

# Compelling and Staying Arbitration in Alabama

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**A Practice Note explaining how to request judicial assistance in Alabama 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 Alabama.**

## 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 asking an Alabama state court to compel or stay 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](#)). For information on enforcing or challenging arbitration awards in Alabama, see Practice Note, Enforcing Arbitration Awards in Alabama ([W-003-3511](#)).

## PRELIMINARY CONSIDERATIONS WHEN COMPELLING OR STAYING ARBITRATION

Before seeking judicial assistance to compel or stay arbitration, parties must determine whether the Federal Arbitration Act (FAA) or Alabama state law applies to the arbitration agreement (see Determine the Applicable Law). Parties also must consider:

- The threshold issues courts consider when evaluating a request to compel or stay arbitration (see Threshold Issues for the Court to Decide).
- Considerations for preparing the application (see Considerations When Preparing the Application).

## 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 FAA or Alabama state 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. However, even if the arbitration agreements falls under the FAA, parties may contemplate enforcement of their arbitration agreement under state law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *Robertson v. Mount Royal Towers*, 134 So. 3d 862, 865 (Ala. 2013)).

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 also *Cent. Reserve Life Ins. Co. v. Fox*, 869 So. 2d 1124, 1127 (Ala. 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](#)).

### Alabama State Law

The Alabama Arbitration Act (AAA) sets out the Alabama statutory scheme governing arbitration (Ala. Code §§ 6-6-1 through 6-6-16).

The AAA generally applies only to post-dispute arbitration agreements (see *Robertson*, 134 So. 3d at 868 n. 4). Alabama law prohibits the specific enforcement of pre-dispute arbitration agreements (Ala. Code § 8-1-41(3); see *J.L. Loper Constr. Co. v. Findout P'ship, LLP*, 55 So. 3d 1152, 1153 n. 1 (Ala. 2010)).

Unlike states that have adopted the Uniform Arbitration Act or the Revised Uniform Arbitration Act, the AAA does not provide authority to compel or stay arbitration. Therefore, the AAA only applies in those rare cases involving purely intrastate transactions with no effect on interstate commerce (see *Dan Wachtel Ford, Lincoln Mercury, Inc. v. Modas*, 891 So. 2d 287, 290 (Ala. 2004)). Alabama generally has “not developed rules of arbitration for dealing with pre-dispute agreements” separate from the law developed in FAA-governed cases (*Robertson*, 134 So. 3d at 868 (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 684 So. 2d 102, 106 (Ala. 1995))).

## INTERSECTION OF THE FAA AND ALABAMA LAW

Although the FAA preempts state law to the extent that state law contradicts federal law, Alabama state courts apply state contract law to determine whether the parties have entered into an arbitration agreement (see *Capitol Chevrolet & Imports, Inc. v. Payne*, 876 So. 2d 1106, 1109 (Ala. 2003)).

Given the AAA’s narrow scope, and because the FAA applies to nearly all Alabama arbitrations, Alabama courts consider the FAA part of the Alabama arbitration law (see *Robertson*, 134 So. 3d at 868). If an agreement falls under the FAA, Alabama state courts apply the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Alabama state law (see *Southland v. Keating Corp.*, 465 U.S. 1, 12-13 (1984); see also Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability ([6-574-8707](#))). Because the AAA only applies in the rare circumstance of a purely intrastate transaction with no effect on interstate commerce (see Alabama State Law), almost all arbitration agreements in Alabama fall under the FAA (see *Birmingham News v. Horn*, 901 So. 2d 27, 44 (Ala. 2004) (overruled on other grounds by *Horton Homes, Inc. v. Shaner*, 999 So. 2d 462 (Ala. 2008))). Whether or not the FAA applies, Alabama courts apply Alabama procedural rules to the enforcement proceedings (see *Unum Life Ins. Co. of Am. v. Wright*, 897 So. 2d 1059, 1074 (Ala. 2004)).

For information on 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 an application to stay or compel arbitration, the court plays a gatekeeping role that is limited to determining issues of substantive arbitrability, unless the parties agree the arbitrator decides these issues (see Arbitrability Issues for the Arbitrator to Decide). These issues include whether:

- There is a valid agreement to arbitrate (see Valid Arbitration Agreement).
- A party has waived its right to arbitration by litigation conduct (see *Ocwen Loan Servicing, LLC v. Washington*, 939 So. 2d 6, 12 (Ala. 2006) (see Waiver)).

