

# Compelling and Staying Arbitration in Alaska

MATTHEW K. PETERSON, CLAPP PETERSON TIEMESSEN THORSNESS & JOHNSON, LLC,  
WITH PRACTICAL LAW ARBITRATION

Search the [Resource ID numbers in blue](#) on Westlaw for more.

A Practice Note explaining how to request judicial assistance in Alaska state court to compel or stay arbitration. This Note describes the primary 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 Alaska.

## SCOPE OF THIS NOTE

When a party wishes to arbitrate and the other party refuses to arbitrate in the face of an agreement to arbitrate, the first party may make an application to an Alaska court to compel arbitration. 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 Alaska, including arbitrability.

For information on compelling or staying arbitration in federal courts, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts ([6-574-8707](#)). For information on enforcing arbitration awards in Alaska, see Practice Note, Enforcing Arbitration Awards in Alaska ([W-020-5517](#)).

## 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 Alaska 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 Issues for the 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 (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 Alaska arbitration law.

### The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to:
  - a commercial transaction; or
  - a maritime matter.
- States the parties' agreement to arbitrate a dispute.

(9 U.S.C. § 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving "commerce," a term the courts define broadly as an exercise of Congress's interstate commerce powers to their fullest extent (see *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281 (1995)). Parties may, however, 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); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989) (noting there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability of private arbitration agreements)). Where the FAA governs an arbitration agreement, Alaska courts apply the FAA in state court proceedings (see *Gibson v. Nye Frontier Ford, Inc.*, 205 P.3d 1091, 1095 (Alaska 2009)).

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](#)).

### Alaska Arbitration Law

Arbitration in Alaska is governed by the Alaska Revised Uniform Arbitration Act (ARUAA) (Alaska Stat. Ann. §§ 09.43.300 to 09.43.595), which mirrors the FAA (see *McAlpine v. Priddle*, 321 P.3d 345, 349-50 (Alaska 2014); *Lexington Mktg. Grp., Inc. v. Goldbelt Eagle, LLC*, 157 P.3d 470, 473 (Alaska 2007)). The ARUAA applies to arbitration agreements made on or after January 1, 2005 (Alaska Stat. Ann. § 09.43.300(a)).

The ARUAA reflects Alaska's public policy favoring arbitration (see *Dep't of Pub. Safety v. Pub. Safety Emps. Ass'n*, 732 P.2d 1090 (Alaska 1987); *City of Fairbanks Mun. Util. Sys. v. Lees*, 705 P.2d 457 (Alaska 1985); *Modern Constr., Inc. v. Barce, Inc.*, 556 P.2d 528, 529 (Alaska 1976)).

The ARUAA is based on the Revised Uniform Arbitration Act (RUAA), adopted by the Alaska legislature in 2007. In construing and applying the ARUAA, courts must consider cases from other states that adopted the RUAA to promote uniformity of the law across the country (Alaska Stat. Ann. § 09.43.560).

For more information on the RUAA and a list of states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview ([W-004-5167](#)).

### INTERSECTION OF THE FAA AND ALASKA LAW

Alaska arbitration law closely follows federal arbitration law (see *Lexington Mktg. Grp.*, 157 P.3d at 473). The FAA may apply in both state and federal courts (see *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984); *Lexington Mktg. Grp.*, 157 P.3d at 472).

If an 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.*, 489 U.S. at 477; see also *Gibson*, 205 P.3d at 1096 n.15).

If both federal and Alaska law govern an arbitration agreement, for example, where the agreement contains an Alaska choice of law provision but also relates to interstate commerce, the Alaska courts apply:

- The ARUAA, unless it is inconsistent with the FAA's policy of favoring enforcement of arbitration agreements (see *Volt Info. Scis.*, 489 U.S. at 479; *Gibson*, 205 P.3d at 1096).
- Alaska court rules under the ARUAA (Alaska Stat. Ann. § 09.43.320).
- Alaska contract law in determining whether the parties have a valid arbitration agreement (see *Gibson*, 205 P.3d at 1096).

