

Compelling and Staying Arbitration in Indiana

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

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 also need to seek a court order contesting the arbitration. This Note describes the key issues counsel should consider when requesting a court to compel or stay arbitration in Indiana, including Indiana's statutory arbitration scheme and the procedures and forms applicable to applications to contest or compel arbitration in Indiana.

For information on enforcing arbitration awards in Indiana state and federal courts, see Practice Note, [Enforcing Arbitration Awards in Indiana](#). For information on compelling or enjoining 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 contest arbitration, parties must determine whether the Federal Arbitration Act (FAA) or Indiana 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 contest 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 remedy when seeking to compel or contest 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 Indiana arbitration law.

The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to interstate or international commerce or a maritime matter.
- States the parties' agreement to arbitrate a dispute.

(9 U.S.C. §§ 1 and 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving interstate "commerce," a term the courts define broadly. 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); *MPACT Const. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 906 (Ind. 2004)).

If the agreement falls under federal law, state courts apply the FAA, which preempts conflicting state law only "to the extent that [state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable); see also *MPACT Const. Grp.*, 802 N.E.2d at 905).

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](#)).

Indiana State Law

The arbitration procedural framework under Indiana law is established by statute and not common law (see *Natare Corp. v. D.S.I., Duraplastec Sys., Inc.*, 855 N.E.2d 985, 986 (Ind. 2006)). Indiana's arbitration law is codified in the Arbitration and Alternative Dispute Resolution statute, which includes:

- The Opt-In Arbitration Statute, codified in Chapter 1 of the Arbitration and Alternative Dispute Resolution statute (Ind. Code §§ 34-57-1-1 to 34-57-1-26), which governs arbitration where parties without an arbitration agreement agree to arbitrate a dispute that is otherwise subject to court litigation.
- The Indiana Uniform Arbitration Act (IUAA), codified in Chapter 2 of the Arbitration and Alternative Dispute Resolution statute (Ind. Code §§ 34-57-2-1 to 34-57-2-19), which sets out specific rules for court applications by arbitral parties, including applications to compel or stay arbitration.

The IUAA reflects Indiana's strong public policy favoring arbitration (see *Welty Bldg. Co. v. Indy Fedreau Co., LLC*, 985 N.E.2d 792, 798 (Ind. Ct. App. 2013); *Marion Cmty. Sch. Corp. v. Marion Teachers Ass'n*, 873 N.E.2d 605, 608 (Ind. Ct. App. 2007)). Unless an agreement provides otherwise, the IUAA applies to all arbitration agreements, including arbitration agreements between employers and employees or their respective representatives (Ind. Code § 34-57-2-1(a)). It does not apply to:

- Consumer leases.
- Sales and loan contracts.

(Ind. Code § 34-57-2-1(b).)

The IUAA is based on the Uniform Arbitration Act (UAA), which the National Conference of Commissioners on Uniform State Laws revised in 2000 when it promulgated the Revised Uniform Arbitration Act (RUAA). To date, the Indiana legislature has not introduced legislation to adopt the RUAA. 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](#)).

Because the IUAA governs most arbitrations in Indiana, this Note does not discuss the Opt-In Arbitration Statute in detail.

INTERSECTION OF THE FAA AND INDIANA LAW

The FAA preempts conflicting state law only "to the extent that it 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.*, 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)). The FAA governs arbitration agreements and awards in contracts involving interstate commerce, and the IUAA governs Indiana arbitration matters that are not preempted by the FAA (see *LaSalle Grp., Inc. v. Electromotion of Del. Cty., Inc.*, 880 N.E.2d 330, 331 (Ind. Ct. App. 2008)).

Under Indiana law, the parties to a contract can agree to use the FAA to interpret their contract if the contract implicates interstate commerce (see *MPACT Const. Grp.*, 802 N.E.2d at 904;

Earley v. Edward Jones & Co., LP, 105 N.E.3d 1094, 1100 (Ind. Ct. App. 2018)). If the arbitration clause is silent regarding choice of law, the FAA applies to the arbitration agreement even if the contract contains a choice of law provision specifying that Indiana law governs that contract. Therefore, if the parties want Indiana law to govern their arbitration agreement, they must expressly state so in the contract's arbitration clause (see *Hall St. Assocs.*, 552 U.S. at 590; *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60 (1995)).

Although the FAA's substantive provisions may apply regardless of whether a party seeks enforcement of the arbitration agreement in state or federal court, the FAA does not preempt Indiana contract law and canons of contract interpretation in determining whether the parties agreed to arbitrate any dispute (see *MPACT Const. Grp.*, 802 N.E.2d at 906).

