Compelling and Staying Arbitration in Florida

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A Practice Note explaining how to request judicial assistance in Florida 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 Florida. ***Due to the ongoing 2019 novel coronavirus disease (COVID-19) outbreak, many court rules and procedures may be suspended or modified on a state-wide or court-by-court basis. Check Select State Court Updates: Impact of COVID-19 for the latest developments in this jurisdiction (such as court closures, trial continuances, deadline extensions, and remote appearance procedures).***

We have revised this resource to refer to the Florida Rules of General Practice and Judicial Administration (Fla. R. Gen. Prac. & Jud. Admin.), formerly known as the Florida Rules of Judicial Administration. Our editorial team is currently updating this resource's links to the Florida Rules of General Practice and Judicial Administration, which went into effect on March 1, 2021. In the meantime, you can access the Florida Rules of General Practice and Judicial Administration here.

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. 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 key issues counsel should consider when asking a Florida state court to compel or stay arbitration.

For information on compelling or staying arbitration in federal court, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts.

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 Florida state law applies to the arbitration agreement (see Determine the Applicable Law).

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 Florida 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 the courts define broadly. Even if the arbitration agreement 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); see generally *Santos v. Gen. Dynamics Aviation Servs. Corp.*, 984 So. 2d 658, 660 (Fla. DCA 4th 2008), citing *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 273-74 (1995)).

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) (noting the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable)).

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.

Florida State Law

Florida has two arbitration statutes:

- The Revised Florida Arbitration Code (RFAC), §§ 682.01 to 682.25, Fla. Stat., which governs domestic arbitration and is based on the **Revised Uniform Arbitration Act** (RUAA). The RFAC applies to all arbitration agreements, regardless of the date the parties make their agreement.

- The Florida International Commercial Arbitration Act (ICAA), §§ 684.0001 to 684.0049, Fla. Stat., which governs international arbitration and is based on the **United Nations Commission on International Trade Law (UNCITRAL)** Model Law on International Commercial Arbitration.

Because the ICAA was enacted in 2010 and there are few cases construing it, this Note does not discuss the ICAA.

For information on the RUAA and a list of states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview.

Intersection of the FAA and Florida Law

Because the FAA only preempts state law to the extent that state law contradicts federal law, the FAA does not prevent Florida state courts from, among other things, applying state contract law to determine whether the parties have entered into an arbitration agreement (see generally *Avatar Props., Inc. v. N.C.J. Inv. Co.*, 848 So. 2d 1259, 1262-63 (Fla. DCA 5th 2003)).

If an agreement falls under the FAA, Florida state courts apply the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Florida state law (see *Southland Corp. v. Keating*, 465 U.S. 1, 12-13 (1984); *AirBNB, Inc. v. Doe*, 2022 WL 969184, at *4 (Fla. Mar. 31, 2022); *Shotts v. OP Winter*

Haven, Inc., 86 So. 3d 456, 463-64 (Fla. 2011); see also Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability).

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

- Does not involve interstate commerce (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Agreements Covered by Chapter 1 of the FAA).
- Contains a choice of law provision specifying that Florida law governs the agreement and its enforcement.

An agreement to arbitrate future disputes in another jurisdiction is outside the authority of the RFAC, but if the FAA applies, a Florida court must enforce an agreement that provides for arbitration in another jurisdiction (see *AMS Staff Leasing, Inc. v. Taylor*, 158 So. 3d 682, 685-86 (Fla. DCA 4th 2015); *Default Proof Credit Card Sys., Inc. v. Friedland*, 992 So. 2d 442, 444 (Fla. DCA 3rd 2008)).

For information regarding various states' procedural rules relating to arbitration, see Practice Note, Choosing an Arbitral Seat in the US.

Threshold Issues for the Court to Decide

When deciding an application to stay or compel arbitration, the court may not rule on the merits of the claims underlying the arbitration (§ 682.03(4), Fla. Stat.). The court instead plays a gatekeeping role that is limited to determining whether:

- There is a valid agreement to arbitrate (§ 682.03(2), Fla. Stat.; see Valid Arbitration Agreement).
- The issue is arbitrable (§ 682.03(3), Fla. Stat.; see Scope of Arbitration Agreement).

