

**JUDICATE WEST ARBITRATION & PRIVATE JUDGING
ADMINISTRATIVE PROCEDURES**

1) **Rules:**

a) Unless otherwise required by law, the parties are free to agree to any preferred procedural rules to govern their matter, including state or federal procedural rules, or the rules of an ADR provider organization. The only constraints on such modifications are fundamental notions of procedural due process or mandatory provisions of applicable law.

b) For non-consumer arbitrations (e.g., commercial arbitrations), Judicate West (“JW”) offers its own set of Commercial Arbitration Rules (“JW Rules”). For non-consumer arbitrations where the parties do not agree, JW rules will apply. (See JW Rule 2.A.1.) For consumer arbitrations, to the extent the parties’ arbitration clause does not otherwise specify particular procedural rules and the parties do not agree, JW will default to any rules specified by the California Arbitration Act, California Code of Civil Procedure (“CCP”), section 1280, et seq. (Please review California Civil Code § 1761 and CRC Ethics Standard 2(d), 2(e) for definitions of a “consumer” or “consumer arbitration.”)

c) Should the governing procedural rules fail to address an issue which arises during any phase of the proceeding, and to the extent not otherwise specified by contract, the parties agree to submit that issue to the Neutral, who will decide and determine the matter according to general principles of law and equity. This includes but is not limited to disputes regarding discovery, continuances, motions, fees, and evidentiary rules (offer and admissibility).

d) For consumer arbitrations, JW will not force any consumers to have a matter involving them administered by JW. JW will only administer a consumer arbitration if all parties mutually consent or if specifically directed by a court order.

2) **Waiver and Interpretation of Rules:** A party to an arbitration waives objection if it participates in a session with knowledge that there has not been compliance with a requirement or provision of applicable rules and has failed to submit a written objection. Before selection of a Neutral, JW reserves the right to interpret rules necessary to administer the matter. JW also reserves the right to interpret rules unrelated to a Neutral’s powers or duties.

3) **Fees:** JW’s agreement to render services is with the participating firms or claims professionals, not the parties they represent. Paying firms are responsible for ensuring payment of fees. Per CCP § 1284.2, fees are shared on a pro rata basis, unless modified by mutual consent of the parties, law, court order, or ruling by the Neutral. Disputes regarding how to split fees will be handled by the Neutral, and JW retains the right to collect an initial retainer from one or both parties until any fee dispute is resolved. In a consumer arbitration, per CCP § 1284.3(b)(1), JW waives all administrative fees and costs charged to or assessed upon an indigent consumer party. Please note that this does not include Arbitrator fees. Please contact JW at the outset of your case for an indigent consumer fee waiver form. JW’s administrative fees are applicable in private judging matters as well as arbitrations, and JW may refuse to administer a private judging matter if administrative fees are not paid. Please see the JW Arbitration and Private Judging Fee Schedule at judicategwest.com for more information regarding filing fees, case management fees, and our Neutrals’ fees for service.

4) **Representation by Counsel:** JW reserves the right to decline administration of any matter, or cease administration of any matter, where one or more parties are not represented by counsel. Many JW Neutrals choose only to conduct arbitrations where all parties are represented by counsel. If for any reason any party to an arbitration ceases to be represented by counsel, the Arbitrator, in his or her sole discretion, may suspend or terminate the arbitration unless doing so would unduly prejudice a party, or unless the Arbitrator determines that in the interest of justice and equity the arbitration should proceed. (See, e.g. JW Rule 4.A.) Counsel and self-represented parties must at all times conduct themselves civilly and professionally.

5) Initiating Services:

a) Counsel for each party will be required to sign an Agreement for Judicate West Arbitration or Private Judging Services ("JW Service Agreement") before services will be initiated. Counsel will also be asked to pay a refundable retainer as provided by JW's Arbitration and Private Judging Fee Schedule before a Neutral commences work on a matter. JW and its Neutrals reserve the right to withhold Neutral's services, rulings, or awards until all fees, retainers, and JW Service Agreements are received.

b) To initiate an arbitration, all parties may mutually elect to arbitrate some or all of the issues in their dispute by submitting a written agreement to arbitrate to JW. (See, e.g., JW Rule 4.B.) When one party unilaterally commences arbitration (the "Claimant"), that party will serve a written Notice of Intent to Arbitrate ("NIA") on the other party(ies) (the "Respondent(s)"). To initiate the arbitration process at JW in these circumstances, the Claimant must submit a copy of the NIA to JW together with payment of the applicable filing fees and proof of service on all named parties. It is the Claimant's responsibility to properly identify and serve all Respondent(s), and absent a specific court order, JW generally will not proceed with administering an arbitration unless the named Respondent(s) participate in the process, including by responding to correspondence from JW staff regarding the matter. Respondent(s) may submit a response to the NIA to JW and serve it on all parties within 30 days of receipt of the NIA. Choosing not to submit a response to the NIA is considered a general denial of the claims made in the NIA.

c) For private judging matters, including Referee and Special Master assignments, JW strongly recommends that the parties contact JW as early as possible to confirm that their desired Neutral is available to serve. The parties are responsible for ensuring that all documents required by law are prepared and filed with the appropriate court.

d) If the parties have not agreed to a Neutral, JW will assist them in a Neutral selection process. The proceeding will be initiated with an assigned Neutral pursuant to any contract, court order, and/or governing rules after all parties have: signed and returned the JW Services Agreements, received and reviewed any applicable disclosures for the appointed Neutral, and paid any applicable JW fees and refundable retainers.

