

# Compelling and Staying Arbitration in Arkansas

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A Practice Note explaining how to request judicial assistance in Arkansas state court to compel or stay arbitration. This Note describes what issues counsel must consider before seeking judicial assistance, and explains the steps counsel must take to obtain a court order compelling or staying arbitration in Arkansas.

## SCOPE OF THIS NOTE

When a party commences a lawsuit in defiance of an arbitration agreement, the opposing party may need to seek a court order to stay the litigation and compel arbitration. Likewise, when a party starts an arbitration proceeding in the absence of an arbitration agreement, the opposing party may need to seek a court order staying the arbitration. This Note describes the key issues counsel should consider when requesting a court to compel or stay arbitration in Arkansas, including preliminary considerations when compelling or staying arbitration, threshold factual issues presented to the court, considerations when preparing the motion, procedural rules applicable to the motion, and appeal of an order compelling or staying arbitration.

For information on compelling or staying arbitration in federal courts, see Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts* ([6-574-8707](#)).

## PRELIMINARY CONSIDERATIONS WHEN COMPELLING OR STAYING ARBITRATION

Before seeking judicial assistance to compel or stay arbitration, parties must determine what law applies to the arbitration agreement (see *Determine the Applicable Law*). Parties must also consider:

- The threshold factual issues courts consider when evaluating a request to compel or stay arbitration (see *Threshold Issues for the Court to Decide*).

- The issues specific to requests to compel arbitration (see *Considerations When Seeking to Compel Arbitration*).
- The issues specific to requests to stay arbitration (see *Considerations When Seeking to Stay Arbitration*).
- Whether to make an application for provisional remedies such as an attachment or preliminary injunction when seeking to compel or stay arbitration (see *Considerations When Seeking Provisional Remedies*).

## DETERMINE THE APPLICABLE LAW

When evaluating a request for judicial assistance in arbitration proceedings, the court must determine whether the arbitration agreement is enforceable under the Federal Arbitration Act (FAA) or Arkansas arbitration law.

### The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to:
  - a commercial transaction; or
  - a maritime matter.
- States the parties' agreement to arbitrate a dispute. (9 U.S.C. § 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving "commerce," a term the courts define broadly. Parties may, however, contemplate enforcement of their arbitration agreement under state law (also referred to as arbitration law) (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *E-Z Cash Advance, Inc. v. Harris*, 60 S.W.3d 436, 438-39 (Ark. 2001)).

If the agreement falls under federal law, state courts apply the FAA, which preempts conflicting state law only "to the extent that [state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989)) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply

to ensure that arbitration agreements are enforceable); see *Terminix Int'l Co. v. Trivitt*, 289 S.W.3d 485, 489 (Ark. Ct. App. 2008); *Lehman Props., Ltd. P'ship v. BB & B Constr. Co.*, 98 S.W.3d 470, 473 (Ark. Ct. App. 2003)).

For more information on compelling arbitration when an arbitration agreement falls under the FAA, see Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Agreement Must Fall Under Federal Arbitration Act* ([6-574-8707](#)).

### Arkansas State Law

The Arkansas Uniform Arbitration Act (AUAA), codified at Arkansas Code Annotated §§ 16-108-201 to 16-108-233, governs arbitration in Arkansas, including motions to stay or compel arbitration. The AUAA is based on the Revised Uniform Arbitration Act (RUAA) and applies to arbitration agreements made:

- On or after July 27, 2011 (Ark. Code Ann. § 16-108-203(a)).
- Before July 27, 2011, if all parties agree (Ark. Code Ann. § 16-108-203(b)).

In Arkansas, public policy strongly favors the enforcement of arbitration agreements, whether under the FAA or the AUAA (see *Reg'l Care of Jacksonville, LLC v. Henry*, 444 S.W.3d 356, 360 (Ark. 2014); *BDO Seidman, LLP v. SSW Holding Co.*, 386 S.W.3d 361, 368 (Ark. 2012)). The court must resolve doubts about arbitrability in favor of arbitration (see *Courtyard Gardens Health & Rehab., LLC v. Arnold*, 485 S.W.3d 669, 674 (Ark. 2016)).

However, the AUAA expressly does not apply to:

- Personal injury or tort matters.
- Employer-employee disputes.
- Claims by an insured or beneficiary under any insurance policy or annuity contract.

