

**Office of Travel Agent Arbiter Rules of Practice and Procedure**  
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## An Agent's Guide to the Arbiter's Rules of Practice and Procedure

(Ed. Note: This guide was prepared and provided to ARC by the Travel Agent Arbiter)

This quick-reference guide to the Travel Agent Arbiter's Rules of Practice and Procedure (which follow in their entirety) is designed to assist the agent who may be unfamiliar with either the Travel Agent Arbiter Program or the arbitration process, or both. It is not meant to be a substitute for the Rules, but merely a starting point for the uninitiated.

### 1. What kind of cases can the Arbiter resolve?

Virtually any dispute regarding any aspect of the contractual relationship between the Airlines Reporting Corporation (ARC) and the agent if the parties are unable to resolve it informally. Either the agent or ARC may file a complaint against the other, and where both agree, agents and individual airlines may also bring their disputes to the Arbiter (see sec. 2.E.). Typical disputes: ARC's 'finding' that "reasonable care" was not used for the security of ticket stock in a daytime theft; ARC's disapproval of an application; an agent's request to release it from the "personal guarantee of performance".

### 2. What can't be brought before the Arbiter?

Questions involving matters of "general applicability" or ARC policy matters are usually not appropriate (although the Independent Arbitration Panel may be the correct forum for these disputes). Also, any dispute already in court, unless directed by the court or such agent/carrier disputes as debit memos, commission or fare structure disputes or an individual carrier's revocation of the agent's appointment are excluded. However such agent/carrier disputes may be brought to the arbiter if both sides agree to do so in writing (see Sec. 2.E Rules).

### 3. Who is the Arbiter, what is an Arbitration, and what will it cost?

The TAA is a neutral, impartial third-party whose authority to resolve disputes in a final and binding manner is established in the Agent Reporting Agreement (ARA) and/or various ARC resolutions. The TAA is an employee of a non-profit corporation funded in equal parts by the agent community and the airline industry through assessments collected by ARC; however, neither has any influence over the Arbiter in any proceeding. The Corporation's Board consists of three agent groups and three airline representatives; ARC is not a member.

Arbitration is a quicker, less expensive method of resolving legal disputes without court litigation. The rules are flexible and the proceedings informal and relatively brief. The decisions will be final and binding on both sides.

No costs are assessed in an ARC-Agency case; the TAA's expenses are paid by the Program, which receives its funding through a small share of the annual ARC assessments.

### 4. What must I do if ARC files a complaint against me?

In the usual case, the agent has 15 calendar days in which to file a response [sec. 3.G.(3).]; cases involving "expedited appeals" have their own unique rules (see sec. 3.E. and 3.F.). Your answer must address each of the allegations, and may include your own complaint and/or request for damages. A failure to file a complete answer could result in a decision against you [sec.3.G.(4).].

#### a. In addition, your answer should contain:

- a list of available hearing dates
- a request for or a waiver of an oral hearing
- specific details and facts supporting your version of events [sec.3.A.(1).]

### 5. How do I file a complaint against ARC?

First, be sure the matter is within the TAA's authority. If so and informal discussions with ARC are unsuccessful, a written "complaint" is sent to ARC and the TAA (be sure copies of everything you send to the Arbiter are sent to ARC at all stages).



- a. The complaint:
  - identifies the parties
- b. - details the problem and supports the allegations with references to the ARA
  - requests a specific remedy
  - includes a list of available hearing dates, and
  - includes copies of relevant documents.

Once a complaint and response are filed, the TAA will establish a hearing date, if appropriate. In such cases, the parties must exchange copies of every document they intend to present to the Arbiter at least seven (7) days prior to the hearing, including the names and summaries of expected testimony of all witnesses they intend to produce.

6. What will the decision be based upon?

The Arbiter must base the decision solely on the evidence presented, either in writing and/or at the hearing, through documents and live testimony. Each point must be established by a fair preponderance of all the convincing and substantial evidence presented on the record.

7. What if I don't like the decision?

By the terms of the ARA, the parties have agreed to submit to arbitration, which is "final and binding." Ordinarily, courts will not accept appeals based on disagreement with an arbitral decision unless characterized by extreme unfairness or disregard of the facts or law. Courts will, however, enforce an arbitration decision, which is properly reached.

The TAA's Rules provide an internal appeal (sec. 7.D.). Within ten days of receipt, you may ask the TAA to reconsider the decision who may then review all or part of the record, and may even reopen the hearing if an error is found or new and previously unavailable evidence is offered.

8. Are the decisions always made public?

Once a decision is 'final' the TAA makes it available to the press and public. This is an important aspect of the program's emphasis on educating the industry and in demonstrating the openness and objectivity of the process (sec.7.E.). The record, however, is not open to public access, but only by written permission of the parties.