6) Disclosures:

a) Both JW and its Neutrals depend on your providing the names (including correct spellings) of all law firms, attorneys, parties, subsidiaries, witnesses, experts, divisions, affiliates, partners, and joint venturers involved in the litigation. These names should be provided to us as soon as possible. Names of all attorneys working or possibly working on the file are needed at the outset of the matter, so that JW's and the Neutral's files can be reviewed at the individual level as well as the firm level in preparing disclosures.

b) In arbitration, if the parties do not respond to JW within 15 days of receiving their Arbitrator's disclosures, their rights to disqualify an Arbitrator, including under CCP §§ 1281.91 and 1297.125, are deemed waived. If the parties seek a session with their Arbitrator within less than 15 days of receiving disclosures, they will be required to sign a waiver acknowledging that they are seeking the session before the statutory disqualification deadline has passed. For private judging matters with disclosure requirements, please refer to applicable law relating to any request for Neutral disqualification.

7) **Case management conferences and pre-conference hearings** can be set at the request of the parties or as ordered by the Neutral. The purpose is to expedite cases by permitting more efficient and informal proceedings that may result in stipulations of uncontested facts, discussion of hearing rules, exchange of information, etc. Many Arbitrators require at least one case management conference, at least before the cancellation deadline in a matter, for the planning and scheduling of arbitral proceedings.

8) **Ex Parte (i.e., one-sided) communications** with an Arbitrator should be avoided, as they risk the resulting disqualification of your Arbitrator. (See CRC Ethics Standard 14.) Ex parte communications with your Neutral are also disallowed for many types of private judging matters. Any questions regarding scheduling and administration should be directed to JW and your Case Manager.

9) **Filings:** All briefs or submissions should be submitted via MyJW or sent to briefs@judicategwest.com with a copy to your Neutral's Case Manager. To ensure timely delivery to your Neutral, any filings submitted within two days of a session should be emailed directly to your Neutral's Case Manager. Providing documents only to JW does not result in their service on other parties in your matter. You are independently responsible for ensuring any necessary service of documents before submitting a filing to your Neutral. Your Neutral may exercise discretion in deciding whether to accept late filings or declining to consider filings that do not include necessary proofs of service. JW's document retention policy for documents received from parties is available here.

10) **Rulings & Award:** Materials prepared by JW or your Neutral, including your Neutral's rulings and award, are served by email to the applicable email addresses provided to us and the service requirements of CCP § 1283.6 are deemed waived. If you wish to receive hard copies of documents, please inform us in writing. JW retains the right to withhold any decision from all parties until all fees have been paid in full.

11) **Court filings** of briefs, decisions, stipulations, and any related documents, including for example any filing requirements applicable for briefs submitted to judicial references under CCP §§ 638 and 639, are the responsibility of the parties. When JW serves the parties with a Neutral's ruling requiring filing with the court, the parties are expected to timely file the ruling.

12) **Cancelation/Continuance:** Hearings cannot be continued by a party unilaterally. If the parties do not agree to continue a session, the party seeking the continuance must file a written request with the Neutral. Any cancelation/continuance fees must be agreed to with JW in accordance with its policies outlined in its Arbitration and Private Judging Fee Schedule. If agreement cannot be reached, any cancelation/continuance fees will initially be split between the parties and the Neutral will make a final ruling regarding the appropriate allocation of fees between the parties at the appropriate time, typically upon serving of the final ruling/award.

13) **Failure to Perform:** Though it is extremely rare that a Neutral has an emergency or falls ill and cannot serve, JW cannot guarantee hearing dates nor be held liable for any loss incurred in the event a case may be canceled or postponed due to a Neutral's emergency unavailability.

14) **Default:** If a party or representative fails to appear at a session after confirming participation and without obtaining a continuance, the Neutral, at his/her discretion, may deem the party to be in default for that session and take evidence necessary to reach a determination on a dispute or render an award.

15) **Court Reporters / Transcripts:** JW does not offer transcription services, and a party who wishes to have a certified record of a proceeding is responsible for hiring a court reporter. The requesting party must make arrangements after notifying the Neutral and all other parties at least 7 days prior to the session. The parties are not permitted to record proceedings without the express permission of the Neutral. Any requests for a recording of a virtual proceeding (e.g., a Zoom recording) must be made to both JW and the Neutral at least 7 days in advance of a session, and it is the parties' responsibility to ensure the virtual proceeding is actually recorded as desired by confirming with the Neutral. JW is not responsible for any failure to record, and recommends that a party obtain a certified transcript by hiring a court reporter if it intends to rely on specific statements made during the proceedings as evidence.

16) **Privacy Policy and Compliance:** JW complies with all applicable regulations regarding how we use information supplied to us, including privacy and disclosure laws and regulations. Information submitted to us remains confidential and is only for our internal use in order to provide our services to the parties of your case, except for standardized disclosures required by statute or information disclosed as required by other legal due process, such as a court order. By submitting information to us or participating in any arbitration or private judging matter administered by us you confirm consent to our terms of service and privacy policy, which may be viewed by visiting judicategwest.com and/or by clicking [here](#).