(Ark. Code Ann. § 16-108-233(b).)

Arkansas law also prohibits arbitration of disputes involving:

- Livestock and poultry production contracts, unless the parties agree to arbitrate after the dispute arises (Ark. Code Ann. § 2-32-201(b)(5)).
- An automobile dealer and an auto purchaser, unless the purchaser agrees in a separate writing that acknowledges in bold print the purchaser's waiver of the right to sue in court (Ark. Code Ann. § 4-75-413).

For more information on the RUAA and a list of states that have adopted it, see Practice Note, *Revised Uniform Arbitration Act: Overview* ([W-004-5167](#)).

### INTERSECTION OF THE FAA AND ARKANSAS LAW

Because the FAA only preempts state law to the extent that state law contradicts federal law, the FAA does not prevent Arkansas state courts from, among other things, applying state contract law to determine whether the parties have entered into an arbitration agreement and whether the parties' agreement to arbitrate is valid (see *Bank of the Ozarks, Inc. v. Walker*, 487 S.W.3d 808, 810 (Ark. 2016)).

If an agreement falls under the FAA, Arkansas state courts apply the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold

questions under Arkansas state law (see *Southland Corp. v. Keating*, 465 U.S. 1, 12-13 (1984); see also Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability* ([6-574-8707](#))).

Arkansas state courts apply state law to determine enforceability of the arbitration agreement if, for example, the agreement:

- Does not affect interstate commerce (see *Arkansas Diagnostics Ctr., P.A. v. Tahiri*, 257 S.W.3d 884, 890-92 (Ark. 2007); *Lehman Props.*, 98 S.W.3d at 473; Practice Note, *Compelling and Enjoining Arbitration in US Federal Courts: Agreements Covered by Chapter 1 of the FAA* ([6-574-8707](#))).
- Contains a choice of law provision specifying that Arkansas law governs the agreement and its enforcement (see *Pest Mgmt., Inc. v. Langer*, 240 S.W.3d 149, 153 (Ark. Ct. App. 2006)).

For further discussion of various states' procedural rules relating to arbitration, see Practice Note, *Choosing an Arbitral Seat in the US* ([1-501-0913](#)).

### THRESHOLD ISSUES FOR THE COURT TO DECIDE

When deciding a motion to compel or stay arbitration, the court may not rule on the merits of the claims in the underlying arbitration (Ark. Code Ann. § 16-108-207(d); see *LegalZoom.com, Inc. v. McIlwain*, 429 S.W.3d 261, 265 (Ark. 2013); *Alltel Corp. v. Sumner*, 203 S.W.3d 77, 80 (Ark. 2005)). Instead, the court plays a gatekeeping role that is limited to determining whether:

- There is a valid agreement to arbitrate between the parties (see *Valid Arbitration Agreement*).
- The dispute falls within the scope of the arbitration agreement (see *Scope of Arbitration Agreement*).
- The party moving to compel arbitration waived its right to arbitrate (see *Waiver*).

(Ark. Code Ann. § 16-108-207; see *LegalZoom.com*, 429 S.W.3d at 265; *Courtyard Gardens Health & Rehab., LLC v. Quarles*, 428 S.W.3d 437, 442 (Ark. 2013); *Alltel Corp.*, 203 S.W.3d at 80.)

The court decides these threshold arbitrability issues unless the parties clearly and unmistakably delegate arbitrability issues to the arbitrator (see *Bigge Crane & Rigging Co. v. Entergy Ark., Inc.*, 457 S.W.3d 265, 268-69 (Ark. 2015); *HPD, LLC v. TETRA Tech., Inc.*, 424 S.W.3d 304, 311 (Ark. 2012) (incorporation of American Arbitration Association rules constitutes clear and unmistakable delegation of arbitrability to the arbitrator); see also Practice Note, *Arbitrability Issues in US Arbitration: Determination by a Court or Arbitrator* ([W-005-0556](#))).

A party may raise any of these issues as a basis for the motion to compel or stay arbitration or as a defense in an opposition to a motion. Once the court has ruled on these issues, all remaining questions in the dispute are for the arbitrator to decide (Ark. Code Ann. § 16-108-207(b)).