9. How long will this all take?

Depending on the complexity of the case, a hearing can be scheduled within 30 days of the first filing of a complaint; it has been the Arbiter's practice to issue a decision within 10-14 days of the close of the hearing.

10. Whom do I call if I have questions?

At the TAA's office (phone (703) 530-9002) contact the Office Manager who may refer you to the Travel Agent Arbiter, William S. McGee. Remember, only procedural questions can be handled here. At ARC, Thomasine Williams, Lead – Arbitration and Recovery, is available to handle most issues, which may involve a potential arbitration. Her phone number is 703-816-8127, and email is [twilliams@arccorp.com](mailto:twilliams@arccorp.com), and agents may feel free to discuss a possible settlement with ARC at any time prior to or during an arbitration. The TAA will not participate in these negotiations, but does encourage them wholeheartedly.



## Rules of Practice and Procedure

### Section 1: Guiding Principles

The Rules of Practice and Procedure of the Office of the Travel Agent Arbiter are meant to assure a prompt, efficient, and impartial review of each matter properly submitted. The rules grant to each party the following rights as a minimum: to move for dismissal, summary judgment, or other appropriate relief; to submit in writing any relevant information which it deems appropriate; to appear personally or through counsel and present evidence and argument in support of its position; to hear the evidence and arguments of the other party; to cross examine the other party. Proceedings shall be informal, and the parties shall not be required to adhere to strict rules of evidence. Parties submitting disputes for resolution to the Travel Agent Arbiter should understand the importance of the process and its results to the industry in general, and know that final decisions will always be made available to the public, although the hearing records will remain confidential, and access will only be permitted through written authorizations from all parties concerned. Furthermore, requests to conceal the identity of people, places and things in these published decisions will be carefully scrutinized and will not be granted except in circumstances where great prejudice or harm could result to one's reputation, business interests or rights generally.

The guiding principles for all decisions of the Travel Agent Arbiter (TAA) include, where appropriate and relevant (a) the provisions of the Airlines Reporting Corporation (ARC) Agent Reporting Agreement (ARA), (b) the ARC Carrier Services Agreement, (c) all applicable resolutions of the Board of Directors of ARC, and (d) the "Transitional Agreement Regarding the Reporting and Settlement of Transportation Sales by Agents in U.S. Territories" ("Transitional Agreement") as well as the requirements published in the *Industry Agents' Handbook*.

As used in these rules, the acronym TAA shall refer to the Travel Agent Arbiter and, except as the context may otherwise require, each Associate Travel Agent Arbiter.

In counting days under these Rules, calendar days shall be used, unless the day for response is a Federal holiday or weekend, in which case the next regular business day is to be considered the proper response date.

Any notice or other mailing required under these Rules shall be considered properly served if proof of actual delivery or attempted delivery to the party's address of record is established. Any time prior to the close of the record any party may be heard concerning any alleged failure to receive a notice or other required mailing. Each party to a proceeding herein shall be deemed to have consented to receive such notice or mailing at its address of record. Refusal to accept delivery of any such document at such address shall not act as a stay of the proceeding nor prohibit the issuance or implementation of any order or decision. Each party shall immediately advise each other party and the TAA of any change in its mailing address, phone/fax numbers or email address which occurs during the pendency of a proceeding.

## Section 2: Jurisdiction

The TAA shall have jurisdiction over the following matters:

**A. Request to Review ARC's Disapproval of Application**

A request for Review (hereinafter "Review") by an applicant which has been denied inclusion on the Agency List by ARC. For purposes of these Rules, the term "applicant" shall include agents whose proposed changes of ownership, name, or location or whose application for an authorized satellite ticket printer location has been disapproved by ARC.

**B. Complaint by ARC Against Agent**

A complaint against an Agent by ARC alleging that the Agent has breached any provision of the Agreement.

**C. Petition to Release Personal Guarantee Requirement**

A petition to release an agent of the requirement to maintain a "Personal Guarantee of Performance of Agent's Agreement."

**D. Complaint by Agency Against ARC**

All individual complaints arising under the Agent Reporting Agreement and the Transitional Agreement (as distinguished from matters solely between an Agent and a Carrier) except the following:

- (1) Policy matters, or what might be described as matters of general applicability;
- (2) Matters in litigation in a court of competent jurisdiction;
- (3) Matters which are specifically removed from the TAA's jurisdiction;
- (4) Decisions of the Travel Agent Commissioner issued on or before December 31, 1987;
- (5) Prior decisions of the Travel Agent Arbiter or an Associate Travel Agent Arbiter covering the same matter;
- (6) Prior decisions of ARC issued on or before December 31, 1987;
- (7) Revocation of an Agent's appointment by an individual carrier, under Section XXIX of the ARC-ARA;
- (8) Claims arising under any provision of any State or Federal antitrust law or regulation.