The court may also need to decide other threshold issues, unless the parties' agreement delegates these issues to the arbitrator (§ 682.02, Fla. Stat.). The other issues a court may need to decide include whether:

- A party waived its right to arbitrate (see Waiver).
- The arbitration agreement violates public policy (see Public Policy).

(See *Shotts*, 86 So. 3d at 464, 471; *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 & n.2 (Fla. 1999).)

Courts leave these questions to the arbitrator if the parties' agreement:

- Expressly states that the arbitrator decides issues of arbitrability (see *Darden Restaurants, Inc. v. Ostanne*, 255 So. 3d 382, 385 (Fla. DCA 4th 2018); *Newman for Founding Partners Stable Value Fund, L.P. v. Ernst & Young, LLP*, 231 So. 3d 464, 467 (Fla. DCA 4th 2017)).

- Incorporates by reference specific institutional arbitration rules that grant this power to the arbitrator (see *AirBNB*, 2022 WL 969184, at *6; *Glasswall, LLC v. Monadnock Constr., Inc.*, 187 So. 3d 248, 251-52 (Fla. DCA 3rd 2016)).

A party may raise any of these questions as a basis for the application to compel or stay arbitration or as a defense in opposition to an application. Once the court rules on these issues, the arbitrator decides all remaining questions in the dispute.

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.

Valid Arbitration Agreement

The RFAC provides that:

- The court decides whether:
  - an agreement to arbitrate exists;
  - a specific controversy is subject to an agreement to arbitrate; and
  - an arbitration agreement is invalid or unenforceable based on general contract defenses under Florida law, such as fraud or unconscionability.
- The arbitrator decides whether:
  - the parties have satisfied a condition precedent to arbitration; and
  - the enforceability of a contract containing a valid arbitration provision.

(§ 682.02(2), (3), Fla. Stat.; see *Shotts*, 86 So. 3d at 464; *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. DCA 1st 1999).)

The court determines the validity of an arbitration agreement based on general principles of Florida contract law, including any general Florida contract defenses asserted by the opposing party, such as:

- Fraud.
- Duress.
- Unconscionability.

(*Shotts*, 86 So. 3d at 464-65; *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).)

The party opposing arbitration bears the burden of showing that the arbitration clause is invalid or unenforceable (see *Powertel*, 743 So. 2d at 574).

Scope of Arbitration Agreement

An arbitration agreement applies only to those issues the parties have agreed to arbitrate (see *Ibis Lakes Homeowners Ass'n, Inc. v. Ibis Isle Homeowners Ass'n, Inc.*, 102 So. 3d 722, 727-28 (Fla. DCA 4th 2012)). Florida courts resolve any ambiguity in favor of arbitrability (see *Seifert*, 750 So. 2d at 636; *Qubty v. Nagda*, 817 So. 2d 952, 956 (Fla. DCA 5th 2002)).

In determining the scope of an arbitration agreement, Florida courts recognize that an agreement may be:

- Narrow, meaning the parties agreed to arbitrate only claims or controversies arising out of the contract. A claim or controversy arises out of the contract if it has a direct relationship to the contract's terms and provisions.
- Broad, meaning the parties agreed to arbitrate claims or controversies that not only arise out of, but also relate to the contract. A claim or controversy relates to the contract if it has a significant relationship to the contract's terms and provisions, whether they are based on tort or contract law.

(See *Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013).)

Waiver

The court, rather than an arbitrator, presumptively decides whether a party waived its right to arbitration (see *Cassedy v. Hofmann*, 153 So. 3d 938, 942 (Fla. DCA 1st 2014)). Under Florida law, waiver is the relinquishment of a known right either:

- Voluntarily and intentionally.
- Because of conduct that implies voluntary and intentional relinquishment.

(*Raymond James Fin. Servs., Inc. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005).)