### VALID ARBITRATION AGREEMENT

Whether the FAA or the AUAA applies to an arbitration agreement, the court determines the validity of the arbitration agreement under state contract law and uses the same rules of construction that the

courts apply to contracts generally (see *Walker*, 487 S.W.3d at 810). Under Arkansas law, the essential elements of a contract are:

- Competent parties.
- Subject matter.
- Legal consideration.
- Mutual agreement.
- Mutual obligation.

(See *Essential Accounting Sys., Inc. v. Dewberry*, 428 S.W.3d 613, 616 (Ark. Ct. App. 2013); *Kearney v. Shelter Ins. Co.*, 29 S.W.3d 747, 749 (Ark. Ct. App. 2000).)

Under Arkansas law all contracts, including arbitration agreements, must contain mutual obligations between the parties. Arkansas courts have found arbitration agreements invalid where the parties' obligations are not mutual, such as where:

- One party must arbitrate but the other party may elect to assert a claim in court (see *Alltel Corp. v. Rosenow*, 2014 WL 4656609, at \*8-9 (Ark. Sept. 18, 2014); *Tyson Foods, Inc. v. Archer*, 147 S.W.3d 681, 685 (Ark. 2004)).
- The arbitration clause precludes the arbitrator from enforcing one party's primary right under the parties' agreement (see *Independence Cty. v. City of Clarksville*, 386 S.W.3d 395, 400 (Ark. 2012)).

Arkansas state courts seek to give effect to the parties' intent as shown by the language of their arbitration agreement (see *Jorja Trading, Inc. v. Willis*, 566 S.W.3d 510, 513 (Ark. Ct. App. 2018)). In determining the parties' intent, the court:

- Construes an ambiguous arbitration clause against the drafter (see *Hamilton v. Ford Motor Credit Co.*, 257 S.W.3d 566, 569 (Ark. Ct. App. 2007)).
- Does not construe the arbitration agreement strictly, but rather reads it to include subjects within the spirit of the parties' agreement (see *Courtyard Gardens Health & Rehab, LLC v. Sheffield*, 495 S.W.3d 69, 71 (Ark. 2016)).

Courts may only consider contract defenses to an arbitration agreement after the court determines a valid arbitration agreement exists (see *Bank of the Ozarks v. Walker*, 434 S.W.3d 357, 360 (Ark. 2014); *GGNSC Holdings, LLC v. Chappel*, 453 S.W.3d 645, 648 (Ark. 2014)). Defenses that a party may assert to invalidate an agreement to arbitrate include:

- Impossibility of performance (see *GGNSC Holdings*, 453 S.W.3d at 649).
- Generally applicable contract defenses, such as:
  - fraud;
  - duress; and
  - unconscionability.

(See *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *Walker*, 434 S.W.3d at 360.)

The court may not invalidate an arbitration agreement based on a defense that either:

- Only applies to arbitration.
- Derives its meaning from the fact that the contract at issue is an arbitration agreement.

(See *Doctor's Assocs.*, 517 U.S. at 687; *Perry v. Thomas*, 482 U.S. 483, 492-93 n.9 (1987); *BDO Seidman*, 386 S.W.3d at 370.)

### SCOPE OF ARBITRATION AGREEMENT

If the court finds the parties have a valid arbitration agreement, the court then determines whether the parties' dispute falls within the scope of the agreement (see *Walker*, 434 S.W.3d at 360; *HPD*, 424 S.W.3d at 308). The court:

- Determines the scope of the matters the parties intended to arbitrate based on the parties' language and the spirit of the agreement.
- Resolves any ambiguities in favor of arbitration

(See *Tyson Foods*, 147 S.W.3d at 684; *E-Z Cash Advance*, 60 S.W.3d at 440.)

### WAIVER

The court may refuse to compel arbitration if the party seeking arbitration waived its right to arbitrate by failing to timely assert the right (see *Tri-State Delta Chems., Inc. v. Crow*, 61 S.W.3d 172, 175 (Ark. 2001)). Courts find waiver if the party moving to compel arbitration is a party to a lawsuit involving issues subject to arbitration and either:

- Fails to assert arbitration as a defense to the lawsuit (see *Diamente v. Dye*, 430 S.W.3d 196, 202 (Ark. 2013)).
- Actively participates in the litigation (see *Advocat, Inc. v. Heide*, 378 S.W.3d 779, 784 (Ark. Ct. App. 2010)).