#### **E. Complaint by an Agent Against a Carrier or by a Carrier Against an Agent**

Any complaint arising out of any dispute between an ARC- approved Agent and a Carrier party to the ARC Carrier Services Agreement, in which all parties to the dispute have consented in writing to (1) the jurisdiction of the TAA, and (2) the final and binding nature of the decision rendered therein.

All costs incurred by the TAA in acting upon a dispute between an ARC-approved Agent and a Carrier party to the ARC Carrier Services Agreement, shall be assessed in equal shares against the parties to the dispute, unless the TAA shall direct otherwise as circumstances and equity require. All monies so collected shall be retained in the funds of the Travel Agent Arbiter Program, Inc. (TAAP) and used to affect the costs of operating the office of TAA in whatever manner the Chief Executive Officer (CEO) and Board of TAAP so decide.

#### **F. Later-Defined Subjects**

Any other subject matter hereafter defined by the Joint Advisory Board (JAB-ARA) which definition is ratified by the Board of Directors of ARC.

#### **G. Expedited Appeal from Withholding/Removal of Traffic Documents and Airline Identification Plates**

- (1) An appeal by an Agent after ARC has removed all of its traffic documents and the airline identification plates (or has withheld traffic documents) based on any of the following allegations:
- (2) Failure to pay a dishonored ARC draft on demand.
- (3) Unreported sales coupled with a clear and present danger of substantial loss to the carriers.
- (4) Failure to submit a duplicate sales report and tender a certified check in payment thereof, within 96 hours after notice of failure to file a sales report.
- (5) Any fraud situation coupled with a clear and present danger of substantial loss to the carriers.
- (6) A total lapse of bond or letter of credit coverage.

In all such cases the Agent shall have the right to request expedited proceedings in accordance with Section 13 of these rules. Any such appeal shall conform to the filing requirements found in Section 3 of these rules.



H. Application for Approval of Emergency Provisional Remedy

An application to permit ARC's removal of its traffic documents and all airline identification plates (or to withhold traffic documents) from, or take other action against, an agent, as a provisional remedy on an emergency basis when any one or more of the following allegations are the basis of such application:

- (1) An unauthorized ownership change.
(2) A shortage in a settlement authorization.
(3) A failure to increase a bond or letter of credit to the required amount.

I. Disputes Arising Under the ARC Travel Agency Service Fee Processing Agreement

All disputes arising under the ARC Travel Agency Service Fee Processing Agreement.

Section 3: Document Filing Requirements

A. General Requirements

1. Documents must be copied to all parties

Any document filed with the TAA by any person concerning any pending proceeding must be copied to all parties contemporaneously with the submission to the TAA, who shall not act upon any such document unless it contains this (or an essentially similar) certification: "I certify that on (date) a true copy of this entire document was mailed/delivered to all parties, namely

Signed \_\_\_\_\_"

2. Form & Contents

No precise form of Review, Petition, or Complaint is required, but each shall be legible, typewritten, prepared on 8 1/2 x 11" paper, or electronically transmitted in a format compatible with the software currently employed by the Arbitrator's office, and contain the TAA docket number once assigned. It will be the responsibility of the sending party to ensure that any electronic transmission of material to the TAA is, in fact, received by the TAA and all parties, or in the alternative the sending party may also transmit the material contemporaneously by fax, mail, or prepaid delivery service and so indicate on the front page thereof and in the certificate of service.

3. Waiver of Oral Hearing and Request for Pre-Hearing Conference

Every Request for Review, Appeal, Petition, or Complaint shall contain a separately numbered paragraph indicating the filing party's desire to have the TAA (a) conduct an oral hearing or (b) issue a decision upon the record without hearing. Each Review, Petition, Appeal or Complaint shall also indicate, in a separately numbered paragraph, whether the party desires a pre-hearing conference with the respondent. Such conference is subject to the provisions of Section 5.C. herein. Failure to request an oral hearing shall act as a waiver of same; upon motion and for good cause shown, or upon the TAA's own initiative, such waiver may be overridden in the interests of fairness and the need to obtain a full and complete record.



#### 4. Hearing Dates, Location

Each Complaint, each Request for Review, each Petition, each Appeal and each response thereto must have appended a list of the dates on which the party submitting the documents will be available for hearing during the next 45 days, even though the filing party itself may not require a hearing, except in the case of an expedited proceeding. If the complainant, applicant, petitioner, or appellant believes that for cost or other reasons it would be more practical to conduct an oral hearing at a place other than the TAA office, it shall so state the reasons and provide a proposed alternative location(s) and a statement of agreement to reimburse TAAP for all reasonable travel and other expenses so incurred. Any party to the proceeding may file, within 5 days of receipt of such request (for hearing at a place other than the TAA office), a statement in support of or opposition thereto with the TAA and the other parties.

