

# Enforcing Arbitration Awards in Wisconsin

by [Joshua D. Maggard](#), [Patrick Proctor-Brown](#), and [Zachary T. Eastburn](#), [Quarles & Brady LLP](#), with Practical Law Arbitration

**Maintained** • USA (National/Federal), Wisconsin

---

*A Practice Note explaining how to enforce arbitral awards in the state and federal courts in Wisconsin. This Note explains the procedure for confirming an arbitration award in Wisconsin and the grounds on which a party may challenge enforcement under Wisconsin and federal law, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Federal Arbitration Act (FAA), and the Wisconsin Arbitration Act (WAA). This Note also explains the procedure for vacating, modifying, or correcting an arbitral award in Wisconsin.*

---

## Contents

### Scope of This Note

#### Statutory Framework

Federal Arbitration Act

Wisconsin Arbitration Act

Interplay Between Federal and Wisconsin Arbitration Law

#### Confirmation Procedure

Confirming Awards Under the FAA

Confirming Awards Under the WAA

#### Vacating, Modifying, or Correcting an Award

Vacating an Award Under the FAA

Vacating an Award Under the WAA

Modifying or Correcting Awards Under the FAA

Modifying or Correcting Awards Under the WAA

#### Awards and Orders Subject to Appeal

## Scope of This Note

The prevailing party in an [arbitration](#) may need to enforce the arbitration award if the losing party fails to pay or voluntarily comply. In the arbitration context, "enforcement" generally refers to judicial confirmation, modification, or correction of an arbitration award and entry of a judgment on it.

This Note explains how a party may enforce an arbitration award in Wisconsin federal or state court. It describes the relevant state and federal statutes, jurisdictional and [venue](#) considerations, the procedure for confirming an award in state and federal court, and the potential challenges to enforcement. This Note also briefly explains the legal standards and procedure for vacating, modifying, or correcting an arbitration award in Wisconsin state or federal court.

This Note also does not cover the mechanics of debt collection once a party obtains a judgment. For information about enforcing a federal judgment, see [Practice Note, Enforcing Federal Court Judgments: Basic Principles](#). For more information about enforcing or challenging arbitration awards generally, see [Enforcing or Challenging Arbitration Awards in the US Toolkit](#).

## Statutory Framework

To enforce an arbitration award in Wisconsin, a party must first determine whether federal or state law governs the enforcement procedure. In Wisconsin, the two possibilities are:

- The [Federal Arbitration Act](#) (FAA) (see [Federal Arbitration Act](#)).
- The Wisconsin Arbitration Act (WAA) (see [Wisconsin Arbitration Act](#)).

## Federal Arbitration Act

US arbitration law greatly favors the enforcement of arbitration awards, including those rendered outside US territory. The FAA is the federal statute that governs arbitration. The FAA:

- Governs domestic US arbitrations and applies to maritime disputes and contracts "involving commerce" ([9 U.S.C. §§ 1 to 16](#) (Chapter 1)).
- Implements:

- the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (New York Convention), subject to reciprocity and commercial reservations ([9 U.S.C. §§ 201 to 208](#) (Chapter 2)); and
- the [Inter-American Convention on International Commercial Arbitration](#) (Panama Convention) ([9 U.S.C. §§ 301 to 307](#) (Chapter 3)).

The FAA applies to a broad range of arbitration awards (see [Citizens Bank v. Alafabco, Inc.](#), [539 U.S. 52 \(2003\)](#)). Together with the New York Convention, the FAA governs the enforcement of most arbitral awards in the US. The US Supreme Court has suggested in dicta that parties to an arbitration otherwise governed by the FAA may agree to enforcement under state statutory or common law. (See [Hall St. Assocs., L.L.C. v. Mattel](#), [552 U.S. 576, 590 \(2008\)](#).)

For more information on the FAA, see [Practice Note, Understanding the Federal Arbitration Act](#).

## Domestic Arbitrations Under the FAA

Chapter 1 of the FAA applies to arbitrations and awards that involve:

- Maritime matters.
- Interstate and foreign commerce.

([9 U.S.C. § 2](#).)

For more information on enforcing domestic arbitration awards under Chapter 1 of the FAA, see [Practice Note, Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 1 of the FAA for Non-New York Convention Awards](#).

## New York Convention

Chapter 2 of the FAA implements the New York Convention. The New York Convention applies to arbitration agreements and awards arising out of a legal commercial relationship, whether or not contractual, including a transaction, contract, or agreement described in Chapter 1 of the FAA ([9 U.S.C.](#)

§ 2). However, an arbitration based on an agreement arising out of a relationship entirely between US citizens does not fall under the New York Convention unless that relationship either:

- Involves property located abroad.
- Contemplates performance or enforcement abroad.
- Has some other reasonable relation to one or more foreign states.

(9 U.S.C. § 202.)