If an agreement falls under the FAA, the Alaska state court applies the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under Alaska state law (see *Southland Corp.*, 465 U.S. at 12-13; see also Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability ([6-574-8707](#))).

For a discussion of various states' procedural rules relating to arbitration, see Practice Note, Choosing an Arbitral Seat in the US ([1-501-0913](#)).

### THRESHOLD ISSUES FOR THE COURT TO DECIDE

When deciding an application to stay or compel arbitration, the court may not rule on either:

- The merits of the claims underlying the arbitration (Alaska Stat. Ann. § 09.43.340(d)).
- The validity of the underlying contract containing the arbitration clause (see *Lexington Mktg. Grp.*, 157 P.3d at 475-76).

Instead, the court plays a gatekeeping role that is limited to determining the arbitrability of the dispute, specifically whether:

- There is a valid arbitration agreement (see Valid Arbitration Agreement).
- The arbitration agreement covers the dispute (see Scope of Arbitration Agreement).

(Alaska Stat. Ann. § 09.43.330(c); see *Classified Emps. Ass'n v. Matanuska-Susitna Borough Sch. Dist.*, 204 P.3d 347, 353 (Alaska 2009); *Lexington Mktg. Grp.*, 157 P.3d at 475-76.)

The court decides the arbitrability of a claim unless the parties clearly and unmistakably delegate the arbitrability determination to the arbitrator, for example by:

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

(See, *SMJ Gen. Constr., Inc. v. Jet Commercial Constr., LLC*, 440 P.3d 210, 214 (Alaska 2019); *Classified Emps. Ass'n*, 204 P.3d at 353; *State v. Pub. Safety Emps. Ass'n*, 798 P.2d 1281, 1285 (Alaska 1990).)

A party may raise the validity and scope of an arbitration agreement as a basis for the application to compel or stay arbitration, or as a defense in an opposition to an application. The court must summarily rule on the application (Alaska Stat. Ann. § 09.43.340(a)(2)). Once the court has ruled on these issues, all remaining questions in the dispute are for the arbitrator to decide (see *Hudson v. Citibank (South Dakota) NA*, 387 P.3d 42, 53 (Alaska 2016)).

For more information on the delegation of arbitrability issues, see Practice Note, Arbitrability Issues in US Arbitration: Determination by a Court or Arbitrator ([W-005-0556](#)).

## VALID ARBITRATION AGREEMENT

An Alaska court deciding an application to compel arbitration must determine whether there is a valid, enforceable arbitration agreement. The court summarily decides the issue and orders the parties to arbitrate unless it finds there is no enforceable arbitration agreement (Alaska Stat. Ann. §§ 09.43.330(c), 09.43.340(a).)

The existence of a valid arbitration agreement is a question of law for the court to decide by applying Alaska contract law to determine whether there are grounds at law or equity for revocation of a contract (Alaska Stat. Ann. § 09.43.330(a); *Lexington Mktg. Grp.*, 157 P.3d at 473). Unless the court finds grounds for revocation, the court must find the parties' arbitration agreement valid and order the parties to arbitrate (Alaska Stat. Ann. § 09.43.340(a)). The court resolves doubts about an ambiguous arbitration agreement in favor of arbitration (see *Classified Emps. Ass'n*, 204 P.3d at 353). When determining the validity of an arbitration agreement, the court does not consider the validity of the contract containing the arbitration agreement (see *Lexington Mktg. Grp.*, 157 P.3d at 475-77).

## WAIVER

In determining the existence and validity of an arbitration agreement, the court may also determine whether the party seeking arbitration waived its right to arbitrate. Under Alaska law, the issue of whether a party's litigation conduct constitutes a waiver of the right to arbitrate is an issue involving the party's compliance with the arbitration agreement, rather than a ground for the revocation of the agreement. Therefore, where the FAA governs the agreement, Alaska courts:

- Do not consider a party's waiver by litigation conduct as an issue involving state law under the FAA's savings clause (9 U.S.C. § 2).
- Apply federal law under the default clause of the FAA (9 U.S.C. § 3) to determine if a party waived the right to arbitrate by engaging in litigation.