The court's waiver determination is a fact specific inquiry. The court considers:

- The length of the litigation.
- Whether the party seeking arbitration actively availed itself of the opportunity to litigate.
- Prejudice to the party opposing arbitration.

(See *Diamente*, 430 S.W.3d at 202; *Advocat*, 378 S.W.3d at 784.)

A party does not necessarily waive its right to arbitrate by:

- Filing an initial motion to dismiss.
- Conceding to the court's jurisdiction and venue.
- Conducting some limited discovery.

(See *Advocat*, 378 S.W.3d at 784.)

### CONSIDERATIONS WHEN PREPARING THE MOTION

Before moving to compel or stay arbitration in Arkansas state court, counsel should consider several factors.

### CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

A party may request that the court compel arbitration when the opposing party commences a lawsuit or otherwise expresses the intention to avoid arbitration of a dispute even though the dispute is subject to a valid arbitration agreement. The requesting party submits the request as a motion (Ark. Code Ann. §§ 16-108-205 and 16-108-207).

If there is no lawsuit already pending between the parties, the moving party files the motion in any court of proper venue

(see Venue) asking a court to compel the other party to arbitrate the dispute (Ark. Code Ann. § 16-108-207(e)).

If there is a lawsuit pending, for example because the other party started a lawsuit over a dispute subject to arbitration, the moving party submits the motion to compel arbitration in that case (Ark. Code Ann. § 16-108-207(e); see *Cash in a Flash Check Advance of Ark., L.L.C. v. Spencer*, 74 S.W.3d 600, 604 (Ark. 2002)). If there is a pending lawsuit, the party moving to compel arbitration should also consider moving to stay the litigation. The court must stay any pending litigation on just terms when:

- A party moves to compel arbitration (Ark. Code Ann. § 16-108-207(f)).
- The court grants a motion to compel arbitration (Ark. Code Ann. § 16-108-207(g)).

If the court finds arbitrable claims are severable, the court may sever and stay litigation of the non-arbitrable claims and order arbitration of the arbitrable claims (Ark. Code Ann. § 16-108-207(g)).

When a party moves to compel arbitration, the court must:

- Order arbitration if the other party does not appear or oppose the motion.
- Summarily decide the motion, if the other party opposes the motion.
- Order arbitration unless the court finds that there is no enforceable arbitration agreement.

(Ark. Code Ann. § 16-108-207(a)(2), (c).)

The court may not refuse to order arbitration because either:

- The underlying arbitration claim lacks merit.
- The party seeking arbitration did not establish grounds for the arbitrable claim.

(Ark. Code Ann. § 16-108-207(d).)

#### CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

If an arbitration claimant threatens or demands arbitration against a party not bound to arbitrate the dispute, the party may ask a court to stay arbitration. Like a party seeking to compel arbitration, a party seeking to stay arbitration files a motion (Ark. Code Ann. § 16-108-207(b)).

If there is no lawsuit pending, the party resisting arbitration files the motion in any court of proper venue (see Venue) (Ark. Code Ann. § 16-108-207(e)). If there is a lawsuit already pending between the parties, the party opposing arbitration files the motion in that case (Ark. Code Ann. § 16-108-207(e)). The court must:

- Decide the motion summarily.
- Order the parties to arbitration if it finds an enforceable arbitration agreement, even if the other party did not move to compel arbitration.

(Ark. Code Ann. § 16-108-207(b).)

#### CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Along with a request to compel or stay arbitration, a party may seek provisional remedies before the arbitrator's appointment. Under the AUAA, a party may move the court for provisional remedies to the same extent and under the same conditions as if the claim were the subject of a civil action. (Ark. Code Ann. § 16-108-208.)

The forms of provisional relief are:

- Injunctions (Ark. R. Civ. P. 65), such as a:
  - preliminary injunction (Ark. R. Civ. P. 65(a)); and
  - temporary restraining order (TRO) (Ark. R. Civ. P. 65(b)).
- Appointment of a receiver (Ark. R. Civ. P. 66).
- Replevin (Ark. Code Ann. §§ 18-60-801 to 18-60-822).

