

Compelling and Staying Arbitration in Pennsylvania

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A Practice Note explaining how to request judicial assistance in Pennsylvania 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 Pennsylvania courts.

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 Pennsylvania state court, including the standards under Pennsylvania arbitration law, the courts' inquiry on an application to stay or compel arbitration, and the form of applications to compel or stay arbitration. Except where noted, this Note does not address common law arbitration or statutory compulsory 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 whether to assert the Federal Arbitration Act (FAA) or whether Pennsylvania state 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 Factual Issues for 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 FAA or Pennsylvania arbitration law.

The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to a commercial transaction or 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 it defines broadly. Parties may, however, contemplate enforcement of their arbitration agreement under state arbitration law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); see also *Com. ex. rel. Kane v. Phillip Morris USA, Inc.*, 114 A.3d 37, 50-52 (Pa. Cmwlth. Ct. 2015)).

If the agreement falls under the FAA, state courts apply that statute, 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); *Com. ex. rel. Kane*, 114 A.3d at 52 (the PUA standard for review of an award applies regardless of whether the parties agreed to the FAA standard in their agreement); *Trombetta v. Raymond James Fin. Servs. Inc.*, 907 A.2d 550, 567 (Pa. Super. Ct. 2006) (“[P]re-emption will not be used to eviscerate state procedural arbitration rules when such rules have no effect on the enforceability of the underlying agreement.”)).

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](#)).

Pennsylvania Arbitration Law

The Pennsylvania Uniform Arbitration Act (PUAA) governs most arbitration in Pennsylvania. It is based on the model Uniform Arbitration Act, which the Uniform Law Commission promulgated in 1955 based on the FAA. Parties indicate their intention to have the PUA apply to their arbitration by:

- Agreeing in writing to arbitrate their dispute.
- Expressly providing for arbitration pursuant to the PUA.

(42 Pa. C.S.A. § 7302(a).)

Prior to the PUA, arbitration agreements were governed by the Arbitration Act of 1927. The PUA, enacted in 1980, repealed and replaced the 1927 Act. However, the 1927 Act still applies to:

- Agreements that predate 1980.
- Disputes where the parties specifically agree to arbitrate under the 1927 Act.

(*Pantelis v. Erie Ins. Exch.*, 890 A.2d 1063, 1065 (Pa. Super. Ct. 2006).)

The choice between the two Acts is significant because, unlike the PUA, the 1927 Act permits a court to review legal errors by an arbitrator, whereas the PUA does not (see *Pantelis*, 890 A.2d at 1065; 42 Pa. C.S.A. § 7314(a); see also Practice Note, *Enforcing Arbitration Awards in Pennsylvania* ([w-002-5381](#))).

In early 2017, the Pennsylvania legislature introduced HB 781 to adopt the Revised Uniform Arbitration Act (RUAA). That bill remains pending. For more information about the RUAA and the jurisdictions that have adopted it, see Practice Note, *Revised Uniform Arbitration Act: Overview* ([w-004-5167](#)).

Pennsylvania also recognizes common law arbitration (42 Pa. C.S.A. §§ 7341 to 7342), which applies if the parties agree to arbitration without specifying an arbitral form (42 Pa. C.S.A. § 7302(a); see *Brennan v. Gen. Acc. Fire & Life Assur. Corp., Ltd.*, 574 A.2d 580, 583 (Pa. 1990)). The rules for compelling and staying arbitration under the PUA also apply to compelling and staying common law arbitration (42 Pa. Cons. Stat. §§ 7304, 7342(a)).

Pennsylvania has a program of statutory compulsory arbitration, codified at 42 Pa. C.S.A. §§ 7361 to 7362, which makes arbitration mandatory in certain civil cases and therefore does not involve applications to stay or compel arbitration. This Note does not address statutory compulsory arbitration.

INTERSECTION OF THE FAA AND PENNSYLVANIA LAW

Because the FAA only preempts state law to the extent that state law contradicts federal law, the FAA does not prevent Pennsylvania state courts from, among other things, applying state contract law to determine whether the parties have entered into an arbitration agreement (see *Gaffer Ins. Co., Ltd. v. Discover Reins. Co.*, 936 A.2d 1109, 1114 (Pa. Super. Ct. 2007)).

If an agreement falls under the FAA, a Pennsylvania state court applies the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Pennsylvania 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](#))).