If the New York Convention and the FAA conflict, the New York Convention applies (9 U.S.C. § 208). An arbitration award issued in a country that is a signatory to the New York Convention generally is enforceable in the US, subject to the New York Convention's provisions for refusal of enforcement and recognition (see [Article, Fifty Years of the New York Convention on Arbitral Awards: Success and Controversy](#)).

For more information on enforcing international arbitration awards under the New York Convention, see [Practice Note, Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 2 of the FAA Implementing the New York Convention](#).

## **Panama Convention**

Chapter 3 of the FAA implements the Panama Convention. The Panama Convention applies to arbitrations arising from a commercial relationship between citizens of nations that have signed the Panama Convention if, with certain exceptions, the parties are not all US citizens (9 U.S.C. §§ 301 to 307). Chapter 3 of the FAA incorporates the Panama Convention into US law (9 U.S.C. §§ 203 and 302). If both the Panama Convention and the New York Convention apply to an international arbitration, the New York Convention controls unless:

- The parties expressly agree that the Panama Convention applies.
- A majority of the parties to the arbitration agreement are citizens of a nation or nations that:
  - have ratified or acceded to the Panama Convention; and
  - are member states of the Organization of American States.

(9 U.S.C. § 305.)

Because parties most often enforce arbitration awards under the New York Convention or the FAA's domestic arbitration provisions, this Note does not provide a detailed analysis of the Panama Convention.

## Wisconsin Arbitration Act

Wisconsin law has a strong policy favoring arbitration (see *Leavitt v. Beverly Enters., Inc.*, 784 N.W.2d 683, 694 (Wis. 2015); *First Weber Grp., Inc. v. Synergy Real Estate Grp., LLC*, 860 N.W.2d 498, 507 (Wis. 2015)).

Wisconsin's arbitration law is the Wisconsin Arbitration Act (WAA), set out in Chapter 788 of the Wisconsin Statutes Annotated (Wis. Stat. §§ 788.01 to 788.18). The WAA is virtually identical to the FAA (see *Borst v. Allstate Ins. Co.*, 717 N.W.2d 42, 51 n.4 (Wis. 2006)). The WAA sets out the rules for Wisconsin arbitrations, including:

- The requirement that the final award must be in writing (Wis. Stat. § 788.08).
- The standards and procedures for confirming, vacating, and modifying the award (Wis. Stat. §§ 788.09, 788.10, and 788.11).

The WAA does not apply to contracts or disputes between employers and:

- Employees.
- Employee associations, except for disputes over a term of a [collective bargaining agreement](#) (Wis. Stat. § 111.10).

(Wis. Stat. § 788.01.)

## Interplay Between Federal and Wisconsin Arbitration Law

Federal law 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. 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 [Cottonwood Fin., Ltd. v. Estes](#), 810 N.W.2d 852, 858 (Wis. Ct. App. 2012)).

The principal purpose of the WAA, like that of the FAA, is to require courts to enforce arbitration agreements according to their terms (see [Riley v. Extendicare Health Facilities, Inc.](#), 826 N.W.2d 398, 403 (Wis. Ct. App. 2012)). In interpreting the WAA, Wisconsin courts rely on federal cases interpreting the FAA as persuasive authority (see [Marlowe v. IDS Prop. Cas. Ins. Co.](#), 811 N.W.2d 894, 898 (Wis. Ct. App. 2012)).

## Confirmation Procedure

To confirm an arbitration award under either the FAA or the WAA, a party must file a proceeding requesting confirmation of the award in a court of competent jurisdiction. The type of proceeding depends on whether the application is in state or federal court. In both state and federal court, the proceeding is an expedited case rather than a regular lawsuit (9 U.S.C. § 6; Wis. Stat. § 788.05).

## Confirming Awards Under the FAA

Section 9 of the FAA governs confirmation of arbitral awards. For the FAA to apply to enforcement proceedings, the parties' agreement must:

- State that a court may enter judgment on the award.
- Specify the court (see [Federal Venue](#)).

If the parties' agreement satisfies both requirements, any party may apply to the court within one year after issuance of the arbitration award to confirm the award (9 U.S.C. § 9).

## Standard for Confirmation Under the FAA

A court must confirm an arbitration award unless it finds grounds to vacate, modify, or correct the award (9 U.S.C. §§ 10 and 11; see [Vacating, Modifying, or Correcting an Award](#)).

## Federal Court Jurisdiction

Although the FAA creates federal substantive law that requires parties to honor arbitration agreements, Chapter 1 of the FAA does not create any independent federal [subject matter jurisdiction](#) (see *Southland Corp. v. Keating*, 465 U.S. 1, 16 n.9 (1984) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983))). Before a federal court may enforce awards under Chapter 1 of the FAA, the petitioner therefore must establish either:

- [Diversity jurisdiction](#).
- [Federal question jurisdiction](#).

(See *Vaden v. Discover Bank*, 556 U.S. 49 (2009).)

