Preliminary and Administrative Matters

JAMS may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

Rule 8

Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing.

Rule 13 Exchange of Information

(c) The Parties shall promptly notify JAMS when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute.

Fact Pattern

Slater Collection Agency, was attempting to collect a debt from Sarah Smith. Ms. Smith repeatedly told Slater and its collection agents that she didn't owe the money, but Slater kept calling her sometimes two times a day. Ms. Smith told Slater to leave her alone and she would not pay. Ms. Smith spoke with at least three agents. After several months Ms. Smith grew tired of the many calls and wrote to Slater telling them that she refused to pay them any money, she disputed the debt and not to call. Slater kept calling. Later, Ms. Smith checked her credit report and saw that Slater had reported the debt on her credit reports. Slater reported the debt as charged-off, a delinquent balance of \$900 and did not report it as disputed. Ms. Smith disputed the debt with the credit reporting agencies and the debt was verified as accurate - the Slater tradeline did not change. Ms. Smith suffered emotional distress, credit turn downs and some out of pocket expenses. She brings suit against Slater for violations of the FDCPA, FCRA, invasion of privacy and the TCPA.

Presenters Contact Information

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