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

- Does not affect or involve interstate commerce (see *Duquesne Light Co. v. New Warwick Mining Co.*, 660 A.2d 1341, 1343-44 (Pa. Super. Ct. 1995) (indicating that whether the FAA or state law applies requires a fact determination about whether the agreement at issue evidences a transaction in or relating to interstate commerce); see also 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 Pennsylvania law governs the arbitration agreement and its enforcement (see *Com. ex. rel. Kane*, 114 A.3d at 56 (applying Pennsylvania law to review an arbitration award)).

For more information on various states’ procedural rules relating to arbitration, see Practice Note, *Choosing an Arbitral Seat in the US* ([1-501-0913](#)).

THRESHOLD FACTUAL ISSUES FOR COURT TO DECIDE

When deciding an application to stay or compel arbitration, Pennsylvania courts may not rule on the merits of the claims underlying the arbitration (see *Fastuca v. L.W. Molnar & Assoc.*, 950 A.2d 980, 989 (Pa. Super. Ct. 2008); *Strausser Enters., Inc. v. Segal & Morel, Inc.*, 89 A.3d 292, 296 (Pa. Super. Ct. 2014); 42 Pa. C.S.A. § 7304(e)). Instead, the court plays a gatekeeping role that is usually limited to determining substantive arbitrability issues. Substantive arbitrability refers to whether the parties have a valid agreement that covers their dispute. The court therefore decides the arbitration agreement’s:

- Validity (see *Validity of Arbitration Agreement*).
- Scope (see *Scope of Arbitration Agreement*).

(See *Fastuca v. L.W. Molnar & Assoc.*, 950 A.2d 980, 989 (Pa. Super. Ct. 2008); *Midomo Co., Inc. v. Presbyterian Hous. Dev. Co.*, 739 A.2d 180, 186 n.6 (Pa. Super. Ct. 1999).)

The court also decides the threshold issue of whether a party seeking arbitration waived the right to arbitrate by participating in court litigation (see *Waiver*). A party may raise any of these issues as the basis for either:

- An application to compel or stay arbitration.
- A defense in an opposition to an application to compel or stay.

The court presumptively decides issues of substantive arbitrability involving the validity and scope of the arbitration agreement (see Substantive Arbitrability Issues). Conversely, the arbitrator usually decides procedural arbitrability issues such as whether there are any unsatisfied conditions precedent, but the court decides these issues if the parties' arbitration agreement limits the arbitrator's authority to decide these issues.

Therefore, depending on the scope of the matters the parties agree to arbitrate, the court may also make procedural determinations regarding the availability of arbitration (see Procedural Arbitrability Issues), including whether:

- There are any unsatisfied conditions precedent to arbitration (see Satisfaction of Conditions Precedent).
- The application to stay or compel arbitration is within the applicable statute of limitations (see Statute of Limitations).

Once the court rules on the issues reserved for the court, the arbitrator decides all remaining questions in the dispute (see *Santiago v. State Farm Ins. Co.*, 683 A.2d 1216, 1218 (Pa. Super. Ct. 1996); *Messa*, 641 A.2d at 1169).

For more information about the roles of the courts and arbitrators in determining arbitrability issues, see Practice Note, Arbitrability Issues in US Arbitration: Determination by a Court or Arbitrator ([w-005-0556](#)).

SUBSTANTIVE ARBITRABILITY ISSUES

Under Pennsylvania law, issues concerning the validity and scope of an arbitration agreement are substantive arbitrability issues that a court rather than an arbitrator usually decides (see *Ross Dev. Co. v. Advanced Bldg. Dev., Inc.*, 803 A.2d 194, 196 (Pa. Super. Ct. 2002)).

Validity of Arbitration Agreement

An arbitration agreement is valid, enforceable, and irrevocable if it is in writing and provides that the parties agree to arbitrate either:

- An existing controversy.
- Prospective controversies that may arise between the parties.

(42 Pa. C.S.A. § 7303.)

Courts may invalidate an arbitration agreement on the same grounds as any other contract (42 Pa. C.S.A. § 7303). Examples of contract principles that a party may invoke to invalidate an arbitration agreement include:

- Lack of mutual assent (see *Bair v. Manor Care of Elizabethtown, PA, LLC*, 108 A.3d 94, 97-98 (Pa. Super. Ct. 2015)).
- Unconscionability (see *Carll v. Terminix Int'l Co., L.P.*, 793 A.2d 921, 925 (Pa. Super. Ct. 2002)).
- The presence of a confidential relationship (see *Paone v. Dean Witter Reynolds, Inc.*, 789 A.2d 221, 226 (Pa. Super. Ct. 2001) (explaining that an arbitration agreement between individuals in a confidential relationship is voidable unless the proponent shows that the agreement was entered into freely by the other party and with an understanding of the agreement's nature, terms, and consequences)).