(See *Hudson*, 387 P.3d at 47.)

The general factors the court considers when applying federal law to determine whether a party waived the right to arbitrate are:

- The party's knowledge of the right to compel arbitration.
- The party's actions that are inconsistent with the right to arbitrate.
- Any prejudice to the opposing party because of the waiving party's actions.

(See *Hudson*, 387 P.3d at 48.)

The factors the court considers when applying Alaska law to determine whether a party waived the right to arbitrate are similar to the factors under federal law (see *Hudson*, 387 P.3d at 48). Because Alaska law favors arbitration, the courts do not lightly infer waiver of the right to arbitrate (see *Blood v. Kenneth Murray Ins., Inc.*, 68 P.3d 1251, 1255 (Alaska 2003)). Under Alaska law, a party's waiver of the right to arbitrate must:

- Be clear and unambiguous.
- Arise from conduct that:
  - shows the party's intentional relinquishment of a known right;
  - is inconsistent with any other intention than waiver; or
  - results in prejudice to the other party.

(See *Blood*, 68 P.3d at 1255; *Powers v. United Servs. Auto. Ass'n*, 6 P.3d 294, 299 (Alaska 2000); *Airoulofski v. State*, 922 P.2d 889, 894 (Alaska 1996).)

A party does not waive its right to arbitrate by bringing a non-arbitrable claim in court and failing to plead the right to arbitrate a separate arbitrable claim (see *Hudson*, 387 P.3d at 52).

## SCOPE OF ARBITRATION AGREEMENT

If the parties have a valid arbitration agreement, the court deciding an application to compel or stay arbitration determines whether the parties' dispute is covered by the terms of the arbitration agreement (see *Lexington Mktg. Grp.*, 157 P.3d at 475). The court may not order parties to arbitrate a dispute they did not agree to arbitrate (see *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986)). If there are no plausible or reasonably arguable grounds for the court to find the dispute covered by the parties' agreement, the court may not order arbitration (see *Classified Emps. Ass'n*, 204 P.3d at 353.).

## CONSIDERATIONS WHEN PREPARING THE APPLICATION

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

### CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

A party may ask the court to compel arbitration when the opposing party starts a lawsuit or otherwise expresses the intention to avoid arbitration of a dispute even though the dispute is subject to a valid arbitration agreement (Alaska Stat. Ann. § 09.43.340(a)(2)).

If there is no lawsuit pending, the party seeking arbitration files an initial application in any court of proper venue (see Venue) asking a court to compel the other party to arbitrate the dispute. If there is already a lawsuit pending between the parties, for example because the other party started a lawsuit over the arbitrable dispute, the party seeking to compel arbitration makes the motion in the pending litigation. (Alaska Stat. Ann. § 09.43.340(e).)

The court must order the parties to arbitrate if the party refusing to arbitrate either:

- Fails to appear.
- Does not oppose the motion to compel arbitration.

(Alaska Stat. Ann. § 09.43.340(a)(1).)

If there is a court action already pending between the parties, the party seeking arbitration may also move to stay the court proceeding. Under the AUAA, the court must stay any pending litigation between the parties on just terms:

- Until the court decides the motion to compel arbitration (Alaska Stat. Ann. § 09.43.340(f)).
- If the court orders arbitration of the parties' dispute (Alaska Stat. Ann. § 09.43.340(g)).

If the court finds the arbitrable claims are severable, the court may sever and stay litigation of the non-arbitrable claims and order arbitration of the arbitrable claims (Alaska Stat. Ann. § 09.43.340(g)).

### CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

If an arbitration claimant threatens or demands arbitration against a party not bound to arbitrate the dispute, the party may ask a court to stay arbitration (Alaska Stat. Ann. § 09.43.340(b)).