THRESHOLD ISSUES FOR THE COURT TO DECIDE

When deciding an application to compel or stay arbitration the court plays a gatekeeping role that is limited to determining whether:

- The parties have a valid and enforceable arbitration agreement (see Valid Arbitration Agreement).
- The dispute falls within the scope of the parties' arbitration agreement (see Scope of Arbitration Agreement).

(See *Harlow v. Parkevich*, 868 N.E.2d 822, 826 (Ind. Ct. App. 2007); *Daimler Chrysler Corp. v. Franklin*, 814 N.E.2d 281, 284-85 (Ind. Ct. App. 2004) (citing *Mislenkov v. Accurate Metal Detinning, Inc.*, 743 N.E.2d 286, 289 (Ind. Ct. App. 2001)).)

The court may also determine whether the party seeking arbitration has waived its right to arbitrate by acting in a manner inconsistent with the right to arbitrate (see Waiver).

Indiana courts resolve every doubt in favor of arbitration (see *Nightingale Home Healthcare, Inc. v. Helmuth*, 15 N.E.3d 1080, 1085 (Ind. Ct. App. 2014)). However, the court may not compel arbitration by a party that did not agree to arbitrate the dispute (see *Sanford v. Castleton Health Care Ctr., LLC*, 813 N.E.2d 411, 416 (Ind. Ct. App. 2004)). Under the IUAA, once the court determines the parties contracted to submit their dispute to arbitration, the court must compel arbitration (Ind. Code § 34-57-2-3(a); see *Daimler Chrysler*, 814 N.E.2d at 285).

The arbitrator, not the court, resolves disputes about procedural preconditions to arbitration, such as delay or waiver of the contract containing the arbitration clause (see *BG Grp., PLC v. Rep. of Argentina*, 572 U.S. 25, 34-35 (2014)). Courts also leave the threshold arbitrability determinations to the arbitrator if the parties' arbitration agreement clearly and unmistakably delegates these issues to the arbitrator (see *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 70-73 (2010)).

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](#)).

VALID ARBITRATION AGREEMENT

Under the IUAA, an arbitration agreement is valid, enforceable, and irrevocable except where there are legal or equitable grounds for revocation of any contract (Ind. Code § 34-57-2-1).

The court determines the existence of a valid arbitration agreement under Indiana contract law. The legal and equitable grounds for invalidating an arbitration agreement include general contract defenses, such as:

- Unconscionability.
- Duress.
- Fraud.
- Ambiguity.
- Lack of capacity.

(See *Brumley v. Commonwealth Bus. College Educ. Corp.*, 945 N.E.2d 770, 776 (Ind. Ct. App. 2011); *Wilcox Mfg. Grp., Inc. v. Mktg. Servs. Of Ind., Inc.*, 832 N.E.2d 559, 562-63 (Ind. Ct. App. 2005).)

For the court to find an arbitration agreement valid, the court must find the parties had a meeting of the minds specifically on the arbitration provision (see *Daimler Chrysler*, 814 N.E.2d at 284 (citing *Mislenkov*, 743 N.E.2d at 289).

SCOPE OF ARBITRATION AGREEMENT

Under the IUAA, the court must compel arbitration unless the arbitration clause cannot be interpreted in a way that covers the parties' dispute (*Precision Homes of Ind., Inc. v. Pickford*, 844 N.E.2d 126, 131 (Ind. Ct. App. 2006)). The court decides whether the parties agreed to arbitrate by determining whether the dispute on its face falls within the arbitration agreement (see *Watts Water Tech., Inc. v. State Farm Fire & Cas. Co.*, 66 N.E.3d 983, 989 (Ind. Ct. App. 2016)).

WAIVER

Under Indiana law, a party may waive its right to arbitrate a dispute that is otherwise arbitrable under a valid arbitration agreement. Even if a party does not waive arbitration in express terms, the court may find the party impliedly waived its right to arbitrate because of the party's actions. (See *Safety Nat. Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986, 1004 (Ind. Ct. App. 2005).)

To find waiver, the court must find the party acted inconsistently with its right to arbitrate by engaging in court litigation (see *MPACT Const. Grp.*, 802 N.E.2d at 910). The factors the court considers include:

- The timing of the arbitration request.
- The filing of any dispositive motions.
- Whether the party seeking to arbitrate is unfairly manipulating the judicial system by attempting to obtain a second bite at the apple due to an unfavorable ruling in another forum

(See *Finlay Props., Inc. v. Hoosier Contracting, LLC*, 802 N.E.2d 453, 455 (Ind. Ct. App. 2003).)