After the appointment of the arbitrator:

- The arbitrator may order provisional relief that the arbitrator deems necessary to:
  - protect the effectiveness of the arbitration proceeding; and
  - promote the fair and expeditious resolution of the controversy.
- A party may move the court for a provisional remedy only if:
  - the matter is urgent; and
  - the arbitrator cannot act timely or provide an adequate remedy.

(Ark. Code Ann. § 16-108-208(b).)

A party does not waive a right to arbitration by moving in court for a provisional remedy (Ark. Code Ann. § 16-108-208(c); see Waiver).

For more information on provisional remedies in Arkansas, see State Q&A, Provisional Remedies: Arkansas ([W-000-2760](#)). For information on seeking interim relief in aid of arbitration generally, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration: Seeking Interim Relief Before Courts and Arbitrators ([0-587-9225](#)).

#### ADDITIONAL PROCEDURAL CONSIDERATIONS

Before filing a motion in an Arkansas court to compel or stay arbitration, counsel should consider additional factors that may affect the contents of the motion, the manner in which to bring it, and the likelihood of obtaining the desired relief. These factors include

- Whether the court has subject matter jurisdiction over the dispute and personal jurisdiction over the other party (see Court Jurisdiction).
- The proper venue in which to bring the motion (see Venue).
- Whether to seek discovery (see Disclosure When Seeking to Compel or Stay Arbitration).

#### Court Jurisdiction

Before commencing an action to compel or stay arbitration, the movant should confirm the court has subject matter jurisdiction to hear the motion and that there is a basis for the court to exercise personal jurisdiction over the other party.

Under the AUAA, an Arkansas court having jurisdiction over the dispute and the parties may enforce an arbitration agreement (Ark. Code Ann. § 16-108-226(a)). The Arkansas courts are divided into:

- Circuit courts, which:
  - are trial courts of general jurisdiction in Arkansas; and
  - have original jurisdiction of all justiciable matters not otherwise assigned by the Arkansas Constitution.
- (Ark. Code Ann. § 16-13-201(a).)
- State district courts, which are trial courts with:
  - exclusive jurisdiction in all contract matters where the amount in controversy does not exceed \$100;

- concurrent jurisdiction with the circuit court in contract matters where the amount in controversy does not exceed \$25,000;
  - concurrent jurisdiction with the circuit court in actions for the recovery of personal property where the value of the property does not exceed \$25,000; and
  - concurrent jurisdiction with the circuit court in matters of damage to personal property where the amount in controversy does not exceed \$25,000.
- (Ar. R. S. Ct. Admin. Order 18(6).)
  - Local district courts, which are trial courts with:
    - exclusive jurisdiction in all contract matters where the amount in controversy does not exceed \$100;
    - concurrent jurisdiction with the circuit court in contract matters where the amount in controversy does not exceed \$5,000;
    - concurrent jurisdiction with the circuit court in actions for the recovery of personal property where the value of the property does not exceed \$5,000; and
    - concurrent jurisdiction with the circuit court in matters of damage to personal property where the amount in controversy does not exceed \$5,000.
  - (Ar. R. S. Ct. Admin. Order 18(3).)

For more information on the Arkansas courts, see State Q&A, Litigation Overview: Arkansas ([W-000-2645](#)).

Proper bases of personal jurisdiction over a non-resident party include:

- General jurisdiction, which is based on a party's continuous, systematic, and substantial contacts with the state unrelated to the events giving rise to the claim (see *Yanmar Co. v. Slater*, 386 S.W.3d 439, 444 (Ark. 2012)).
- Specific jurisdiction, which is based on a party's specific contacts with the state giving rise to the claim (see *Lawson v. Simmons Sporting Goods, Inc.*, 569 S.W.3d 865, 871 (Ark. 2019); *Yanmar Co.*, 386 S.W.3d at 444).
- A forum selection provision in the parties' contract, which the Arkansas courts generally enforce unless the enforcement would be unreasonable and unfair (see *RMP Rentals v. Metroplex, Inc.*, 146 S.W.3d 861, 864 (Ark. 2004)).