If there is no lawsuit pending, the party resisting arbitration files an initial application in any court of proper venue (see Venue). If there is a lawsuit already pending between the parties, the party opposing arbitration files the motion in that case. (Alaska Stat. Ann. § 09.43.340(e).)

The court must decide the issue in a summary proceeding and may not order arbitration unless it finds there is an enforceable arbitration agreement covering the dispute (Alaska Stat. Ann. § 09.43.340(b), (c)). If the court determining an application to stay arbitration finds a valid arbitration agreement covers the dispute, the court must order the parties to arbitration, even though no party moved to compel arbitration (Alaska Stat. Ann. § 09.43.340(b)).

### CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Along with a request to compel arbitration, a party may seek provisional remedies (Alaska Stat. Ann. § 09.43.350). Under the AUAA, a court may grant a party's motion for provisional remedies to protect the effectiveness of the arbitral proceeding. The court may grant provisional remedies:

- Before an arbitrator is appointed and is authorized and able to act.
- To the same extent and under the same conditions as if the dispute were the subject of a civil action.

(Alaska Stat. Ann. § 09.43.350(a).)

The provisional remedies a party may seek from the court include:

- An injunction, such as:
  - a temporary restraining order (TRO); and
  - a preliminary injunction.
- (Ak. R. Civ. P. 65.)
- An order of attachment (Ak. R. Civ. P. 89).

After the appointment of an arbitrator:

- The arbitrator may consider a request for provisional remedies (Alaska Stat. Ann. § 09.43.350(b)(1)).
- The court may consider a request for provisional remedies if:
  - the arbitrator is unavailable; and
  - the matter is urgent.

(Alaska Stat. Ann. § 09.43.350(b)(2).)

Moving for provisional remedies in court under the AUAA does not waive a party's right to arbitrate (Alaska Stat. Ann. § 09.43.350(c)).

For more information on seeking interim relief in aid of arbitration, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration: Seeking Interim Relief Before Courts and Arbitrators ([0-587-9225](https://www.thomsonreuters.com/us/arbitration/interim-provisional-and-conservatory-measures-in-us-arbitration-seeking-interim-relief-before-courts-and-arbitrators)).

### ADDITIONAL PROCEDURAL CONSIDERATIONS

Before commencing a litigation related to an arbitrable dispute in an Alaska 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 over the dispute and personal jurisdiction over the other party (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).
- Whether to seek discovery (see Discovery When Seeking to Compel or Stay Arbitration).

### Court Jurisdiction

Any Alaska court with jurisdiction over the dispute has jurisdiction to enforce an agreement to arbitrate the dispute (Alaska Stat. Ann. § 09.43.530(a)). In Alaska, the Superior Court is the trial court of general jurisdiction (Alaska Stat. Ann. § 22.10.020).

Proper bases of personal jurisdiction in Alaska include:

- Consent, for example if the parties' agreement contains an Alaska forum selection provision (Alaska Stat. Ann. § 09.05.010; see *Kenai Peninsula Borough v. English Bay Vill. Corp.*, 781 P.2d 6, 8–9 (Alaska 1989)).
- General jurisdiction, meaning the court may exercise jurisdiction over a non-resident party if the party has such continuous and systematic contacts with Alaska that the party is essentially at home in Alaska (see *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *Harper v. BioLife Energy Sys., Inc.*, 426 P.3d 1067, 1073 (Alaska 2018)).
- Specific jurisdiction, meaning the court may exercise jurisdiction over a non-resident party under Alaska's long arm statute, when the claim arises out of the party's Alaska-related activities (see *Daimler*, 571 U.S. at 127–28; *Harper*, 426 P.3d at 1075–74; Alaska Stat. Ann. § 09.05.015).

To avoid waiver, a party challenging personal jurisdiction must raise it as a defense in a responsive pleading or by motion (Ak. R. Civ. P. 12(h); see *Morrow v. New Moon Homes, Inc.*, 548 P.2d 279, 294 (Alaska 1976)).