CONSIDERATIONS WHEN PREPARING THE MOTION

Under the IUAA, a party asks the court to compel or stay arbitration by filing a motion, even if there is no court action pending between the parties (Ind. Code § 34-57-2-16). Before filing a motion to compel or stay arbitration in Indiana court, counsel should take into account several factors.

CONSIDERATIONS WHEN SEEKING TO COMPEL ARBITRATION

Under the IUAA, when a party to an arbitration agreement starts a lawsuit or otherwise expresses its intention to avoid arbitration, the party seeking arbitration may move the court to compel the resisting party to arbitrate the dispute (Ind. Code §§ 34-57-2-16 and 34-57-2-3(a)).

A motion to compel arbitration is analogous to a motion for summary judgment (see *Brumley*, 945 N.E.2d at 775). The party seeking to compel arbitration has the burden of proving both:

- The existence of an enforceable agreement to arbitrate the dispute.
- That the disputed matter is the type of claim the parties agreed to arbitrate.

(See *Daimler Chrysler*, 814 N.E.2d at 284 (citing *Mislenkov*, 743 N.E.2d at 289).)

The burden then shifts to the party opposing arbitration to present evidence that the arbitration agreement either:

- Is invalid.
- Does not apply to the parties' dispute.

(See *Brumley*, 945 N.E.2d at 775.)

If the court finds a valid arbitration agreement covering the parties' dispute, the court must both:

- Order the parties to arbitrate.
- Stay any pending litigation between the parties until the arbitration's conclusion.

(Ind. Code § 34-57-2-3; see *Daimler Chrysler*, 814 N.E.2d at 285.)

If only some of the claims in pending litigation are arbitrable, the court stays only those claims (Ind. Code § 34-57-2-3(d)).

CONSIDERATIONS WHEN SEEKING TO STAY ARBITRATION

Under the IUAA, if a party starts or threatens arbitration against another party, the party resisting arbitration can file a motion on ten days' notice asking the court to stay the arbitration (Ind. Code §§ 34-57-2-16 and 34-57-2-3(b)). The court must stay arbitration of the dispute if the court finds:

- The party resisting arbitration did not agree to arbitration.
- The dispute falls outside the scope of the parties' arbitration agreement.
- Non-arbitrable issues between the parties are so inseparable from the arbitrable issues that the arbitrators' findings are likely to have collateral estoppel effect in the trial of the non-arbitrable issues.

(Ind. Code § 34-57-2-3(b), (f); see *Am. Gen. Fin. Mgmt. Corp. v. Watson*, 822 N.E.2d 253, 259 (Ind. Ct. App. 2005).)

CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Along with a request to compel arbitration, a party should consider whether it requires any provisional remedies, such as:

- A temporary restraining order (TRO).
- A preliminary injunction.
- An attachment.

A party may require a provisional remedy to maintain the status quo pending arbitration of the parties' dispute (see *Metaldyne Co., LLC v. Intermet Corp.*, 2006 WL 4959646, at *5 (Ind. Super. July 31, 2006)). Because the IUAA does not address the availability of provisional remedies, a party needing a provisional remedy in aid of arbitration must satisfy the required showing under:

- Indiana Rule of Trial Procedure 64(B) (attachment).
- Indiana Rule of Trial Procedure 65 (TRO and preliminary injunction).

ADDITIONAL PROCEDURAL CONSIDERATIONS

Before bringing a motion to compel or stay arbitration in an Indiana court, a party should review the arbitration provisions to determine if there are any unsatisfied conditions precedent, such as a requirement that a party:

- Provide notice of the dispute.
- Engage in mediation.

(See *Chesterfield Mgmt., Inc. v. Cook*, 655 N.E.2d 98, 102 (Ind. Ct. App. 1995).)

A party bringing a motion to compel or stay arbitration should consider other factors that may affect the motion's contents. These factors include:

- Whether the court has subject matter jurisdiction to hear the request 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).

Court Jurisdiction

Under the IUAA, an agreement providing for arbitration in the state of Indiana confers jurisdiction on any Indiana circuit or superior court to enforce the agreement (Ind. Code § 34-57-2-17).

Venue

When there is already an action pending between the parties, for example because a party started an action over an arbitrable dispute, the party seeking to compel arbitration must file the application as a motion in the already pending action (Ind. Code § 34-57-2-3(c)).

When a party makes an initial motion to compel or stay arbitration, the party files the initial motion in the circuit court or superior court of:

- The county where the adverse party:
 - resides; or
 - has a place of business.
- Any Indiana county, if the adverse party has no residence or place of business in Indiana.

(Ind. Code § 34-57-2-18.)

In situations where the filing party may file in any Indiana county, counsel should consult Indiana Trial Rule 75 for the courts' venue requirements (Ind. R. Trial P. 75).