(See *Anderton v. Practice-Monroeville, P.C.*, 164 So. 3d 1094, 1101 (Ala. 2014).)

Unless the parties’ agreement delegates arbitrability issues to the arbitrator, the court also may determine whether the selected arbitration forum is available (see *Univ. Toyota v. Hardeman*, 2017 WL 382651, at \*3 (Ala. June 27, 2017)).

A party may raise any of these questions as a basis for an application to compel or stay arbitration or as a defense in an opposition to an application. Once the court rules on these issues, the arbitrator decides all remaining questions in the dispute (see *Brasfield & Gorrie, L.L.C. v. Soho Partners, L.L.C.*, 35 So. 3d 601, 604 (Ala. 2009); Arbitrability Issues for the Arbitrator to Decide).

## VALID ARBITRATION AGREEMENT

Under Alabama law, the court decides whether there is a valid and enforceable arbitration agreement between the parties (see *Am. Gen. Fin., Inc. v. Branch*, 793 So. 3d 738 (Ala. 2000); *Anderson v. Ashby*, 873 So. 2d 168 (Ala. 2003)). This determination involves considering whether:

- The parties entered into an agreement to arbitrate (see Agreement to Arbitrate).
- The arbitration clause, as opposed to the contract as a whole, is void as a matter of public policy (see Public Policy).
- The parties are signatories or bound to the arbitration agreement (see Proper Parties).

## Agreement to Arbitrate

In determining whether the parties entered into an agreement to arbitrate, courts apply general principles of state contract law (see *Allied-Bruce Terminix*, 513 U.S. at 281). The contract analysis includes determining whether there was:

- Offer and acceptance.
- Consideration.
- Mutual assent to the terms essential to the contract.

(See *Baptist Health Sys., Inc. v. Mack*, 860 So. 2d 1265, 1273 (Ala. 2003).)

## Public Policy

An Alabama court may void an arbitration clause as a matter of public policy (see *Macon Cnty. Greyhound Park, Inc. v. Hoffman*, 2016 WL 7428389, at \*12 (Ala. Dec. 23, 2016)). The court considers only the arbitration clause, not the contract containing it, and may invalidate the arbitration clause if it is:

- Based on consideration that is illegal under Alabama law, such as gambling (see *Macon Cnty. Greyhound Park*, 2016 WL 7428389, at \*12).
- Unconscionable (see *Am. Gen. Fin.*, 793 So. 2d at 748).

Under Alabama law, a court may refuse to enforce an arbitration provision on grounds of unconscionability if the provision is both procedurally and substantively unconscionable (see *Blue Cross Blue Shield of Alabama v. Rigas*, 923 So. 2d 1077, 1087 (Ala. 2005)). An unconscionable agreement has terms grossly favorable to a party that has overwhelming bargaining power (see *Anderson*, 873 So. 2d at 174). If the court determines that an arbitration clause is unconscionable, the court does not need to invalidate the entire clause and may instead correct the clause to remove the

unconscionable portions (see *BankAmerica Housing Servs., Div. of Bank of Am., FSB v. Lee*, 833 So. 2d 609, 619 (Ala. 2002) (noting that trial court acted appropriately in choosing arbitrator where arbitration provision unconscionably gave unilateral power to one party to select arbitrator)).

### **Proper Parties**

Alabama courts may determine whether a party has standing to compel arbitration (see *Custom Performance, Inc. v. Dawson*, 57 So. 3d 90, 97-98 (Ala. 2010); *Serv. Corp. Int'l v. Fulmer*, 883 So. 2d 621, 634 (Ala. 2003)).

Where an arbitration agreement explicitly limits its application to disputes “between the parties,” non-parties may not enforce the arbitration agreement. However, non-parties may have standing to enforce an arbitration clause that broadly applies to disputes about a transaction or event when the clause does not define the parties (see *Kenworth of Mobile, Inc. v. Dolphin Line, Inc.*, 988 So. 2d 534, 544-45 (Ala. 2008).)

### **WAIVER**

The court also decides whether a party waived its right to arbitrate, unless the parties’ agreement delegates this issue to the arbitrator (see *Polaris Sales, Inc. v. Heritage Imports, Inc.*, 879 So. 2d 1129, 1133 (Ala. 2003); Arbitrability Issues for the Arbitrator to Decide).