If a party challenges the validity of an arbitration agreement, the party seeking to enforce the agreement bears the burden of establishing the agreement's validity (see *Bair*, 108 A.3d at 96).

Scope of Arbitration Agreement

In evaluating whether a dispute comes within the scope of an arbitration agreement, Pennsylvania courts refer to general contract principles under state law to determine the parties' intent (see *Pittsburgh Logistics Sys., Inc. v. Prof. Transp. & Logistics, Inc.*, 803 A.2d 776, 779 (Pa. Super. Ct. 2002); *Henning v. State Farm Mut. Auto. Ins. Co.*, 795 A.2d 994, 996 (Pa. Super. Ct. 2002); *Provenzano v. Ohio Valley Gen. Hosp.*, 121 A.3d 1085, 1095-96 (Pa. Super. Ct. 2015)). If an arbitration clause does not limit the scope of the matters subject to arbitration, the courts will not impose a limitation (see *Goral v. Fox Ridge, Inc.*, 683 A.2d 931, 933 (Pa. Super. Ct. 1996)).

A court may require an individual who is not a party to the arbitration agreement to arbitrate a dispute if the court finds an obvious and close nexus between the non-signatory and the contract or the contracting parties (see *Provenzo*, 121 A.3d at 1097; *Dodds v. Pulte Home Corp.*, 909 A.2d 348, 351 (Pa. Super. Ct. 2006)). For information on joining non-signatories to arbitration generally, see Article, Joining Non-Signatories to an Arbitration ([6-275-4952](#)).

Waiver

A party may waive its right to compel arbitration by litigating claims or defenses in court that are otherwise subject to arbitration (see *Goral*, 683 A.2d at 933-34). A party may waive its right to proceed to arbitration either:

- Expressly, by stating its intention to waive arbitration.
- Impliedly, through the party's language or actions that are unequivocally inconsistent with an intention to proceed with arbitration.

(See *Goral*, 683 A.2d at 933; *Marranca*, 610 A.2d at 501.)

Conduct that creates an inference of waiver includes participating in the judicial process to win favorable rulings, for example by:

- Failing to raise the issue of arbitration promptly.
- Engaging in discovery.
- Filing pretrial motions that fail to raise the issue of arbitration.
- Waiting for adverse judicial rulings on pretrial motions before asserting arbitration.
- Waiting until the case is ready for trial before asserting arbitration.

(See *O'Donnell v. Hovnanian Enter., Inc.*, 29 A.3d 1183, 1187 (Pa. Super. Ct. 2011); *St. Clair Area Sch. Dist. Bd. of Ed. v. E.I. Assoc.*, 733 A.2d 677, 682 n.6 (Pa. Comwlth. Ct. 1999).)

A party's participation in litigation while a motion to compel arbitration is pending does not waive the right to arbitration (see *Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1278 (Pa. Super. Ct. 2004)). However, a party may waive the right to arbitration even before any party files a complaint if the court permits pre-complaint discovery and the party fails to raise the issue of the right to arbitration (see *GE Lancaster Invests., LLC v. Am. Exp. Tax and Bus. Servs., Inc.*, 920 A.2d 850, 853 (Pa. Super. Ct. 2007)). The best practice is for a litigant to raise its right to arbitration at the earliest possible opportunity.

These same policies apply to waiver of the right to stay arbitration. If a party participates in the arbitration process and fails to promptly present a motion to stay arbitration, that party waives the right to seek a stay of arbitration proceedings in court (see *S. High Dev., L.P. v. Est. of Morgan*, 2015 WL 7760834, at *2-3 (Pa. Super. Ct. Dec. 2, 2015); *White v. Concord Mut. Ins. Co.*, 442 A.2d 713, 717 (Pa. Super. Ct. 1982)).

The court does not lightly infer waiver, but rather finds a waiver only if it can draw no other inference from a party's language or conduct (see *Kwalick v. Bosacco*, 478 A.2d 50, 52 (Pa. Super. Ct. 1984) (waiver "should not be lightly inferred[,] and unless one's conduct has gained him an undue advantage or resulted in prejudice to another he should not be held to have relinquished the right.")).