#### 5. Reduced Rate Carrier Transportation to Hearings

Any person participating in a proceeding before the Travel Agent Arbitrator as either a complainant, petitioner, appellant, respondent, or applicant, as those terms are referred to in the Rules, may request the TAA to issue a "Request for Reduced- Rate Transportation" for the purpose of allowing (a) an owner, officer, partner (or full-time employee), and (b) counsel to or another representative of the participant, to attend the hearing, at a requested 75% discount. In addition, up to two (2) witnesses may be included at a requested 50% discount.

Any person requesting such transportation shall file with the TAA a list of the name(s) and itineraries of the persons for whom such transportation is requested. For all witnesses a brief summary of the anticipated testimony and a statement of its relevance to the matter will be included with the request for transportation.

Upon receipt of a properly completed and timely request, the TAA shall forward a written certificate to the requester, whose responsibility it will be to obtain the necessary transportation. Any such reduced-rate transportation is to be provided by the carrier solely in accordance with any terms, rules and conditions it may establish. The TAA does not have the authority to order any carrier to provide any transportation. Failure to obtain such transportation shall not be a sufficient reason to delay or postpone a scheduled hearing.

### **B. Request for Review of ARC Disapproval of Application (Sec. 2.A.)**

Each Request for Review shall:

- ⇒ identify the applicant by name, location, agency code number (if applicable) and include a valid email address if available;
- ⇒ include the date(s) of the submission of the application and its receipt by ARC, and receipt of the ARC disapproval;
- ⇒ include a copy of
  - a. The application and all supporting documents which were submitted to ARC,
  - b. All other documents which the agent wishes the TAA to consider,
  - c. The ARC disapproval letter.

**C. Complaints (Secs. 2.B., 2.D., 2.E., 2.F.)**

Every complaint shall:

- ⇒ identify the parties by name, location and the agency's code number;
- ⇒ contain the allegations which constitute the basis for the complaints;
- ⇒ specify the provisions of the ARA which are alleged not to have been complied with (if applicable);
- ⇒ set forth sufficient factual detail concerning names, dates, places and similar matters to assure that the respondent will be fully apprised of all facts necessary for the preparation of its defense;
- ⇒ describe the nature of the remedy requested of the TAA (i.e., removal or suspension from the Agency List, compensatory or punitive damages (see Sec.11), and/or an order directing the other party to act or refrain from acting in a particular manner);
- ⇒ be copied to all other parties (see Section 3);
- ⇒ include a list of available hearing dates or a waiver of hearing (see Sections 6.G., 6.H);
- ⇒ include as attachments copies of all correspondence between the parties which is alleged to form the basis for the complaint;
- ⇒ include as an attachment, in all cases of agent-carrier complaints, the original signed consent agreement required in Section 2.E.

**D. Petitions Re: Personal Guarantee (Sec. 2.C.)**

Each petition shall identify the Agent filing the Petition by name, location, and agency code number, and shall state that the requirements for filing such Petition, as set forth in the ARA, have been met. The petition shall include a succinct description of the remedy requested, with a reference to that section of the ARA allegedly authorizing such remedy.

**E. Expedited Appeals from ARC Removal Actions (Sec.2.G.)**

An appeal pursuant to Sec. 2.G. of these rules shall be made in writing by the agent and filed with the TAA within ten days after ARC has removed all of its traffic documents and the airline identification plates (or has withheld traffic documents) from the agent. The appeal shall state that it is being made pursuant to Sec. 2.G., contain a statement of the reasons why the agent believes ARC's action to be improper, and provide a brief description of the evidence which the agent intends to present in support of its position.

**F. Application for Emergency Provisional Remedy (Sec.2.H.)**

The application shall be delivered in the manner proscribed for expedited proceedings defined elsewhere in these Rules.

The application shall describe, at a minimum, the following:

- (1) The legal and factual basis for the provisional remedy requested
- (2) The likely extent and nature of the injury to be suffered unless such emergency action is allowed.
- (3) The nature and extent of the final remedy, which will be requested.
- (4) The complete name, office and email address and telephone number(s) of the agent(s) involved.

Upon receipt of the application the TAA will endeavor to contact the agent as soon as possible, by telephone, email, telegram, or other

means. If ARC requests an immediate hearing on the application, the TAA shall schedule same within three business days thereof and so immediately notify all parties. If the Agent is unwilling or unable to attend such hearing the TAA shall proceed to issue a written decision (or an oral decision if the circumstances so warrant) on the application and promptly notify all parties thereof.