A party seeking to prove the other party waived its right to arbitrate has a “heavy burden” and courts do not lightly infer a waiver of the right to arbitrate (*Paragon Ltd., Inc. v. Boles*, 987 So. 2d 561, 565 (Ala. 2007) (quoting *Mutual Assurance, Inc. v. Wilson*, 716 So. 2d 1160, 1164 (Ala. 1998))). Even though courts sometimes refer to a party’s litigation conduct as a matter of procedural arbitrability, the court rather than the arbitrator usually decides the issue because the court is best positioned to evaluate the party’s litigation conduct (see *Ocwen Loan Servicing*, 939 So. 2d at 12).

To demonstrate waiver of the right to arbitrate under Alabama law, the party resisting arbitration must show that both:

- The party seeking arbitration substantially invoked the litigation process (for example, by removing a case to federal court and filing a report under FRCP 26(f) (see *Ex parte Hood*, 712 So. 2d 341, 343 (Ala. 1998))).
- The party resisting arbitration is substantially prejudiced by requiring it to arbitrate.

(See *Aurora Healthcare, Inc. v. Ramsey*, 83 So. 3d 495, 500 (Ala. 2011); *Paragon Ltd.*, 987 So. 2d at 565.)

However, a party does not waive its right to arbitration by, for example:

- Litigating a venue issue, because a defendant is entitled to have the court determine the proper venue before the defendant moves to compel arbitration, (see *Aurora Healthcare*, 83 So. 3d at 501).
- Failing to demand arbitration after prevailing on a motion to compel arbitration, unless the arbitration agreement requires the successful movant to commence arbitration (see *Nation v. Lydmar Revocable Tr.*, 2017 WL 4215891, at \*6-7 (Ala. Sept. 22, 2017)).

A party also does not necessarily waive its right to arbitration by:

- Filing an answer to a complaint.
- Participating in limited discovery.
- Waiting a few months after service of a complaint to move to compel arbitration.

(See *Ex parte Rager*, 712 So. 2d 333, 336 (Ala. 1998).)

### **ARBITRABILITY ISSUES FOR THE ARBITRATOR TO DECIDE**

Arbitrators decide issues of procedural arbitrability, which are issues that grow out of the dispute and bear on its final disposition (see *Brasfield*, 35 So. 3d at 604). Procedural arbitrability issues include:

- Notice.
- Laches.
- Estoppel.
- Statute of limitations.
- Conditions precedent to arbitration.

(See *Rainbow Cinemas, LLC v. Consol. Constr. Co. of Alabama*, 2017 WL 2610506, at \*5 (Ala. June 16, 2017); *Brasfield*, 35 So. 3d at 604-05; *Hanover Ins. Co. v. Kiva Lodge Condo. Owners’ Ass’n, Inc.*, 221 So. 3d 446, 456-57 (Ala. 2016).)

Arbitrators also decide issues of substantive arbitrability if the parties’ agreement delegates these issues to the arbitrator by:

- Expressly stating that the arbitral tribunal has the power to rule on its own jurisdiction, including objections to the arbitration agreement’s:
  - existence;
  - scope; or
  - validity.
- Impliedly stating that the tribunal has this power by referring “all disputes” to arbitration.
- Incorporating by reference institutional arbitration rules that grant this power to the tribunal, such as the rules of the American Arbitration Association.

(See *Managed Health Care Admin., Inc. v. Blue Cross & Blue Shield of Ala.*, 2017 WL 3821731, at \*6 (Ala. Sept. 1, 2017); *Rainbow Cinemas*, 2017 WL 2610506, at \*6; *Anderton v. Practice-Monroeville, P.C.*, 164 So. 3d 1094, 1102 (Ala. 2014).)

### **CONSIDERATIONS WHEN PREPARING THE APPLICATION**

Before making an application to compel or stay arbitration in an Alabama court, counsel should take into account several factors.

### **CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION**

A party may ask the court compel arbitration when the opposing party commences a lawsuit or otherwise expresses the intention to avoid arbitration even though the dispute is subject to a valid arbitration agreement. The FAA’s procedural rules apply to applications to compel arbitration in Alabama (see *Allied-Bruce Terminix*, 684 So. 2d at 106-07; *Unum Life Ins.*, 897 So. 2d at 1075).