PROCEDURAL ARBITRABILITY ISSUES

If authorized by the parties' arbitration agreement, the arbitrator may resolve procedural arbitrability issues, such as timeliness and conditions precedent to the availability of arbitration itself, as opposed to conditions precedent to the contract as a whole (see *Ross Dev. Co.*, 803 A.2d at 197). Pennsylvania courts have repeatedly recognized the broad power of arbitrators to determine whether the parties have satisfied conditions precedent and whether arbitration claims are barred by statute of limitations (see *Runewicz v. Keystone Ins. Co.*, 383 A.2d 189, 192 (Pa. 1978)).

Courts look to the arbitration agreement to determine if a court or arbitrator decides a procedural arbitrability issue. For example, if the parties' arbitration agreement provides that the arbitrator determines all disputes between the parties, the courts defer to the arbitrator to decide procedural arbitrability issues such as the satisfaction of conditions precedent and timeliness (see *Brennan*, 574 A.2d at 583 (if arbitration agreement does not limit the scope of matters subject to arbitration, arbitrator has authority to decide all matters necessary to dispose of claim); *Messa*, 641 A.2d at 1170 (improper for court to determine if application to compel arbitration was within statute of limitations because arbitration agreement did not limit scope of arbitrable issues and "it is well settled that unless restricted by the agreement of submission, arbitrators are the final judges of both law and fact.")).

Likewise, if the parties' arbitration agreement itemizes the specific matters they agree to submit to arbitration and those matters do not include procedural arbitrability issues, a court decides those issues (see *Erie Ins. Exch. v. Bristol*, 2016 WL 3062309, at *5 & n.1 (Pa. Super. Ct. May 27, 2016) (affirming summary judgment for insurer declaring uninsured motorist arbitration demand was time-barred because arbitration agreement specified that court decides statute of limitations issues)).

Satisfaction of Conditions Precedent

Courts evaluate whether the parties have satisfied conditions precedent to arbitration if those conditions are precedent to the validity of the overall contract containing the arbitration agreement, as opposed to the arbitration agreement specifically. The satisfaction of conditions precedent to the validity of the arbitration agreement itself is a matter of procedural arbitrability that the arbitrator usually decides. (See *Keystone Tech. Grp., Inc. v. Kerr Grp., Inc.*, 824 A.2d 1223, 1227-28 (Pa. Super. Ct. 2003)).

Statute of Limitations

Like issues regarding the satisfaction of conditions precedent, issues involving the timeliness of an arbitration demand or application to compel arbitration are matters of procedural arbitrability. The arbitrator usually decides these issues, unless the parties' agreement provides for a court to decide the issue or limits the matters the arbitrator decides to exclude timeliness issues (see *Messa*, 641 A.2d at 1170; *Ross Dev. Co.*, 803 A.2d at 197; *Runewicz*, 383 A.2d at 192).

A motion to appoint an arbitrator or to compel arbitration tolls the statute of limitations, but the statute continues to run if a party makes an extrajudicial demand for arbitration without an application to court (see *Erie Ins. Exch.*, 2016 WL 3062309, at *5; *Hopkins*, 65 A.3d at 461). There are no reported Pennsylvania cases addressing whether the actual appointment of an arbitrator tolls the statute of limitations.

CONSIDERATIONS WHEN PREPARING AN APPLICATION TO COMPEL OR STAY

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

CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

A party may ask a court to 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.

Local court rules typically dictate the form that an application to compel arbitration must take. Depending on the local rules or circumstances of the controversy, an application to compel arbitration can take the form of a petition, a motion, or preliminary objections (see Form of Application to Stay or Compel Arbitration.)

If a court grants a request to compel arbitration, the court order includes a stay of the court action or proceeding. If the pending litigation has several issues in dispute but only one issue that is subject to arbitration, the court may sever and stay the arbitrable issue while the remainder of the pending litigation proceeds. (42 Pa. C.S.A. § 7304(d).)

CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

If an arbitration claimant threatens or demands arbitration against a party that is not bound to arbitrate the dispute, the party seeking to avoid arbitration may ask a court to stay arbitration. A party may request a stay of arbitration through either a petition or a motion, depending on local rules (see *Sch. Dist. of City of Monessen v. Apostolou Assocs., Inc.*, 761 A.2d 597, 599 (Pa. Super. Ct. 2000); Form of Application to Stay or Compel Arbitration).

CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Although Pennsylvania's arbitration statutes do not expressly provide for any provisional remedies, courts have held that the PUAA does not preclude a court from granting equitable relief in the form of a preliminary injunction before the court determines whether the underlying dispute is arbitrable (see *Langston v. Nat'l Media Corp.*, 617 A.2d 354, 354-55 (Pa. Super. Ct. 1992)). Pennsylvania courts have granted provisional remedies to:

- Require a party to submit into escrow the amount in controversy and the amount of arbitration fees when the underlying contract called for escrow deposits (see *Langston*, 617 A.2d at 356, 359).
- Prevent a party from destroying files that were the subject of the arbitration and require that party to escrow a portion of the income it derived from client files it took from the opposing party (see *Sagot Jennings & Signmond v. Sagot*, 2003 WL 1873298, at *7, *15 (Pa. Com. Pl. Apr. 2, 2003)).

For more information on preliminary injunctive relief in Pennsylvania, see Practice Notes, Provisional Remedies: Initial Considerations and Drafting the Required Documents for Injunctive Relief (PA) ([w-000-1070](#)) and Provisional Remedies: Procedure for Obtaining Injunctive Relief in Philadelphia County (PA) ([w-000-1070](#)).

For more information on seeking interim relief in aid of arbitration generally, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration ([0-587-9225](#)).

ADDITIONAL PROCEDURAL CONSIDERATIONS

Before commencing litigation related to an arbitrable dispute in a Pennsylvania court, counsel should also consider other factors that may affect the contents of the request for judicial assistance, 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 and personal jurisdiction (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).

Court Jurisdiction

If there is no action already pending between the parties, an applicant makes a request to compel or stay arbitration by starting a special proceeding (see Form of Application to Stay and Compel Arbitration). Before commencing a special proceeding to compel or stay arbitration, the petitioner's counsel should confirm there is a basis for the court's subject matter jurisdiction and exercise of personal jurisdiction over the respondent.

The statute confers jurisdiction on the Pennsylvania courts for arbitration-related proceedings if the parties agree in writing to arbitration in Pennsylvania (42 Pa. C.S.A. § 7318).

An arbitration agreement cannot divest a court of jurisdiction (see *Chester City Sch. Auth. v. Aberthaw Cons. Co.*, 333 A.2d 758, 761 (Pa. 1975); *Shapiro v. Keystone Ins. Co.*, 558 A.2d 891, 894 (Pa. Super. Ct. 1989) (“the fact that an arbitration clause directs a specific venue generally has no effect on the jurisdiction of a court of common pleas of a different county to appoint arbitrators, compel arbitration, or confirm an award”)).

Pennsylvania courts may exercise personal jurisdiction over an individual who is domiciled in the Commonwealth at the time of service of the case-initiating papers (42 Pa. C.S.A. § 5301(a)(1)(ii)). Pennsylvania courts also may exercise personal jurisdiction over corporations, partnerships, unincorporated associations, and similar entities formed or incorporated under Pennsylvania law or that have their principal place of business in Pennsylvania (42 Pa. C.S.A. § 5301(a)(2), (3)).

For more information on the Pennsylvania courts' exercise of personal jurisdiction, see Practice Note, Commencing a Lawsuit:

Initial Considerations (PA): Does the Court Have Personal Jurisdiction Over the Defendant? ([w-000-1235](#)).

Venue

If the underlying dispute is also the subject of a pending judicial proceeding, the party seeking to compel or stay arbitration of the dispute should make the application to that court, as long as the court has jurisdiction to hear applications to compel or stay arbitration (42 Pa. C.S.A. § 7304(c)).

If the underlying dispute is not the subject of a pending judicial proceeding, the party seeking to compel or stay arbitration must commence a new action in the proper venue. The applicant should file the action in the court in the county where either:

- The agreement specifies the parties must hold the arbitration hearing.
- The arbitration hearing is occurring.

(42 Pa. C.S.A. § 7319(1)).

If the agreement does not specify a location for the arbitration hearing and the arbitration proceedings have not started, the applicant seeking to compel or stay arbitration should file the application in court in the county where the adverse party either:

- Resides.
- Has a place of business.

(42 Pa. C.S.A. § 7319(2)).

If the adverse party does not reside or have a place of business in Pennsylvania, the applicant may file the application in the court of any county (42 Pa. C.S.A. § 7319(2)).

DRAFTING AND FILING APPLICATIONS TO COMPEL OR STAY ARBITRATION

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

- The appropriate form of the application (see Form of Application to Compel or Stay Arbitration).
- The procedural and formatting rules relevant to case-initiating documents (see Procedural Rules for Applications to Compel and Stay Arbitration and Formatting Rules for Applications to Compel and Stay Arbitration).
- How to file and serve the documents (see Filing the Application).

Before filing any court document, counsel should always consult the applicable local court rules. This is particularly true in Pennsylvania, where local courts are delegated substantial authority regarding the form of applications to compel or stay arbitration.