## **G. Respondent's Answer**

### **(1) Basic Requirements**

Every named respondent to a proceeding before the TAA (unless these rules and the nature of the proceeding require otherwise) shall specifically admit, deny, or, where appropriate, disclaim knowledge of each and every allegation in the Review, Petition, or Complaint and set forth any defenses to the charges which will be relied upon by the respondent. Each response shall also include:

- ⇒ a list of available hearing dates within the next 45 days or
- ⇒ a waiver of oral hearing, or
- ⇒ if so desired, a request for oral hearing at a place other than the TAA office, in accordance with Sec 3.A.(4) and
- ⇒ any request for a pre-hearing conference, in accordance with Sec.3.A.(3) and Sec.5C.

Failure to request an oral hearing shall act as a waiver of same; upon motion and for good cause shown, or upon the TAA's own initiative, such waiver may be overridden in the interests of fairness and the need to obtain a full and complete record.

### **(2) ARC Response to Request for Review of Application Disapprovals**

In addition to the above, ARC shall include in its response a copy of all documents in its possession upon which it relied in reaching its decision to disapprove the application.

### **(3) Filing Times**

Every answer to a Review, Petition, or Complaint shall be filed with the office of the TAA (as provided for in Sec.1 of these Rules) within 15 calendar days after receipt of the Review, Petition, or Complaint, not counting the day of receipt. However, in the case of an expedited proceeding as defined elsewhere in these Rules, an answer shall be filed within 72 hours of receipt.

### **(4) Failure to Answer**

Failure to answer within the allotted time frame shall constitute an admission of all allegations contained in either the Review, Petition, or Complaint for purposes of allowing the TAA to act thereon and enter a decision and order as may be appropriate, without further replies or proceedings unless requested by the TAA. Prior to the issuance of a decision in such instance the TAA will notify the respondent of such intentions at least 24 hours before any decision is issued. If the respondent then informs the TAA within 24 hours that it wishes to furnish an answer to the Review, Petition, or Complaint the TAA shall consider all the facts and circumstances and, in his discretion, may provide a reasonable response time (but no more than 10 days) in which such answer may be filed. However, if the complainant informs the TAA that its complaint has been returned as undeliverable after attempted service upon the agent's address of record, and the TAA's notice to the agent has also been returned as undeliverable, no further notice shall be necessary, and the TAA may close the record and proceed to a decision based on the evidence submitted if appropriate under all the circumstances.

## Section 4: Motions

Motions may be made or submitted by the parties at any time. Except for motions made during the course of a hearing, motions shall be in writing, and shall set forth the grounds upon which the motion is based, the specific relief sought, and may be accompanied by affidavit or other evidence a movant desires the TAA to consider. The pendency of a motion will not serve to stay the procedural steps in any matter before the TAA.

## Section 5: TAA's Response to Documents

### A. Docket Number

Upon receipt of a properly completed Review, Petition, or Complaint, the TAA shall assign a docket number and so inform the parties in writing. Such number will appear on all documents thereafter filed by any party. However, any delay in receiving this notification of docketing shall not relieve the respondent from any of the other requirements of these Rules, including the 15 day response period of Sec. 3.G., provided a copy of the Review, Petition, or Complaint was actually received by the respondent.

### B. Incomplete Documents/Motion for More Specific Statement

The TAA shall endeavor to see that all documents filed are complete and in accordance with the Rules and all other applicable requirements. Upon a motion for more specific statement from any party, or upon his own initiative, the TAA may request additional information as may be required for whatever reason. Such motion must be filed within the allotted response period, upon receipt of which the TAA will either grant, modify or deny the motion and establish a new timetable for responses from each party thereafter.

### C. Pre-Hearing Conferences/Stipulations

Any party to a Review, Petition, or Complaint may request, at any time prior to an oral hearing or decision on the record without oral hearing, as the case may be, that a pre-hearing conference be held for any purpose, including defining issues, stipulating to evidence, and scheduling further proceedings. Any such request will be served upon the other parties and the TAA in the same manner as any Review, Petition, or Complaint and shall clearly indicate the reasons for such request. The TAA may schedule a pre-hearing conference when, in his opinion, the nature of the proceeding or the request is such that the inconvenience to the parties will be outweighed by the potential benefits of such a conference.

Any party to a proceeding may also request any other party to provide stipulations to facts, admissions, or agreements or other procedural or substantive issues prior to hearing, and may request the TAA to so order any party refusing to provide same. Any such request will be made in accordance with the rules provided herein for the filing of documents.