If no lawsuit is pending between the parties, a party asks the court to compel the other party to arbitrate by filing a petition to compel

arbitration. If a lawsuit is already pending (for example, because the other party started an action to stay arbitration), the party seeking arbitration files a motion in the pending action. (See *Unum Life Ins.*, 897 So. 2d at 1075; 9 U.S.C. § 4.) The court refers to the substance of the pleading rather than its specific form, so mistakenly styling a petition as a motion or vice versa is not fatal to the application (see *Unum Life Ins.*, 897 So. 2d at 1075).

If a court action is pending between the parties, counsel also should consider moving the court to stay the litigation.

An order granting a motion to compel arbitration is not an adjudication on the merits and does not terminate the underlying action in the trial court (see *Potts v. Baptist Health Sys., Inc.*, 853 So. 2d 194, 196 n. 4 (Ala. 2002)).

Alabama courts have not squarely addressed whether granting a motion to compel arbitration automatically stays further proceedings in the trial court. However, under the FAA, when a court compels arbitration it also must grant an application to stay all proceedings of the arbitrable claims (9 U.S.C. § 3; *Owens*, 890 So. 2d 983, 990 (Ala. 2004)). Alabama courts do not ordinarily stay litigation of non-arbitrable claims pending the arbitration of arbitrable claims (see *Allied-Bruce Terminix*, 684 So. 2d at 111). If a party wants a stay of further court proceedings during arbitration, counsel should move simultaneously to compel arbitration and stay all court proceedings during the pendency of arbitration.

## **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 the arbitration.

If no lawsuit is pending, a party asks the court to stay arbitration by filing a petition (see *Unum Life Ins.*, 897 So. 2d at 1074-75). If a lawsuit is already pending between the parties (for example because the other party started a lawsuit to compel arbitration), the party seeking to avoid arbitration may:

- File a motion to stay arbitration.
- Oppose any motion to compel arbitration.

(See, for example, *Clement Contracting Grp., Inc. v. Coating Sys., L.L.C.*, 881 So. 2d 971, 972 (Ala. 2003).)

## **CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES**

Despite the existence of a valid arbitration agreement, a party may ask a court for emergency injunctive relief (for example, a temporary restraining order, preliminary injunction, or other provisional remedies), if the arbitration award cannot return the parties substantially to the status quo (see *Holiday Isle, LLC v. Adkins*, 12 So. 3d 1173, 1177 (Ala. 2008)).

For more information on seeking interim relief in aid of arbitration, 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 commencing an action related to an arbitrable dispute in Alabama state court, counsel also should consider other factors that

may affect the contents of the request, 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 action and a basis to exercise personal jurisdiction over the other party (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).
- The proper time to bring the request (see Timing).
- Whether to seek discovery (see Disclosure When Seeking to Compel or Stay Arbitration).

## **Court Jurisdiction**

Alabama courts do not have subject matter jurisdiction to resolve issues the parties delegate to the arbitrator to decide (see *Ex parte Johnson*, 993 So. 2d 875, 888 (Ala. 2008); see Arbitrability Issues for the Arbitrator to Decide).

Alabama courts' subject matter jurisdiction also depends on the amount in controversy. Alabama circuit courts are the state's trial courts of general jurisdiction and are organized by county. Each county has one circuit court, with the exception of Jefferson County, which is split into two divisions. (Ala. Code § 12-11-2.) The circuit courts have original jurisdiction:

- Over all civil actions in which the matter in controversy exceeds \$10,000, exclusive of interests and costs.
- Concurrent with the district courts over all civil actions in which the matter in controversy exceeds \$6,000, exclusive of interests and costs (Ala. Code § 12-12-30 and § 12-12-31).

Alabama district courts are courts of limited jurisdiction. They are organized by county, with each county having one district court. The district courts have jurisdiction over:

- All civil cases in which the amount in controversy, exclusive of interest and costs, does not exceed \$6,000. These actions are placed on a small claims docket. (Ala. Code § 12-12-31.)
- All civil cases where the amount in controversy, exclusive of interest and costs, does not exceed \$10,000. The circuit courts have concurrent jurisdiction over these cases. (Ala. Code §§ 12-11-30 and 12-12-30.)

To invoke the subject matter jurisdiction of the Alabama courts, a party must have standing to bring the application (see *State v. Prop. at 2018 Rainbow Drive*, 740 So. 2d 1025, 1028 (Ala. 1999)).