A party waives the right to arbitrate in Florida by either:

- Actively participating in court litigation (for example, by propounding discovery requests about the merits of the dispute).
- Taking action inconsistent with the right to arbitrate.

(See *SHP IV Harbour Island, LLC v. Boylan*, 273 So.3d 249, 250-51 (Fla. DCA 5th 2019); *Wilson v. Amerilife of E. Pasco, LLC*, 270 So. 3d 542, 545-46 (Fla. DCA 2nd 2019); *Fritz v. Fritz*, 219 So. 3d 234, 238 (Fla. DCA 3rd 2017); *Ibis Lakes Homeowners Ass'n*, 102 So. 3d at 731.)

Filing a motion in court to compel arbitration does not constitute waiver (see *Cox v. Village of Tequesta*, 185 So. 3d 601, 606-07 (Fla. DCA 4th 2016)). The court may also permit a party to conduct limited discovery about arbitrability without the party waiving the right to arbitrate, if the discovery does not delve into the merits of the dispute (see *SHP IV Harbour Island, LLC v. Love Mgt. Co., LLC*, 273 So. 3d 249, 251 (Fla. DCA 5th 2019)). Without some other indication of waiver, such as participating in merits discovery, a party also does not necessarily waive its right to arbitration by failing to assert the right in a timely manner. The essential waiver question is whether, under the totality of the circumstances, the party acted inconsistently with the right to arbitrate. (See *Cox*, 185 So. 3d at 607; *Ibis Lakes Homeowners Ass'n*, 102 So. 3d at 731.)

A party claiming waiver need not demonstrate that it was prejudiced by the other party's litigation conduct (see *Raymond James Fin. Servs.*, 896 So. 2d at 711).

Public Policy

The trial court, not the arbitrator, decides whether an arbitration agreement is unenforceable because it violates public policy (see *Shotts*, 86 So. 3d at 481; *Anderson v. Taylor Morrison of Florida, Inc.*, 223 So. 3d 1088, 1091 (Fla. DCA 2nd 2017)). For example, a mandatory arbitration provision in an agreement between an attorney and client is unenforceable as violative of the Florida bar rules if it does not caution the client to obtain independent legal advice about the advisability of agreeing to arbitration (see *Owens v. Corrigan*, 252 So. 3d 747, 750 (Fla. DCA 4th 2018)). An arbitration agreement may also violate Florida's public policy if it prohibits a party from obtaining meaningful relief under a statute (see *Anderson*, 223 So. 3d at 1091; *Hernandez v. Crespo*, 211 So. 3d 19, 27 (Fla. 2016)).

If the provision of the arbitration agreement that violates public policy is severable, the court may sever the offending provision and enforce the agreement (see *Rockledge NH, LLC v. Miley By and Through Miley*, 219 So. 3d 246, 248 (Fla. DCA 5th 2017)).

Arbitrability Issues for the Arbitrator to Decide

Conditions Precedent

An arbitration agreement may contain a condition precedent to the obligation to arbitrate, such as requiring the parties to negotiate or mediate before starting arbitral proceedings (see Practice Note, Hybrid, multi-tiered and carve-out dispute resolution clauses).

Under Florida law, the arbitrator decides whether the parties have satisfied any conditions precedent to arbitration (§ 682.02(3), Fla. Stat.; see *Cooper v. Fine*, 705 So. 2d 131, 131 (Fla. DCA 4th 1998)).

Statute of Limitations

The arbitrator decides the timeliness of an arbitral claim under the applicable statute of limitations (see *O'Keefe Architects, Inc. v. CED Constr. Partners, Ltd.*, 944 So. 2d 181, 183 (Fla. 2006); *Fed. Contracting, Inc. v. Bimini Shipping, LLC*, 128 So. 3d 904, 905 (Fla. DCA 3rd 2013)).

Considerations When Preparing the Application

Before making an application to compel or stay arbitration in Florida state court, counsel should consider several factors.