FORM OF APPLICATION TO COMPEL OR STAY ARBITRATION

There are potentially four ways a party may ask a court to compel or stay arbitration:

- A petition.
- A complaint.
- A motion.
- Preliminary objections.

Although counsel should always try to use the correct form for any court filing, mistakes happen. If counsel inadvertently uses the wrong form, the court may disregard the procedural error if the error does not affect the substantial rights of the parties (see *Green Acres Rehab. and Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1272-73 (Pa. Super. Ct. 2015); Pa. R.Civ.P. No. 126).

Petitions and Complaints

Under the PUAA, an applicant seeking to stay or compel arbitration must make the request in the form of a petition where the local rule permits petitions (42 Pa. C.S.A. § 7317; see *Cid v. Erie Ins. Grp.*, 63 A.3d 787, 788 (Pa. Super. 2013)). Although Pennsylvania Rule of Civil Procedure 206.1 (governing petitions) does not list staying or compelling arbitration as a permissible use of a petition, it authorizes local courts to designate applications that may proceed by petition. If the local court in which a party seeks to compel or stay arbitration permits the use of petitions for these applications, the court's local rules will say so in Local Rule 206.1 (Pa. R.Civ.P. No. 206.1).

In jurisdictions that do not permit petitions to stay or compel arbitration, if there is not already an pending action, the party may file, in turn:

- A complaint that states whether the claims are subject to arbitration, seeking declaratory or injunctive relief as applicable.
- A motion to stay or compel arbitration in that proceeding.

(See *Adams Cty. Asphalt Co. Inc. v. Pennsy Supply Inc.*, 1989 WL 206371, at *4 (Pa. Ct. Common Pleas, Dauphin Cty., Feb. 22, 1989); *Komar v. Mack*, 2013 WL 2896329, at *1 (Pa. Ct. Common Pleas, Phila. Cty., May 24, 2013).)

In some counties, a party may file a petition when there is no action already pending. These actions are called "petition actions." If the court's local rules do not indicate whether the court permits petition actions, counsel should contact the appropriate prothonotary.

Motions and Preliminary Objections

If an action is already pending between the parties, a party seeking to compel or stay arbitration may file a motion to compel or stay, subject to the waiver doctrine (see Waiver) and 42 Pa. C.S.A. § 7317 (prescribing the form of arbitration-related applications to court) (see *Erie Ins. Exch. v. Mason*, 594 A.2d 741, 741 (Pa. Super. Ct. 1991) (referencing a motion to compel arbitration)). If the local court rules do not include a Local Rule 206.1 permitting a petition for court applications (for example, Local Rules of Civil Procedure—Venango County), a party in an action already pending may seek to compel or stay arbitration by motion.

If a plaintiff starts a lawsuit and the defendant believes the claims are subject to arbitration, the defendant may assert its right to arbitration through preliminary objections (Pa. R.Civ.P. No. 1028(a)(6)). When a party's preliminary objections argue that a dispute is subject to an arbitration clause, courts routinely treat the preliminary objections as in the nature of a motion to compel (see *Shadduck v. Christopher J. Kaclik, Inc.*, 713 A.2d 635, 636 (Pa. Super. Ct. 1998)). To ensure that the defendant does not waive its right to arbitration, the defendant should raise the right to arbitration in the preliminary objections in response to a complaint and file either a petition or motion to compel arbitration.

For more information on preliminary objections, see Practice Note, Preliminary Objections (PA) ([w-000-1493](#)).

Practitioners should note that even in counties that require petitions as the form for applications to compel or stay arbitration, the courts in that county may still refer to petitions as motions (see *Keystone Tech. Grp., Inc.*, 824 A.2d at 1224-25).

Special Rules for Consumer Credit Transactions

Pennsylvania provides special rules for compelling arbitration in a consumer credit transaction. If there is no pending civil action between the parties, a claimant in a consumer credit action files and serves a complaint like a complaint in other civil actions and includes an allegation that the claims in the complaint are subject to an agreement to arbitrate. The defendant either admits or denies that the relevant claims are subject to arbitration. If a defendant believes the claims in a complaint are subject to arbitration but the complaint does not demand arbitration, the defendant can compel arbitration by raising it in preliminary objections. (Pa. R.Civ.P. No. 1329(a)(1).)

