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A look inside strike lists and how arbitrators are selected

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Most litigators do not give much thought to the process by which strike and rank lists are created and arbitrators are appointed to a case. Neither California law nor the dispute resolution provider organizations (DRPO) rules provide specifics on this process, and each DRPO administers cases differently. For example:

- What happens to an arbitration demand after it is filed?
- Does it go into a black box, waiting for someone to serendipitously notice it?
- Who processes and reads it?
- When does that happen?
- How are strike and rank lists formed?
- When are they formed?
- What does a candidate know about the case and when?
- Do different organizations have different processes, and if so, how do they differ?

Because the rules and internal policies at each DRPO can differ, there are no simple answers to these questions. This article focuses on the aspects that are fundamentally similar to shed some light on the process.

Most arbitration agreements will dictate which DRPO will have jurisdiction over the dispute, and to the extent an arbitration provision is silent as to DRPO, the filing party can typically unilaterally select a DRPO. After the Demand for Arbitration is filed, the DRPO will intake the demand and review it substantively

to determine if the case has been properly brought to it and that the filing is complete in all respects. Once the filing is complete and properly served, the DRPO will begin to put together a strike and rank list.

The process for all DRPOs is substantively the same; the DRPO will review its roster and put together a strike and rank list of at least five qualified arbitrators with diverse backgrounds (or more if it is a tripartite panel) from its roster and provide that list, along with the candidates' respective CVs and instructions on how many each party can strike and then rank. Rule 15 of the JAMS Comprehensive Arbitration Rules and Procedures provides it will appoint the candidate with the highest composite ranking while the AAA rules are silent on how it selects that candidate after the strike and rank process is complete.

The candidate is then contacted by the DRPO and is advised that they have been conditionally selected, pending disclosures and conflicts checks, if necessary. It is important to note that this is the first time the candidate learns about the existence of the case. To complete the disclosure conflict form (DCF), the conditionally selected candidate is provided with a copy of the Demand for Arbitration and any other filed documents, such as a complaint, if one exists, and a copy of the relevant arbitration provision. At JAMS, the candidate is also provided with reports showing any former or current matters that involve the same parties, law firms

or lawyers to make sure the disclosures are complete. A completed copy of the DCF, which typically asks questions about, among other things, potential relationships among the candidate and the parties and their lawyers, is provided to the parties. Importantly, if that candidate also works at a law firm or some other organization that can give rise to a conflict of interest, they will also need to run a separate conflicts check after being selected to make sure they can accept the appointment. JAMS' neutrals are all dedicated to JAMS, so service of the completed DCF is the last step in the initial disclosure process.

If there is a conflict of interest or something that requires disclosure, the candidate will decline the case and the DRPO will pick the next candidate (or disclose the issue if it is not a conflict and proceed with accepting the matter). If all the candidates are conflicted out or decline to accept the appointment, each DRPO has its own process to appoint an arbitrator. For JAMS, if the strike and rank process does not yield an arbitrator, then JAMS will designate the arbitrator.

Once the disclosure forms are completed and returned by the candidate to the DRPO, it will review the disclosures and then officially appoint the candidate, and notice will be provided to the parties. The candidate is then typically granted access to the case on the DRPO's online portal.

Assuming no challenges are made to the appointment of the candidate, either



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the arbitrator or their case manager will reach out to the parties to schedule a preliminary scheduling conference (PSC). It is reasonable to expect that the arbitrator has reviewed the case file in the DRPO's portal prior to the PSC, and many arbitrators will serve on the parties a draft scheduling order and ask them to meet and confer prior to the initial conference to streamline the process.

While DRPOs have different rules and arbitrators manage their cases differently, the general process of intake until the first scheduling conference is similar. Understanding this process can help a lawyer select the DRPO that is best suited for each case.