If there is no litigation between the parties already pending, the party starting an action to compel or stay arbitration also must ensure the court has a basis to exercise personal jurisdiction over the other party. Proper bases of personal jurisdiction include:

- General jurisdiction, which is based on the other party:
  - having a presence in the state;
  - transacting business in the state; or
  - supplying services or goods to the state.
- Specific jurisdiction under Alabama's long-arm statute, which is based on the other party's minimum Alabama contacts giving rise to the cause of action.

(Ala. R. Civ. P. 4.2(a); see *Wenger Tree Serv. v. Royal Truck & Equip., Inc.*, 853 So. 2d 888, 895-99 (Ala. 2002).)

For more information on the Alabama court system, see State Q&A, Litigation Overview: Alabama: State Courts ([W-000-4071](#)).

## Venue

Under Alabama law, venue for an action is proper in the county where either:

- The other party:
  - resides, if a permanent resident of the state; or
  - has a principal place of business, if a corporation.
- The act or omission occurred.

(Ala. Code §§ 6-3-2, 6-3-7.)

Arbitration clauses often contain forum selection clauses, which are presumptively valid under Alabama law (see *Ex parte Soprema, Inc.*, 949 So. 2d 907, 912-13 (Ala. 2006); *F.L. Crane & Sons, Inc. v. Malouf Const. Corp.*, 953 So. 2d 366, 373 (Ala. 2006)).

## Timing

Alabama law provides no specific deadline by which a party must move to compel arbitration. However, to avoid waiver, the moving party must ensure that there is no unjustifiable delay or substantial prejudice inflicted on the other party by litigation conduct (see *Paragon Ltd.*, 9876 So. 2d at 565; see *Waiver*).

## Discovery When Seeking to Compel or Stay Arbitration

If a party opposes an application to compel arbitration, the trial court typically holds a hearing to determine whether there are genuine issues of material fact concerning the making or performance of an arbitration agreement (see generally *Bevel v. Marine Grp. LLC*, 2017 WL 836566, at \*1 (Ala. Mar. 3, 2017); *S. Energy Homes, Inc. v. Harcus*, 754 So. 2d 622, 625-26 (Ala. 1999)). Because the applicant bears the burden of proving the existence and validity of an arbitration agreement that touches interstate commerce, Alabama courts sometimes permit some limited discovery into these arbitrability issues (see *Ex parte Greenstreet, Inc.*, 806 So. 2d 1203, 1207 (Ala. 2001)).

When the burden shifts to the other party, however, the court generally does not permit the party opposing the application even limited discovery on issues of arbitrability unless the opponent:

- Presents some evidence in opposition to the motion to compel arbitration (such as an affidavit).
- Shows good cause as to why discovery is necessary on the question of arbitrability (for example, that all evidence of arbitrability is in another party's custody or control).

(See *Ex parte Greenstreet*, 806 So. 2d at 1208-09; see also *Ex parte Bill Heard Chevrolet, Inc.*, 927 So. 2d 792, 805 (Ala. 2005)).

If the court permits the parties to take limited discovery, the court may not deny a motion to compel arbitration while the discovery is still pending (see *AmSouth Bank v. Looney*, 883 So. 2d 1207, 1214 (Ala. 2003)). While a motion to compel arbitration is pending, the trial court may not compel general discovery on the merits of the underlying claims (see *Ex parte Locklear Chrysler Jeep Dodge, LLC*, 2017 WL 4324965, at \* 4 (Ala. Sep. 29, 2017)).

## APPLICATION TO COMPEL OR STAY ARBITRATION

A party seeking to compel or stay arbitration files either:

- A petition, if no court action is pending between the parties.
- A motion in the pending action, if an action is already pending between the parties.

(See *Unum Life Ins.*, 897 So. 2d at 1075.)

Alabama courts also permit a party to compel or stay arbitration through a declaratory judgment action (see *Mutual Assurance, Inc. v. Wilson*, 716 So. 2d 1160, 1164-65 (Ala. 1998); *Clement Contracting Grp.*, 881 So. 2d at 972).

When bringing an application to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules relevant to case-initiating documents and motions (see Procedural and Formatting Rules for Application).
- The documents necessary to make an application to compel or stay arbitration (see Documents Required for Application).
- How to file and serve the documents (see Filing and Serving the Application).

## PROCEDURAL AND FORMATTING RULES FOR THE APPLICATION

Counsel should be familiar with applicable procedure and formatting rules for applications in the Alabama courts. Counsel also may check the relevant court websites for additional information and guidance on procedural and formatting rules, although many court websites remain limited sources of information. By statute, the Alabama courts do not have local court rules (Ala. R. Civ. P. 83).