PROCEDURAL RULES FOR APPLICATIONS TO COMPEL AND STAY ARBITRATION

Because Pennsylvania's local rules largely govern the appropriate manner in which to apply to compel or stay arbitration, any of the following procedural rules may be relevant in drafting the application:

- 42 Pa. C.S.A. § 7317 (Form and Service of Arbitration Related Applications to Court).
- 42 Pa. C.S.A. § 7304 (Court Proceedings to Compel or Stay Arbitration).
- Pa. R.Civ.P. No. 204.1-205.5 (General Filing and Formatting Rules).
- Pa. R.Civ.P. No. 206.1 (Petitions).
- Local Rule 206.1 (Petitions).
- Pa. R.Civ.P. No. 208.2-208.4 (Motions).
- Pa. R.Civ.P. No. 209 (Briefs).
- Pa. R.Civ.P. No. 1017-1034 (Pleadings).
- Pa. R.Civ.P. No. 1028 (Preliminary Objections).
- Court-specific rules (for example, Local Rules of the First Judicial District of Pennsylvania, Court of Common Pleas of Philadelphia County, Trial Division - Civil).
- Judges' individual rules.

For more information on drafting, filing, and serving papers in Pennsylvania, see Practice Notes:

- Commencing a Lawsuit: Filing and Serving the Complaint (PA) ([w-000-1236](#)).
- Commencing a Lawsuit: Drafting the Praecipe for Writ of Summons and Writ of Summons (PA) ([w-000-1397](#)).
- Filing Documents in State Court (PA) ([w-000-1323](#)).

FORMATTING RULES FOR APPLICATIONS TO COMPEL AND STAY ARBITRATION

General Formatting Rules

The state-wide Pennsylvania rules require that all legal papers filed with the court:

- Be on good quality white paper of standard size (eight and one half inches by eleven inches).
- Have margins of at least one inch on all four sides, with the first sheet leaving a three inch space on the top of the page for court stamps and filing notices.
- Have double-spaced text.
- Have lettering that is clear, legible, and no smaller than 12-point type.
- Have pages printed single sided, except that exhibits and other supporting documents may be printed double sided.
- Be firmly bound.

(Pa. R.Civ.P. No. 204.1.)

A party may indent and single-space all quotations that are more than two lines (Pa. R.Civ.P. No. 204.1).

For more information on the general formatting rules for filings in Pennsylvania state court, see Practice Note, General Formatting Rules in State Court (PA) ([w-000-1324](#)).

Formatting Rules for Petitions

To comply with state-wide formatting rules, petitions should:

- Specify the relief the petitioner seeks and the material facts related to the petition (Pa. R.Civ.P. No. 206.1(b)).
- Be comprised of numbered paragraphs, with each paragraph containing only one material allegation (Pa. R.Civ.P. No. 206.1(c)).
- Include a rule to show cause along with a proposed order (Pa. R.Civ.P. No. 206.4).
- Be signed, which certifies that:
 - the petitioner is not submitting the petition for an improper purpose;
 - the petition is based on valid law; and
 - there is evidentiary support for the facts the petition alleges and denies.
- (Pa. R.Civ.P. No. 1023.1).
- State the petitioner's attorney's name, phone number, and address for service of process (Pa. R.Civ.P. No. 1025).
- Be verified if the petition asserts facts that are not in the record (Pa. R.Civ.P. No. 206.3).

Although not specifically required by the rules, petitions also should include a case caption and a title explaining that the petition is a request to compel or stay arbitration.

Formatting Rules for Motions

To comply with state-wide formatting rules, motions should:

- Contain a caption stating the name of the court, number of the action, name of the motion, and name of the moving party (Pa. R.Civ.P. No. 208.2(a)(1)).
- Be divided into consecutively numbered paragraphs (Pa. R.Civ.P. No. 208.2(a)(2)).
- Specify the relief the movant seeks and the material facts constituting grounds for the relief (Pa. R.Civ.P. No. 208.2(a)(3)).

- Include a proposed order (Pa. R.Civ.P. No. 208.2(a)(3); Pa. R.Civ.P. No. 208.4(b)(2) (form of order on motion)).
- Include a certificate of service that states the manner of service and address for each party, including:
 - the name of the attorney of record for each represented party;
 - the party that attorney represents; and
 - a pro se designation for each unrepresented party.
- (Pa. R.Civ.P. No. 208.2(a)(4)).
- Be signed and endorsed in the same manner as for petitions (Pa. R.Civ.P. No. 208.2(a)(5)).
- Include a legal brief of supporting authority if Local Rule 208.2(c) requires it.

If the local rule calls for a brief, the formatting rules for briefs are set out in Pennsylvania Rule of Civil Procedure 210 and Local Rule 210.