## Venue

Under the AUAA, if a proceeding is pending in court between the parties involving an arbitrable claim, a party seeking to compel or stay arbitration must make the motion in that court (Ark. Code Ann. § 16-108-207(e)). Otherwise, a party seeking to compel or stay arbitration must make a motion in the court of the county, as applicable:

- Where the arbitration agreement specifies the arbitration hearing is to be held.
- Where the arbitration hearing, if any, is occurring.
- If the hearing is not underway and the parties' agreement does not specify a location:
  - where the adverse party either resides or has a place of business; or
  - if the adverse party has no residence or place of business in Alabama, the moving party may file the motion in the court of any Alabama county.

(Ark. Code Ann. § 16-108-227.)

## Disclosure When Seeking to Compel or Stay Arbitration

The AUAA does not expressly provide for discovery on a motion to compel or stay arbitration. However, the circuit court has broad discretion to issue discovery orders (see, for example, *Broadway Health & Rehab., LLC v. Roberts*, 524 S.W.3d 407, 410 (Ark. Ct. App. 2017)).

Because the court entertaining a motion to compel or stay arbitration must make a threshold determination about the existence, validity, and scope of an arbitration agreement between the parties (see Threshold Issues for the Court to Decide), a party considering seeking discovery when moving to compel or stay arbitration should:

- Limit any discovery requests to the issue of the arbitration agreement's:
  - existence;
  - validity; and
  - scope.
- To avoid the risk of waiver (see Waiver), refrain from seeking discovery about the underlying arbitral dispute.

## MOTION TO COMPEL OR STAY ARBITRATION

When bringing a motion to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules relevant to case-initiating documents (see Procedural and Formatting Rules for Motions in Arkansas).
- The documents necessary to bring the motion to compel or stay arbitration (see Documents Required for the Motion).
- How to file and serve the documents (see Filing the Motion and Serving the Motion).

## PROCEDURAL AND FORMATTING RULES FOR MOTIONS IN ARKANSAS

Counsel should be familiar with applicable procedure and formatting rules for motions in Arkansas state courts. Counsel also should check the relevant court websites for additional information and guidance on procedural and formatting rules.

### Procedural Rules

Procedural rules governing the filing of a motion to compel or stay arbitration include:

- The AUAA, especially:
  - Ark. Code Ann. § 16-108-205 (applications for judicial relief);
  - Ark. Code Ann. § 16-108-206 (validity of an agreement to arbitrate);
  - Ark. Code Ann. § 16-108-207 (motions to compel or stay arbitration);
  - Ark. Code Ann. § 16-108-208 (provisional remedies);
  - Ark. Code Ann. § 16-108-226 (jurisdiction); and
  - Ark. Code Ann. § 16-108-227 (venue).
- The Arkansas Rules of Civil Procedure, including:
  - Ark. R. Civ. P. 4 (service of process);
  - Ark. R. Civ. P. 5 (service and filing of motions in pending actions);

- Ark. R. Civ. P. 6 (time requirements for responses to motions, responses, and replies);
- Ark. R. Civ. P. 7 (form of motions);
- Ark. R. Civ. P. 10 (form of pleadings); and
- Ark. R. Civ. P. 11 (signing motions and pleadings).
- Arkansas Supreme Court Administrative Order 2(g) (Ar. R. S. Ct. Admin. Order 2(g)).

### Formatting Rules

The Arkansas Rules of Civil Procedure set out the technical requirements for a motion to compel or stay arbitration in Arkansas state court. Generally, the papers must:

- Contain a caption setting out the:
  - name of the court;
  - title of the action (for example, Motion to Compel Arbitration);
  - case number;
  - names of the parties; and
  - name, bar number, mailing address, telephone number, fax number, and email address of each attorney signing the motion.
- State in numbered paragraphs all allegations of the claim.
- Attach as an exhibit to the motion a copy of any written instrument or document on which a claim or defense is based (see Documents Required for the Motion).
- Be printed on 8-1/2 by 11-inch paper.

(Ark. R. Civ. P. 10, 84.)

The papers must also have a two-inch margin on the first page of each document to accommodate the court's file mark. If a two-inch top margin is not possible, the document must include as its first page the uniform cover page developed by the Arkansas Administrative Office of the Courts, available on the court's forms website. (Ar. R. S. Ct. Admin. Order 2(g).)

Counsel should check the local court rules and the judge's individual rules for any additional formatting requirements.

### DOCUMENTS REQUIRED FOR THE MOTION

A party seeking to compel arbitration must show both:

- The existence of a valid arbitration agreement covering the dispute.
- The other party's refusal to arbitrate.