Considerations When Seeking to Compel Arbitration

A party may ask a court to compel arbitration if the opposing party commences a lawsuit or otherwise expresses the intention to avoid arbitration of a dispute that is subject to a valid arbitration agreement. Whether there is a lawsuit pending between the parties, the party seeking arbitration files a petition to compel arbitration, which the court hears as a motion. (§§ 682.03(1), Fla. Stat.) If there is no lawsuit pending between the parties, the petition is an initial petition, which starts the action and which the petitioner serves in the same way a party serves a summons. (§ 682.015(2), Fla. Stat.)

Although the RFAC styles the application a petition, the statute also refers to it as a motion (for example, § 682.03(1), Fla. Stat. (governing proceedings to compel and stay arbitration "[o]n motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement")).

A party seeking to compel arbitration must establish the existence of a valid agreement to arbitrate (see *Palm Garden of Healthcare Holdings, LLC v. Haydu*, 209 So. 3d 636, 638-39 (Fla. DCA 5th 2017); *Steve Owren, Inc. v. Connolly*, 877 So. 2d 918, 920 (Fla. DCA 4th 2004)). If there is no lawsuit pending, the party seeking to compel arbitration also must determine the proper court in which to file the petition. If no arbitration-related lawsuit is pending between the parties, the party files an initial petition in any proper **venue** under the RFAC (§ 682.15(2), Fla. Stat.; see Venue).

If there is a lawsuit pending between the parties, the court must stay the pending litigation:

- When a party moves to compel arbitration, pending the court's disposition of the motion to compel (§ 682.03(6), Fla. Stat.).
- If the court grants the motion to compel arbitration (§ 682.03(7), Fla. Stat.).

If the arbitrable claims are severable, the court may sever and stay the court proceedings of only the arbitrable claims (§ 682.03(7), Fla. Stat.).

Considerations When Seeking to Stay Arbitration

A party may only ask a court to stay arbitration if an arbitration claimant threatens or demands arbitration against a party not bound to arbitrate the dispute. The party resisting arbitration makes the request to stay the arbitration by filing a petition, which the court hears as a motion (§§ 682.03(2) and 682.015, Fla. Stat.). The petitioner files the petition in either:

- The proper venue under the RFAC, if there is no arbitration-related lawsuit already pending between the parties (see Venue).

- A pending lawsuit, if there is an arbitration-related lawsuit pending between the parties.

(§§ 682.03(5) and 682.15(2), Fla. Stat.)

If the court concludes that the arbitration agreement is valid and enforceable when ruling on a petition to stay arbitration, the court must order the parties to arbitrate, even if no party filed a petition to compel arbitration (§§ 682.03(3), Fla. Stat.).

Considerations When Seeking Provisional Remedies

A party seeking to compel arbitration should consider whether to ask the court for a provisional remedy, such as:

- A **temporary restraining order** or **preliminary injunction** (Fla. R. Civ. P. 1.610).
- Appointment of a **receiver** (Fla. R. Civ. P. 1.620).

Under the RFAC, before the appointment of an arbitrator, the court may order provisional remedies to protect the effectiveness of the arbitration proceeding (§ 682.031(1), Fla. Stat.).

After appointment of the arbitrator, only the arbitrator may provide provisional remedies in aid of arbitration unless the matter is urgent and the arbitrator cannot either:

- Act timely.
- Provide an adequate remedy.

(§ 682.031(2), Fla. Stat.; see *Sea Vault Ptrs., LLC v. Barmello, Ajamil & Ptrs., Inc.*, 274 So. 3d 473, 477 (Fla. DCA 3rd 2019).)

The court provides a provisional remedy in aid of arbitration to the same extent and under the same conditions a court may provide provisional remedies in a civil action (§ 682.031(1), Fla. Stat.).

A party does not waive the right to arbitration by seeking provisional remedies in Florida state court (§ 682.031(3), Fla. Stat.).

For more information on seeking injunctive relief in Florida, see Practice Note, Temporary Injunctions: Initial Considerations (FL). For more information on seeking interim relief in aid of arbitration generally, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration: Seeking Interim Relief Before Courts and Arbitrators.