A party may request oral argument on a motion or in response to a motion (Pa. R.Civ.P. No. 211). When preparing any motion in Pennsylvania courts, counsel should consult Local Rules 239.3, 210, 205.2, and 208.2.

State-wide formatting rules require preliminary objections to include all relevant bases for objection that are contained at Pennsylvania Rule of Civil Procedure 1028. The formatting rules and other requirements are set out in Local Rules 1028(c) and 205.2.

Documents to Attach

The local court rules usually state whether the court permits attachments and the form the attachments should take. At a minimum, a party seeking to compel arbitration should attach a copy of the parties' arbitration agreement if the court permits attachments. When in doubt, counsel should contact the prothonotary.

FILING THE APPLICATION

Pennsylvania Rules of Civil Procedure 205.1 through 205.4 set out the filing requirements applicable to all legal papers. Counsel should check the applicable state and local rules for any additional requirements when filing an application to compel or stay arbitration.

Electronic Filing

Although Pennsylvania has state-wide rules governing the electronic filing of documents (Pa. R.Civ.P. No. 205.4), whether a specific local court permits electronic filing is set out in Local Rule 205.4, which also describes the electronic filing system program and the practice and procedure for electronic filing.

The baseline rules for any electronic filings in Pennsylvania courts provide that:

- The documents must be in PDF format.
- Legal papers filed electronically are deemed the original document.
- Electronic filing of legal papers constitutes a certification that the filer properly signed a hard copy of the legal paper and, where applicable, verified it.

- The filing party must maintain the signed hard copy of the electronically filed document for two years after the later date of:
 - the disposition of the case;
 - the entry of an order resolving the issue raised in the filing; or
 - the disposition of an appellate court of the issue raised by the legal paper.
- A filing party is responsible for any delay, disruption, interruption of the electronic signal, and legibility of the document electronically filed, unless the failure was caused by the electronic filing system's website.
- Service by electronic transmission is complete when the filer sends a legal paper to:
 - the recipients' email address; or
 - an electronic filing system website and the system sends an email message to the recipient that the legal paper has been filed and is available on the filing website.

(Pa. R.Civ.P. No. 205.4.)

For additional information on electronic filing in Pennsylvania courts, see Practice Note, E-Filing in State Court (PA) ([w-000-1072](#)).

Traditional Paper Filing

Under the rules for traditional paper filing in Pennsylvania:

- The filer may mail to the prothonotary the required filing fee and legal papers that do not require a signature of a judge.
- The filer also may submit the papers to the prothonotary in person.

(Pa. R.Civ.P. No. 205.1 to 205.3.)

Any additional requirements for paper filings may be set out in Local Rule 205.2.

SERVING THE APPLICATION TO COMPEL OR STAY ARBITRATION

The rules for service depend on whether the application starts an action or is in a pending action. For information on serving case-initiating papers, see Practice Note, Commencing a Lawsuit: Filing and Serving the Complaint (PA) ([w-000-1236](#)).

For information on serving papers in a pending action, see Practice Note, Serving Interlocutory Documents (PA) ([w-000-1484](#)).

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 limit appeals of orders compelling arbitration (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration ([6-574-8707](#))). 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 arbitration 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 rules in Pennsylvania courts are basically the same as the FAA rules. A party may immediately appeal an order:

- Denying an application to compel arbitration.
- Granting an order to stay arbitration.

(42 Pa. C.S.A. § 7320; Pa.R.A.P. 311(a)(8); see *Midomo Co., Inc.*, 739 A.2d 180 at 184 (order appealable regardless of form of application).)

Pennsylvania appellate courts also have jurisdiction over an order staying a petition for injunctive relief pending arbitration (see *Myerowitz*, 678 A.2d at 407-08).

Although an order granting an application to compel arbitration and denying an application to stay arbitration is not immediately appealable, a party may later contest the bases for that order when appealing an order modifying, affirming, or vacating an award (42 Pa. C.S.A. § 7320; see *Patton v. Hanover Ins. Co.*, 612 A.2d 517, 519 (Pa. Super. Ct. 1992); see also Practice Note, Enforcing Arbitration Awards in Pennsylvania ([w-002-5381](#))). Additionally, the grant of a petition for injunctive relief pending arbitration is appealable (see *Myerowitz*, 678 A.2d at 407-08).

For additional information on appeals in Pennsylvania courts, see State Q&A: Initial Civil Appeals: Pennsylvania ([w-000-3058](#)) and Practice Note, Provisional Remedies: Appeals from Injunction Orders (PA) ([w-000-1552](#)).

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