(Ark. Code Ann. § 16-108-207(a).)

Therefore, a party moving to compel arbitration should attach to the motion:

- A properly authenticated copy of the arbitration agreement.
- Evidence that the other party refused to arbitrate, such as:
  - an affidavit;
  - a declaration; or
  - the other party's written statement refusing to arbitrate.

A party moving to stay arbitration must show both:

- The other party started or threatened an arbitration proceeding.
- The parties have no arbitration agreement covering the dispute.

(Ark. Code Ann. § 16-108-207(b).)

Therefore, a party moving to stay arbitration should attach to the motion evidence that:

- The other person started or threatened to start an arbitration.
- There is no agreement to arbitrate the dispute.

### FILING THE MOTION

A party moves to stay or compel arbitration in the manner provided by court rules for making and hearing motions generally. If there is a court action pending between the parties, the movant files the motion the same way it files any motion in that case. (Ark. Code Ann. § 16-108-205(b); Ark. R. Civ. P. 5.)

If there is no court action already pending between the parties:

- The motion is an initial motion that starts a civil action.
- The movant:
  - files the initial motion in court; and
  - serves the other party in the same way a party serves a summons in a civil action (see *Serving the Motion*).

(Ark. Code Ann. § 16-108-205(b); Ark. R. Civ. P. 4.)

Counsel should check the appropriate state and local rules for any additional requirements when filing the motion.

### Electronic Filing

Some Arkansas counties permit electronic filing of motions and other papers, but other counties do not. Counsel should check the court website to determine the availability of electronic filing in Arkansas counties. If the court does not accept electronic filing, the movant must file the motion by traditional paper filing (see *Traditional Paper Filing*).

Electronic filers must be registered before filing any papers. The process can take some time, so first-time filers should take steps to register as early as possible. Registration requires users to:

- Register for and complete training on the Arkansas electronic filing system.
- Pay a \$100 registration fee.
- Register for an electronic filing account.

(Arkansas Courts eFile Instructions.)

### Traditional Paper Filing

All Arkansas counties permit traditional paper filing, even counties that permit and prefer electronic filing. Parties may file motions and other papers by:

- Delivering the papers personally to the court.
- Sending the papers to the court by:
  - US mail; or
  - commercial delivery service, such as UPS or Federal Express.

### SERVING THE MOTION

If there is a court action already pending between the parties, the movant serves notice of the motion in the manner required by Arkansas state law for serving motions in a civil action (Ark. Code Ann. § 16-108-205(b)). Generally, the movant may serve the other party by delivering a copy of the papers to the other party or its attorney (Ark. R. Civ. P. 5).

If there is no court action already pending between the party, the movant serves notice of the initial motion in the manner provided by Arkansas state law for the service of a summons in a civil action (Ark. Code Ann. § 16-108-205(b)).

For information about service of process in Alabama, see State Q&A, Commencing an Action: Alabama: Service of Process ([W-000-2792](#)).

### APPEALING AN ORDER TO COMPEL OR STAY ARBITRATION

In federal court, federal law such as the prohibition on interlocutory appeals (28 U.S.C. § 1291), the final judgment rule (28 U.S.C. § 1292), and the FAA (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration ([6-574-8707](#))) limits appeals of orders compelling FAA governed arbitration. An order granting or denying a request to compel arbitration is not considered a final judgment. Under the

FAA, however, litigants may immediately appeal federal court orders denying arbitration, but not orders favorable to arbitration. US appellate courts therefore have jurisdiction over orders:

- Denying requests to compel and stay litigation pending arbitration (9 U.S.C. § 16(a)(1)).
- Granting, continuing, or modifying an injunction against an arbitration (9 U.S.C. § 16(a)(2)).

The AUAA similarly permits the immediate appeal of orders denying arbitration but not orders permitting arbitration. In Arkansas state court, a party may immediately appeal an order:

- Denying a motion to compel arbitration.
- Granting a motion to stay arbitration.

(Ark. Code Ann. § 16-108-228(a)(1)-(a)(2); Ark. R. App. P.—Civ. 2(a)(12); see *Arnold*, 485 S.W.3d at 672; *May Constr. Co. v. Riverdale Dev. Co.*, 45 S.W.3d 815, 817-18 (Ark. 2001).)

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