Additional Procedural Considerations

Before starting a litigation related to an arbitrable dispute in a Florida state court, counsel should 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** over the case and **personal jurisdiction** over the respondent (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).
- The proper time to bring the request (see Timing).

Court Jurisdiction

Before filing a petition to compel or stay arbitration, petitioner's counsel should confirm the court has subject matter jurisdiction over the petition and personal jurisdiction over the parties. Under the RFAC, Florida courts have jurisdiction over a petition to compel or stay arbitration if the court has jurisdiction over the underlying dispute (§ 682.181(1), Fla. Stat.).

Florida has two trial level courts with subject matter jurisdiction depending on the amount in controversy:

- County courts, which are in each of Florida's 67 counties and have jurisdiction to hear civil actions where the amount in controversy, exclusive of interest, costs, and attorneys' fees, does not exceed the sum of $30,000 (§ 34.01(1), Fla. Stat.).
- Circuit courts, which are assigned to each of Florida's 20 judicial circuits and have jurisdiction to hear all actions outside of the county courts' subject matter jurisdiction, including:
    - actions in which the amount in controversy is greater than $15,000, exclusive of interest, costs, and attorney's fees;
    - actions involving the title and boundaries of real property;
    - declaratory actions; and
    - actions for injunctions.

    (§ 26.012(2), (3), Fla. Stat.; see also *Rappa v. Island Club West Dev., Inc.*, 890 So. 2d 477, 479-80 (Fla. DCA 5th 2004) (on motion to compel arbitration, bare allegation of amount in controversy exceeding $15,000 insufficient to confer subject matter jurisdiction on circuit court).)

Proper bases of personal jurisdiction in Florida include:

- General jurisdiction, which means the party's contacts with Florida are so continuous and systematic that they render the party essentially at home in Florida (§ 48.193(2), Fla. Stat.; see *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

- Specific jurisdiction under Florida's long arm statute, which is proper only when the cause of action arises from the party's contacts with Florida (§ 48.193(1)(a), Fla. Stat.; see *Teva Pharm. Indus. v. Ruiz*, 181 So. 3d 513, 516 (Fla. DCA 2nd 2015)).

(See *Wadley v. Nazelli*, 223 So.3d 1118, 1121 (Fla. DCA 3rd 2017.)

For more information on the Florida court system, see State Q&A, Litigation Overview: Florida: State Courts.

Venue

Under the RFAC, if a court proceeding is pending between the parties involving an arbitrable claim, a party seeking to compel or stay arbitration must file the petition in that court (§ 682.19, Fla. Stat.). Otherwise, a party seeking to compel or stay arbitration must file an initial petition in the court of the county where:

- The arbitration agreement specifies the arbitration hearing must occur.
- The arbitration hearing, if any, is occurring.
- The adverse party either:
  - resides; or
  - has a place of business.

(§ 682.19, Fla. Stat.)

If the adverse party has no residence or place of business in Florida, the moving party may file the petition in any Florida court (§ 682.19, Fla. Stat.).

The parties' agreement also may specify the venue for arbitration-related court proceedings. Forum selection clauses are presumptively valid under Florida law. (See *Corsec, S.L. v. VMC Int'l Franchising, LLC*, 909 So. 2d 945, 947 (Fla. DCA 3rd 2005).)

Timing

The RFAC does not provide a deadline by which a party must petition the court to compel or stay arbitration. A party should seek to compel arbitration as soon as practicable, however, to avoid the risk of waiving the right to arbitrate (see Waiver).

Application to Compel or Stay Arbitration

Florida courts have one form of action, called a civil action (Fla. R. Civ. P. 1.040). If no civil action is pending between the parties, a party seeking to compel or stay arbitration starts a civil action by filing an initial petition in the proper court and serving it on the other party in the same way a party serves a summons in a civil action (§ 682.015(2), Fla. Stat.). The court hears the petition in the same manner as a motion (§ 682.015(1), Fla. Stat.).