Discovery

Because a motion to compel arbitration is analogous to a motion for summary judgment, the parties may designate and rely on evidence beyond the pleadings (see *Brumley*, 945 N.E.2d at 775). The IUAA does not address the availability of court-ordered discovery. To avoid the risk of waiving the right to arbitrate (see Waiver), a party needing discovery to support an application to compel or stay arbitration may seek discovery limited to those issues, as applicable (see *Geneva-Roth, Capital, Inc. v. Edwards*, 956 N.E.2d 1195, 1197-98 (Ind. Ct. App. 2011)).

MOTION TO COMPEL OR STAY ARBITRATION

In Indiana, a party asks a state court to compel or stay arbitration by filing a motion, even if there is no lawsuit pending. If the motion starts the proceeding, the moving party must serve notice on the other party in the same manner provided by law for service of a summons in a civil action (Ind. Code § 34-57-2-16).

A party moves an Indiana state court to compel or stay arbitration under the IUAA by filing a motion in:

- The court where an action between the parties is pending.
- The appropriate court (see Venue) if there is no lawsuit already pending between the parties.

(Ind. Code § 34-57-2-3(c).)

When bringing a motion to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules relevant to case-initiating documents (see Procedural and Formatting Rules for the Motion).
- The documents necessary to bring the motion (see Documents Required for the Motion).
- The rules for filing and serving the motion (see Filing and Serving the Motion).

PROCEDURAL AND FORMATTING RULES FOR THE MOTION

Counsel must be familiar with applicable procedure and formatting rules for motions in Indiana state courts. Counsel should check the relevant court websites and the Local Rules for the relevant court for additional information and guidance on procedural and formatting rules.

Procedural Rules

Indiana's procedural rules governing the filing motions, including motions to compel or stay arbitration, and case-initiating documents are set out in:

- The Indiana Rules of Trial Procedure, especially:
 - Ind. R. Trial P. 3 (commencement of an action);
 - Ind. R. Trial P. 4.1 to 4.17 (summons);
 - Ind. R. Trial P. 5 (service of pleadings and other papers); and
 - Ind. R. Trial P. 7 to 25 (pleadings).
- The applicable Indiana state court's local rules.
- The assigned judge's individual preferences or rules.

Formatting Rules

The Indiana Rules of Trial Procedure set out the technical requirements for motions in Indiana state court, including a motion to compel or stay arbitration. The motion generally must:

- Have a caption containing:
 - the names of the parties;
 - the name of the court;
 - the title of the action;
 - the file number; and
 - the pleading title.
- State with particularity the grounds for the motion in numbered paragraphs.
- State the relief the movant seeks.
- Attach a copy of any written instrument on which the pleading is based.
- Be signed by an attorney of record or by a pro se party, followed by the signer's:
 - printed name;
 - Indiana bar number, if applicable;
 - address;
 - telephone number;
 - fax number; and
 - email address.
- Include a certificate of service.

(Ind. R. Trial P. 5(C), 9.2, 10, and 11.)

DOCUMENTS REQUIRED FOR THE MOTION

The IUAA does not identify the documents a party must file with a motion to compel or stay arbitration. However, Indiana Trial Procedure Rule 9.2 requires that a copy of any written instrument on which a pleading is based be included in or filed with the pleading. A motion to compel arbitration in an action that is not already pending must therefore include a copy of the parties' written arbitration agreement. (Ind. R. Trial P. 9.2.) Even if not required, it always is good practice to attach and rely on evidence, such as the arbitration agreement and affidavits, to support or oppose a motion to compel or stay arbitration.

FILING AND SERVING THE MOTION

Parties must file all motions with the court after serving them (Ind. Code § 34-57-2-16; Ind. R. Trial P. 5). Where the motion starts an action, the movant must serve the initial motion in the same way a party serves a summons in a civil case (Ind. Code § 34-57-2-16). Counsel should check the local rules for any court-specific filing requirements.

Most, but not all, Indiana state courts offer electronic filing options. For courts that permit electronic filing, counsel must register for the electronic filing portal and submit all electronic files in PDF format.

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 when a party may appeal an order compelling FAA-governed 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. Federal 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)); see *Scheurer v. Fromm Family Foods LLC*, 863 F.3d 748 (7th Cir. 2017)).

Similarly, under the IUAA, a party may appeal an order:

- Denying a motion to compel arbitration.
- Granting a motion to stay arbitration.

The state court appeal of an arbitration-related order proceeds in the manner and to the same extent as an appeal from an order or judgement in a civil action (Ind. Code § 34-57-2-19).

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