For general information on commencing an action in Alabama state court, see State Q&A, Commencing an Action: Alabama ([W-000-4036](#)).

## Procedural Rules

Alabama's procedural rules governing petitions and motions are set out in the Alabama Rules of Civil Procedure, specifically:

- Rule 3 (governing the commencement of an action).
- Rule 4 (governing process).
- Rule 7 (governing the styling of pleadings and motions).
- Rule 11 (governing the signing of pleadings and motions).

## Formatting Rules

There are no special formatting requirements for applications to compel or stay arbitration, beyond those used for standard pleadings and motions. The moving party must make the application in writing and state:

- With particularity the grounds for the application.
- The specific relief the movant seeks.

(Ala. R. Civ. P. 7(b), 8(a).)

Because a petition to compel or stay arbitration commences the action, counsel should include a statement explaining the propriety of the venue and the basis of the court's jurisdiction. The court

determines these issues before ruling on a petition (see *Unum Life Ins.*, 897 So. 2d at 1076).

## DOCUMENTS REQUIRED FOR THE APPLICATION

Alabama law does not specify any particular documents that must accompany a petition or a motion to compel or stay arbitration. Because the movant bears the burden of proving the existence of a contract that affects interstate commerce and calls for arbitration, Alabama courts treat a motion to compel arbitration as analogous to a motion for summary judgment (see *Fleetwood Enters., Inc. v. Bruno*, 784 So. 2d 277, 280 (Ala. 2000)). Therefore, the movant must include the documents that prove its entitlement to the relief the movant seeks, such as:

- An agreement between the parties that does (or does not) require arbitration of the dispute.
- Supporting documents describing the circumstances relevant to the agreement, such as affidavits, which are subject to the same admissibility rules that govern summary judgment motions.

(See *SSC Selma Operating Co., LLC v. Gordon*, 56 So. 3d 598, 602 (Ala. 2010).)

## FILING AND SERVING THE APPLICATION

If no action is pending between the parties, the applicant must:

- File with the court clerk:
  - the petition; and
  - a civil cover sheet.
- (Ala. R. Civ. P. 3.)
- Serve on the opposing party the petition and a summons, in the same manner as one serves a summons or other process under Ala. R. Civ. P. 4.

For a motion in a pending action, the movant must:

- First serve the motion on the opposing party, in the same manner as one serves papers in pending actions under Ala. R. Civ. P. 5.
- File with the court clerk:
  - a copy of the motion; and
  - a certificate of service.
- (Ala. R. Civ. P. 5.)

All filings are subject to the privacy and redaction requirements of the Alabama rules (Ala. R. Civ. P. 5.1).

## 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](#))) limit 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)).

Although Alabama law largely mirrors the FAA, Alabama has separate procedural rules for appeals. Under Alabama law, a party may appeal any order granting or denying an application to compel arbitration within 42 days of entry of the order (Ala. R. App. P. 4(d); see *Macon County Greyhound Park*, 2016 WL 7428389, at \*3; *Blue Ribbon Homes Super Center, Inc. v. Bell*, 821 So. 2d 186, 189 (Ala. 2001)). If a party does not file an appeal within 42 days after the entry of the order, the appellate court may dismiss the appeal (see *Colony Homes, LLC v. Acme Brick Tile & Stone, Inc.*, 2017 WL 2991428, \*2 (Ala. July 14, 2017) (citing *Lightning Fair, Inc. v. Rosenberg*, 63 So. 3d 1256, 1262 (Ala. 2010))).

However, a party may not appeal an order disposing of an application to stay proceedings pending arbitration, which the Alabama courts view as a non-final judgment (see *Bear Bros., Inc. v. ETC Lake Dev., LLC*, 121 So. 3d 334 (2013)).

The appellate court reviews de novo a trial court decision on a motion to compel arbitration (see *Macon Cnty. Greyhound Park*, 2016 WL 7428389, at \*3; *Blue Ribbon*, 821 So. 2d at 189).

The federal statutes related to appealing orders concerning compelling or staying arbitration do not preempt Alabama law on the appealability of these orders because:

- The FAA does not affect procedural rules applicable to proceedings in state courts.
- Congress did not show an intention to preempt state rules of appealability.
- State appealability rules do not invalidate arbitration agreements or make enforcing arbitration agreements more difficult.

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