The TAA, in his discretion, shall schedule a pre-hearing conference to discuss such request or shall rule upon such request without hearing. In either case, the TAA shall inform the parties of his decision and shall establish a timetable for compliance therewith, if necessary. The TAA may postpone any scheduled hearing or conference pending compliance with such request. If a party refuses to comply with such request and/or order of the TAA, the TAA shall proceed to conduct an oral hearing and/or issue a decision upon the record without oral hearing, as the case may be, and may consider the reasonableness of such refusal in his decision, order and remedy as appropriate.

Any pre-hearing conference may be held by either the TAA, ATAA or other impartial third party assigned by the TAA and acceptable to all parties.

## D. Exchange of Information and Documents

Each party shall:

- (1) file with the TAA and all other parties not less than seven (7) days prior to any hearing a complete set of all documentary exhibits which it intends to introduce into the record at such hearing; and
- (2) furnish the name, address, telephone number and summary of anticipated testimony from each witness it intends to have testify on its behalf at the hearing.

## Section 6: Hearings

### A. Parties

The only parties to proceedings hereunder shall be the complainant, requester, petitioner or applicant and the respondent(s) thereto. Additional parties may be added upon request of any person or party, subject to the TAA's discretion and the interests of justice, equity and efficiency.

### B. Representation

Any party may be represented by any person of its choosing at any stage of any proceeding hereunder. For purpose of service of documents pursuant to these Rules, service upon such representative shall constitute service upon the party, until such representation is withdrawn in a writing served upon all parties and the TAA.

### C. Notice and Location of Hearing

Except in the case of expedited proceedings, the TAA shall notify all parties in writing of the time, date and location of all oral hearings and conferences at least ten days prior thereto, where feasible.

### D. Attendance

Parties, their representatives and witnesses shall be the only persons entitled to attend oral hearings, unless upon agreement of all parties thereto. Upon the request of any party the TAA shall require any witness to remain outside the hearing room until such witness is called upon to testify. Any properly notified party who fails to appear and has not requested a postponement shall not be entitled to later request any further reconvening. The TAA may proceed to take evidence and issue a decision in the absence of any party without any further notification.

### E. Order of Proceedings

In the usual proceeding, a hearing shall be opened by the recording of the place, time and date of the hearing, the presence of the TAA and parties, and counsel or other representative, if any, and of receipt by the TAA of the Request for Review, Complaint, or Petition, and any answers, motions or other documents. Thereupon the hearing shall proceed in the following manner:

- (1) The TAA shall dispose of all outstanding motions and other preliminary matters.
- (2) The TAA may, if appropriate, ask for statements clarifying the issues involved.
- (3) The party, which submitted the request for Review, the Complaint, or the Petition, as the case may be shall then present its claim, proofs, and witnesses qualified to sponsor the evidence it intends to offer. Such witnesses shall be subject to cross-examination by the opposing party.
- (4) Thereafter, the responding party shall present its defense, proofs, and witnesses, who similarly shall submit to cross-examination, by the applicant, complainant, or petitioner.
- (5) The TAA shall specifically inquire of all parties if they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the TAA shall permit such closing arguments as the parties may desire to make, and then shall declare the hearing adjourned. The record will be closed at that time unless held open for the receipt of post-hearing exhibits



and/or briefs authorized by the TAA. In the latter event, the record shall be deemed to be closed upon issuance by the TAA of a notice with respect to post-hearing exhibits or upon the date briefs are filed, whichever shall later occur.

The TAA may vary this procedure and may take such other or further actions to facilitate and expedite disposition of the proceeding. Proceedings shall be conducted in a manner which is consistent with the rights of the parties and affords full and equal opportunity to all parties for the presentation of any relevant and material evidence, but no other formal rules of evidence shall apply.

#### F. Record of Hearing

The TAA will provide either a tape recording or a verbatim stenographic record of each oral hearing and, upon request of a party, arrange for a transcript thereof, the costs of which will be borne by the requesting party or parties.

In the case of a telephone conference call hearing, however, this requirement for a verbatim record shall not apply.

The record upon which the TAA's decision shall be based shall consist of the oral hearing tape or transcript, if any, and all exhibits received by the TAA in evidence.

In the case of the loss or failure to the recording equipment or tape(s), the TAA may base the decision solely on his own notes and recollections in addition to exhibits. In such event the TAA shall notify the parties of such loss in advance of the issuance of a decision, and take any further action appropriate to the circumstances.

#### G. Evidence

##### (1) Oral hearings

Any party may offer evidence, subject to the ruling of the TAA, at any properly noticed hearing session.

The TAA shall admit all relevant, material and non-repetitious evidence and testimony.

##### (2) On-the-record decisions

Whenever the parties have waived their right to oral hearing, the parties may offer any evidence for the TAA's consideration by submitting a copy thereof, in identical form, to all other parties as well as the TAA.