### Venue

Under the AUAA, if a proceeding is pending in court between the parties involving an arbitrable claim, a party seeking to compel or stay arbitration must make the application in that court (Alaska Stat. Ann. § 09.43.340(e)). Otherwise, a party seeking to compel or stay arbitration must make the application:

- In the superior court of the county where:
  - the arbitration agreement specifies the arbitration hearing is to be held; or
  - the arbitration hearing, if any, is occurring.
- If no hearing has occurred and the agreement does not specify a hearing locale:
  - in the superior court of the county where the adverse party either resides or has a place of business; or
  - if the adverse party has no residence or place of business in Alaska, in the superior court of any Alaska county.

(Alaska Stat. Ann. § 09.43.540.)

## DISCOVERY WHEN SEEKING TO COMPEL OR STAY ARBITRATION

The ARUAA does not provide for discovery. If a party seeks to compel or stay arbitration, the party should limit any discovery requests to the matters the court must decide on the application about the existence, validity, and scope of the arbitration agreement (Alaska Stat. Ann. § 09.43.340(a), (b); see Threshold Issues for the Court to Decide). A party should avoid seeking discovery about the underlying dispute, which is a matter the court may not consider on an application to compel or stay arbitration (Alaska Stat. Ann. § 09.43.340(d)).

## APPLICATION TO COMPEL OR STAY ARBITRATION

The AUAA refers to an “application” to compel or stay arbitration (Alaska Stat. Ann. § 09.43.340). The statute requires applications to comply with the rules of court but does not specify the form of pleading (Alaska Stat. Ann. § 09.43.320). Generally, a party may apply for judicial relief under the AUAA by either:

- Filing and serving a summons and complaint if there is no court action already pending between the parties (Ak. R. Civ. P. 3, 4).
- Filing and serving a motion in an action that is already pending between the parties (Ak. R. Civ. P. 77).

(Alaska Stat. Ann. § 09.43.340(e).)

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

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

## PROCEDURAL AND FORMATTING RULES FOR THE APPLICATION

Counsel should be familiar with applicable procedure and formatting rules for applications in the Alaska courts. Counsel should also check the relevant court websites for additional information and guidance on procedural and formatting rules.

### Procedural Rules

Alaska’s procedural rules governing initial applications and motions to compel or stay arbitration include:

- The AUAA, specifically:
  - Alaska Stat. Ann. § 09.43.320 (applications for judicial relief);
  - Alaska Stat. Ann. § 09.43.340 (applications to compel arbitration and stay of related proceedings); and
  - Alaska Stat. Ann. § 09.43.350 (provisional remedies).
- The Alaska Rules of Civil Procedure, specifically:
  - Ak. R. Civ. P. 3 (commencement of action and venue);
  - Ak. R. Civ. P. 4 (process);
  - Ak. R. Civ. P. 5 (service and filing);
  - Ak. R. Civ. P. 5.1 (filing and service by fax and email);
  - Ak. R. Civ. P. 7 (pleadings);
  - Ak. R. Civ. P. 8 (general rules for pleadings);

- Ak. R. Civ. P. 10 (form of pleadings);
- Ak. R. Civ. P. 11 (signing pleadings);
- Ak. R. Civ. P. 12 (defenses and objections); and
- Ak. R. Civ. P. 77 (motions).

### Formatting Rules

Alaska Rule of Civil Procedure 76 sets out the technical requirements for court filings, including applications to compel or stay arbitration in Alaska state court. The papers generally must:

- Be typed or printed double-spaced in at least 12-point font on paper that is:
  - 8-1/2 by 11 inches;
  - opaque;
  - unglazed;
  - white;
  - of good quality;
  - at least sixteen-pound weight;
  - stapled if more than one page; and
  - two-hole punched at the top center of each page.
- (Ak. R. Civ. P. 76(a).)
- Set out at the top left side of the first page the contact information of the filing attorney or pro se party, as applicable, including the filer’s:
  - name;
  - address;
  - email address; and
  - telephone number.
- (Ak. R. Civ. P. 76(d)(1).)
- Include a caption with:
  - the title of the court and city in which the court is located, centered at the top of the page;
  - the title of the action (listing the names of the parties) on the left side of the page, below the court title and city;
  - the case number or a space for the clerk to insert the case number, below the title of the action; and
  - the document name (for example, Motion to Compel Arbitration), centered below the title of the action.
- (Ak. R. Civ. P. 76(d)(2).)