When seeking to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules for case-initiating documents (see Procedural and Formatting Rules).
- The documents necessary to bring the application to compel or stay arbitration (see Documents Required for the Petition).
- The methods for filing and serving the documents (see Filing the Petition and Serving the Petition).

Procedural and Formatting Rules

Counsel should be familiar with applicable procedural and formatting rules for Florida state courts. Counsel also should check the local circuit court websites for additional information and guidance on procedural and formatting rules for each.

Procedural Rules

The procedural rules for filing a petition and case-initiating papers in Florida courts include:

- The Florida Rules of Civil Procedure, especially:
  - Fla. R. Civ. P. 1.070 (**process**);
  - Fla. R. Civ. P. 1.080 (service of filings and pleadings); and
  - Fla. R. Civ. P. 1.100 (form of pleadings and motions).
- Local rules (for example, the 17th Judicial Circuit Complex Business Division (07) Procedures; see the Florida Courts website for links to all 20 circuit courts).
- Judges' individual rules.

Citations must conform to the Uniform Citation System for Florida Courts set out in the Florida Rules of Appellate Procedure (Fla. R. App. P. 9.800).

Formatting Rules

Whether a party serves and files manually or electronically, all documents a party serves or files in the circuit court must:

- Be prepared on or capable of being printed on 8.5 by 11-inch paper (Fla. R. Gen. Prac. & Jud. Admin. 2.520(b)).
- Have one-inch margins on all sides (Fla. R. Gen. Prac. & Jud. Admin. 2.520(d)(2)).
- Be legibly typewritten or printed (Fla. R. Gen. Prac. & Jud. Admin. 2.520(b)).
- Have consecutively numbered pages (Fla. R. Gen. Prac. & Jud. Admin. 2.520(b)).

Although not required by any statewide rules, attorneys also generally:

- Prepare documents using black Times New Roman 12-point font.
- Double-space text in the body of a document and single-space any:
    - titles;
    - headings;
    - block quotes;
    - footnotes;
    - lists;
    - text within charts; and
    - names and addresses of the attorneys appearing in the case (for example, signature blocks or service lists).

For more information on the formatting requirements for documents filed in Florida circuit courts, see Practice Note, General Formatting Rules in Circuit Court (FL).

Documents Required for the Petition

The RFAC does not identify any specific documents counsel must include with a petition to compel or stay arbitration. The court hears a petition to compel or stay arbitration as a motion (§ 682.015, Fla. Stat.). Florida courts generally require a motion to include an explanation of the movant's points and authorities, but some courts either require or allow counsel to submit a separate memorandum of law (see, for example, FL ST 9 J CIR ORANGE CIV SECTION 5). Counsel should consult the applicable court rules for guidance on the court's preference.

The documents required for a petition to compel or stay arbitration may include:

- The petition, which may include points and authorities.
- A memorandum of law in support of an initial petition, if the court requires or permits it.
- Any accompanying affidavits or exhibits, such as a copy of the parties' arbitration agreement.

For more information about motion practice in the Florida courts, see Practice Note, Motion Practice: Drafting the Motion Papers (FL).

Filing the Petition

Electronic Filing

All Florida circuit courts require electronic filing and service (Fla. R. Gen. Prac. & Jud. Admin. 2.520(a)). Counsel may register for electronic filing using the Florida Courts E-Filing Portal. ***Pro se*** parties may, but are not required to, file documents electronically (see *In re Amendments to Florida Rules of Civil Procedure*, 102 So. 3d 451, 462 (Fla. 2012)).

The ePortal supports Word and **PDF** and **PDF-A** formats (see FAQS for Filers, available at Florida Courts E-Filing Portal Frequently Asked Questions). Submissions using the ePortal must be in a format capable of being electronically searched and printed (see Portal Document Submission Standards, available at Florida Courts E-Filing Authority, Resources: Training Materials and Manuals).

Documents (including exhibits) may not exceed 50 megabytes (Fla. R. Gen. Prac. & Jud. Admin. 2.525(d)).