#### H. Dismissal

Any party may request dismissal of the proceeding at any time by motion to the TAA, provided, however, that once an answer or other responsive pleading has been filed no party may seek to have the proceeding dismissed for the purpose of litigating the claims in the proceeding in federal or state court or before some other governmental body. In the case of an oral hearing such motion shall only be made in the presence of other parties at such hearing. In the case in which such hearing has been waived the movant shall copy all other parties and the TAA shall inform all parties in writing of his ruling prior to issuing a decision.

The TAA on his own motion may dismiss any proceeding if he determines the moving party has failed to establish a prima facie case of its allegations. Any such dismissal shall be in writing and be considered a final decision under these Rules.

#### I. Withdrawal

No party may withdraw from any proceeding for the purpose of litigating the identical claims in a state or federal court or before any other governmental body.

Subject to the above limitation, any party that initiates a proceeding before the TAA may withdraw it at any time prior to the issuance of a decision.

#### J. Adjournments/Postponements

The TAA may adjourn, postpone or grant an extension of time to any party for any purpose upon a showing of good cause. Any party requesting such adjournment, postponement or extension shall first notify all other parties and attempt to obtain their consent prior to

contacting the TAA. The TAA shall issue a ruling in writing, or may direct the requesting party to inform all other parties in writing of the granting of such request.

## Section 7: Decisions

### A. Without Hearing

Once the parties have submitted their evidence, unless the TAA believes that additional information is necessary, he may proceed to issue a decision without hearing in those cases where the parties have waived their rights thereto.

The decision shall be in writing and served upon the parties by certified/registered mail or priority delivery service. It shall contain findings of facts, conclusions of law, order and remedy in paragraphs separately stated, and shall state the date on which such decision shall be considered effective.

### B. After Hearing

Following the close of any oral hearing the TAA shall consider the testimony and evidence submitted to him and proceed to issue a written decision, with findings, conclusions, order and remedy separately stated. Such decision shall be mailed, certified/registered, return receipt requested, or sent by priority delivery service, to all parties.

### C. Binding Effect/Judicial Enforcement

All decisions, whether following oral hearing or not, shall be binding on the parties and considered final, subject to the provisions for reconsideration below (Sec. 7.D.). However, any party may seek judicial relief to enforce the decision.

Subject to the final and binding nature of the decisions rendered hereunder, nothing herein shall affect adversely any party's rights to seek judicial relief to enforce any of the terms of the ARC Agent Reporting Agreement.

### D. Reconsideration

Within ten calendar days of receipt of the decision, any party thereto may request the TAA to reconsider such decision, in whole or in part, by filing a request with the TAA. Such request shall:

⇒ be copied and filed contemporaneously with the other parties,

⇒ state briefly and succinctly the grounds on which the reconsideration is sought.

- (1) if the grounds allege error, the matters of record alleged to have been erroneously decided will be cited with appropriate references to testimony or exhibits which are alleged to support the claim.
- (2) if the grounds allege newly discovered evidence, the request will specify such evidence in its entirety, state the reason why such evidence was not presented at the hearing (if appropriate), and state the reasons why due diligence could not have discovered such evidence earlier. The request shall also set forth any alleged impacts such evidence would likely have on the decision.

A successive petition for rehearing, re-argument, or reconsideration filed by the same party or parties, and upon substantially the same ground as a former petition which has been considered by the TAA shall be denied. Any party to the decision may file a response to such request for reconsideration within ten days of receipt. The response may include a request for (a) a reopening of the hearing, (b) a denial of the request, or (c) additional time in which to respond to the request. The TAA shall then proceed to either (a) issue a revised decision based on the request and response(s), or (b) deny the request, or (c) reopen the record and/or the hearing on such terms as he deems appropriate to the situation, after which the TAA shall issue a revised decision, the effect of which will be to revoke the earlier decision unless specified otherwise by the TAA. The effective date of any decision shall be stayed pending a ruling on any properly submitted request for reconsideration, unless otherwise provided by the TAA in the decision.

## E. Public Release of Decision And Finality of Decision

Five days after a decision is considered to be final, the TAA shall make such decision available to the public. Pending such decision the TAA shall not comment publicly on the identity of the parties or the issues involved in such proceedings except to the extent any such comment is necessary to the fulfillment of the TAA's duties under these Rules. For these purposes a decision shall be considered final when either (a) more than ten (10) days have passed since the receipt of the initial decision by all parties and no timely request for reconsideration has been filed with the TAA, or (b) after a timely request for reconsideration was filed the TAA has either (i) issued a revised decision or (ii) denied the request.