Counsel should check the local court rules for any additional formatting requirements.

## DOCUMENTS REQUIRED FOR THE APPLICATION

Because the AUAA requires the court to determine an application to compel or stay arbitration as a summary proceeding (Alaska Stat. Ann. § 09.43.340), the applicant should submit any supporting documentary evidence with the application.

Generally, a party seeking to:

- Compel arbitration should submit:
  - a copy of the parties’ arbitration agreement; and
  - evidence by affidavit or documentary evidence showing the opposing party’s refusal to arbitrate under the agreement.

- (Alaska Stat. Ann. § 09.43.340(a))
- Stay arbitration should submit evidence by affidavit or documentary evidence showing:
  - the existence or threat of an arbitration proceeding by the other party; and
  - that the parties do not have an agreement to arbitrate the dispute.
- (Alaska Stat. Ann. § 09.43.340(b).)

### FILING THE APPLICATION

All Alaska courts permit traditional paper filing of court documents. A party files the papers with the clerk of the court at the court location where the case is filed unless the clerk directs otherwise (Ak. R. Civ. P. 5(e)).

Alaska does not permit statewide electronic filing, but may permit filing by fax or email if either:

- The presiding judge's administrative order permit it.
- The assigned judge provides prior written consent.

(Ak. R. Civ. P. 5.1(a)(1).)

Unless the court orders the filing of the original document, a party filing a document by fax or email must:

- Retain the original.
- Produce the original for inspection:
  - on request of another party; or
  - if ordered by the court.

(Ak. R. Civ. P. 5.1(a)(1).)

### SERVING THE APPLICATION

If there is no court action already pending between the parties, a party seeking to compel or stay arbitration serves the case-initiating

documents in the same way a party serves process when starting an action under Alaska Rule of Civil Procedure 4. If there is an action already pending between the parties, a party serves the motion in the same way a party serves any motion in that case, by serving the other party or its attorney (Ak. R. Civ. P. 77(a)).

### APPEALING AN ORDER TO COMPEL OR STAY ARBITRATION

In federal court, federal law, such as the prohibition on interlocutory appeals (28 U.S.C. § 1291), the final judgment rule (28 U.S.C. § 1292), and the FAA (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration (6-574-8707)) limit appeals of orders compelling FAA-governed arbitration. An order granting or denying a request to compel arbitration is not considered a final judgment. Under the FAA, however, litigants may immediately appeal federal court orders denying arbitration, but not orders favorable to arbitration. US appellate courts therefore have jurisdiction over orders:

- Denying requests to compel and stay litigation pending arbitration (9 U.S.C. § 16(a)(1)).
- Granting, continuing, or modifying an injunction against an arbitration (9 U.S.C. § 16(a)(2)).

Like the FAA, the AUAA permits appeals of orders:

- Denying applications to compel arbitration (Alaska Stat. Ann. § 09.43.550(a)(1)).
- Granting applications to stay arbitration (Alaska Stat. Ann. § 09.43.550(a)(2)).

A party may also submit a petition for review to the Alaska Supreme Court seeking a discretionary interlocutory appeal of an order compelling arbitration or denying an application to stay arbitration (Ak. R. App. P. 301 to 305).

#### ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at [legalsolutions.com/practical-law](https://legalsolutions.com/practical-law). For more information or to schedule training, call **1-800-733-2889** or e-mail [referenceattorneys@tr.com](mailto:referenceattorneys@tr.com).