Counsel must sign the e-filed petition either with a handwritten signature or an electronic signature indicator in the form of "/s/, "s/," or "/s" [NAME] (Fla. R. Gen. Prac. & Jud. Admin. 2.515(c)). The signature block must contain the attorney's:

- Name.
- Address.
- Telephone number.
- Email address.
- Florida Bar number (or notice that counsel is admitted ***pro hac vice***).

(Fla. R. Gen. Prac. & Jud. Admin. 2.515(a).)

For more information about electronically filing a new case, see Practice Note, E-Filing in State Court (FL): Filing a New Case.

Traditional Paper Filing

A party may manually submit documents to the court if:

- The party is self-represented, although self-represented parties may register with the ePortal for e-filing access.
- The court has excused an attorney from the requirement of email service.
- The party is submitting evidentiary exhibits or filing non-documentary materials.
- The filing exceeds 50 megabytes, in which case counsel may file documents using a CD-ROM, flash drive, or similar storage device.
- The judge accepts the filing in open court.
- The local court rules permit paper filing.
- The clerk does not have the ability to accept and retain electronic filings or has not had electronic filing procedures approved by the supreme court.
- The court determines justice so requires.

(Fla. R. Gen. Prac. & Jud. Admin. 2.525(d).)

Counsel should consult the local court rules to determine whether the court accepts paper filings.

For more information on filing and serving case-initiating documents in Florida courts, see Practice Note, Commencing a Lawsuit: Filing and Serving the Complaint (FL).

Serving the Petition

Unless there is already a civil action involving the arbitration agreement pending, a party seeking to compel or stay arbitration serves notice of the initial petition in the same manner provided by the rules for the service of a summons in a civil action (§ 682.015(2), Fla. Stat.; Fla. R. Civ. P. 1.070 (governing service of process in a civil action)).

A party moving to compel or stay arbitration in a pending civil action serves the petition in the manner provided by the rules for serving motions in civil actions (§ 682.015, Fla. Stat.; Fla. R. Civ. P. 1.070, and Fla. R. Gen. Prac. & Jud. Admin. 2.516 (governing service of motions)). The petitioner may serve the other parties by:

- Email.
- Electronic filing.

- Personal service.

(Fla. R. Gen. Prac. & Jud. Admin. 2.516(b).)

The petitioner must file the petition before or immediately after serving it (Fla. R. Gen. Prac. & Jud. Admin. 2.516(d)).

Discovery When Seeking to Compel or Stay Arbitration

The RFAC does not address the availability of discovery in aid of judicial proceedings to compel or stay arbitration. Given courts' limited role on a motion to compel or stay arbitration (see Threshold Issues for the Court to Decide) and the risk of waiver if a party engages in extensive court litigation (see Waiver), a party interested in obtaining discovery when seeking to compel or stay arbitration should limit the request to discovery necessary to establish the threshold issues of:

- The agreement's validity and scope.
- Waiver.

Appealing an Order to Compel or Stay Arbitration

In federal court, 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 FAA governed arbitration (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration)). Under the FAA, 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)).

In Florida courts, unlike in federal court, an order determining a party's entitlement to arbitration is a nonfinal appealable order. A party may therefore appeal to the district court of appeal any order that either grants or denies a petition to:

- Compel arbitration.
- Stay arbitration.

(Fla. R. App. P. 9.130(a)(3)(C)(iv).)

If a party moves to dismiss a lawsuit based on the existence of an arbitration clause without also moving to compel arbitration, the court's order denying the motion to dismiss is not appealable (see *Gomez v. S & I Props., LLC*, 220 So. 3d 539, 541-42

(Fla. DCA 3rd 2017) (appellate court lacked jurisdiction to review denial of motion to dismiss; order did not necessarily determine a party's entitlement to arbitration)).

The federal statutes related to appealing orders compelling or staying arbitration do not preempt Florida 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.
- The Florida rules on appealability do not invalidate arbitration agreements or make enforcing arbitration agreements more difficult (see *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011); *McKenzie Check Advance of Florida, LLC v. Betts*, 112 So. 3d 1176, 1183-84 (Fla. 2013)).