## F. Ex Parte Communications

The TAA and his staff shall be available at all times to provide general information concerning the operations of the office, to receive comments and suggestions with respect thereto, and to respond to questions concerning practice and procedure. All such inquiries are welcome. However, no party shall offer, nor shall the TAA and his staff entertain, any private communication with respect to the merits of any matter involved in a pending proceeding. Except for procedural inquiries and at conferences conducted upon due notice to those concerned, communications addressed to the TAA concerning pending cases shall be in writing and served upon all parties.

## Section 8: Standards of Conduct

The TAA and persons appearing before him shall conduct themselves in accordance with the highest standards of professional ethics. The TAA and his staff, in all proceedings, and in accordance with the provisions of the applicable ARC Agreements, shall:

- ⇒ Decide cases in a fair and impartial manner upon the basis of the record developed in a given proceeding, free from all extraneous influences.
- ⇒ Accept no things of value, honorariums, or fees for any kind from any person who has, or may reasonably be expected to have, business before the TAA.
- ⇒ Avoid any real or apparent conflict of interest, whether financial, proprietary, personal or otherwise. The TAA shall withdraw from any proceeding in which he has, or might be deemed to have, a conflict of interest.
- ⇒ Refrain from any activity that could result in or create the appearance of adversely affecting the confidence of all segments of the air transportation industry and the public generally in the integrity of the Office of Travel Agent Arbiter.

## Section 9: Amendment of Rules

Requests for amendment of these rules may be filed with the TAA at any time, and copies of such requests shall be served by the persons submitting them on the President of ARC, the Board members of the TAAP and on such other interested persons as the TAA shall direct. Comments concerning rule-making proposals shall be filed within the time period specified by the TAA, who shall maintain at his offices a file of rule-making proposals and comments which shall be available for public inspection.

## Section 10: Access to and Retention of Records And Request to Expunge Identifying Information

All pleadings, correspondence, exhibits and other materials which form a part of the record for decisions in each docketed proceeding shall be retained by the TAA for a period of one year after decision or for such further period as the TAA shall deem appropriate. Access to such records shall be permitted only upon written authorization from the party submitting same, except that when the TAA is served with a proper judicial subpoena for the production of any such records the TAA shall promptly notify all parties in writing, furnish a copy of the subpoena itself, and then shall release certified copies of such records to the court and, upon request of such court, make the originals available for inspection at the office of the TAA. Any party to a proceeding, at any point prior to the issuance of a final decision by the TAA, may for good cause shown request that any identifying name, place or thing be expunged from the written

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decision which is made public pursuant to these rules, and the TAA shall grant such request if substantial prejudice to the rights of any party or person would be jeopardized thereby. Any request to seal such records shall be filed contemporaneously with all other parties to the proceeding, who shall have a reasonable opportunity to comment thereon as determined by the TAA on a case by case basis. In no case, however, will any records ever be sealed against access of any party to the proceeding, and upon request of any party the TAA shall reveal to them, in confidence, the names, places or things so expunged from the publicly issued decision.

## Section 11: Remedial Actions

In determining the remedial action, if any, applicable in a case, the TAA shall consider all relevant circumstances surrounding particular events involved in the case. In imposing a monetary award as the remedial action, the TAA shall follow the principle of compensatory damages, except where the TAA finds gross negligence or willful disregard for the rights of the other party. In each case in which a punitive monetary award is made, the money so collected shall be set aside in a separate fund to be used for a purpose determined to be appropriate by the JAB-ARA which purpose shall be ratified by the ARC Board of Directors. Any party may submit proposed findings, conclusions and remedial actions in lieu of or in addition to any brief. The TAA may, upon his initiative, circulate for comment among the parties a proposed remedial plan of action or monetary or punitive award. Upon receipt of comments by the parties the TAA may adopt, alter or reject all or any part of such comments and such proposal and proceed to issue his decision.

## Section 12: Precedent

Decisions of the Travel Agent Commissioner and the TAA and the Associate Travel Agent Arbitrator shall have non-binding precedential value only.

## Section 13: Expedited Proceedings

In any case in which an expedited proceeding is provided elsewhere herein, or in any case in which a motion for expedited proceedings is made, the respondent shall file all supporting evidence with the TAA and the opposing party within 72 hours of receipt of the Agent's appeal or the ARC complaint, and the TAA shall schedule an oral hearing (unless waived) to begin not later than three business days thereafter, or as soon as the parties agree. If an oral hearing is waived the TAA shall expedite review of the documents and proceed to issue a decision within five days of the close of all proceedings therein.

Any party may object to the motion for expedited proceedings, but such objection must be received within the time allotted for a response. If the objection is denied by the TAA the substantive response will then be due not later than 24 hours after actual receipt of the notice of such denial.

If either party so desires, an expedited hearing may be held by telephone conference call provided it is feasible for all parties to so participate and the circumstances so warrant.