Courts are split on whether they may "look through" to the arbitration claims in determining subject matter jurisdiction. In some courts, including the Seventh Circuit, the fact that the underlying arbitration involved federal claims does not confer federal jurisdiction for the petition to confirm or vacate (see *Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016); *Goldman v. Citigroup Glob. Mkts., Inc.*, 834 F.3d 242, 353-55 (3d Cir. 2016)). Other courts have held that, in light of the reasoning in *Vaden*, courts may look through to the underlying arbitration claims to determine if a petition to confirm, vacate, or modify an arbitration award under §§ 9, 10, or 11 of the FAA presents a federal question (see *Ortiz-Espinosa v. BBVA Sec. of Puerto Rico, Inc.*, 852 F.3d 36, 46-47 (1st Cir. 2017); *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 388 (2d Cir. 2016)).

Federal courts have subject matter jurisdiction over enforcement proceedings for arbitration awards governed by the New York Convention or Panama Convention ([9 U.S.C. §§ 203 and 302](#)).

Under the FAA, once the moving party serves a notice of a petition for confirmation on all parties, the federal court has [personal jurisdiction](#) over those parties ([9 U.S.C. § 9](#)).

To establish personal jurisdiction in cases involving foreign awards, the petitioner may invoke personal jurisdiction, [in rem](#) jurisdiction, or [quasi in rem](#) jurisdiction as applicable if their use under the circumstances also comports with due process standards. Where applicable, a court also may base jurisdiction over the defendant on an aggregation of state or national contacts under [Federal Rule of Civil Procedure \(FRCP\) 4\(k\)\(2\)](#).

The moving party must serve international parties under [FRCP 4](#), because neither the FAA nor the New York Convention provides direction on how to properly serve international parties. Under the 2016 amendment to [FRCP Rule 4\(m\)](#), the 90-day time limit for serving process does not apply to service abroad on individuals, corporations, partnerships, or associations. For information on serving international parties, see [Practice Note, International Litigation: US Laws Governing Cross-Border Service of Process](#).

## Federal Venue

Arbitration agreements may contain forum selection clauses specifying the venue for enforcement of an arbitration award. The FAA, New York Convention, and Panama Convention give effect to the forum the parties select ([9 U.S.C. §§ 9, 204, and 302](#)).

For domestic arbitrations under Chapter 1 of the FAA, a party seeking enforcement must file the application for judicial confirmation in either:

- The court specified in the arbitration agreement for entering judgment on the award, if any.
- Any court in the district where the arbitrator issued the award, if the arbitration agreement does not identify a particular court for entry of judgment on the award.

([9 U.S.C. § 9](#).)

Under the New York and Panama Conventions, a party may file a petition for judicial confirmation in any court either:

- Where the parties may have litigated the underlying dispute if there had been no agreement to arbitrate.
- In the location designated for arbitration in the arbitration agreement if that location is within the US.

([9 U.S.C. §§ 204 and 302](#).)

## Timing

A party to the arbitration may apply for an order confirming the award within one year after the arbitrator makes the award ([9 U.S.C. § 9](#)). The federal courts of appeals are split on whether this time limitation



is mandatory. Some courts, including the US Court of Appeals for the Second Circuit, have interpreted [Section 9](#) as a strictly enforced, one-year statute of limitations (see [Photopaint Techs., LLC v. Smartlens Corp.](#), 335 F.3d 152 (2d Cir. 2003)). Other courts, including the US Courts of Appeals for the Fourth and Eighth Circuits, have relied on the ordinary meaning of "may" to conclude that the one-year limitations period is permissive (see [Sverdrup Corp. v. WHC Constructors, Inc.](#), 989 F.2d 148 (4th Cir. 1993); [Val-U Constr. Co. of S.D. v. Rosebud Sioux Tribe](#), 146 F.3d 573 (8th Cir. 1998)).

The US Court of Appeals for the Seventh Circuit has not ruled on this issue, but the US District Court for the Western District of Wisconsin has held that the one-year limitations period is permissive (see [Nonemacher v. Rain & Hall, LLC](#), 2012 WL 13070084, at \*7 (W.D. Wis. Apr. 24, 2012); see also [Kolowski v. Hasenmiller, Leibsker & Moore, L.L.C.](#), 2008 WL 4372711, at \*2–3 (N.D. Ill. Mar. 20, 2008)).

Under Sections 207 and 302 of the FAA, any party seeking confirmation of an arbitral award governed by the New York or Panama Conventions must apply within three years from when the arbitrator makes the award ([9 U.S.C. §§ 207 and 302](#)).

### Confirmation Procedure Under the FAA

A party seeks confirmation of an arbitration award by serving and filing in the federal district court either:

- A petition to confirm. A petition to confirm an arbitration award enables a petitioner to request that a court confirm an award without first filing a complaint. When a party commences an action in federal court by filing a petition without an accompanying complaint, the court treats the petition as a motion to confirm an arbitration award. ([9 U.S.C. § 6](#); see [D.H. Blair & Co. v. Gottdiener](#), 462 F.3d 95 (2d Cir. 2006).) A confirmation proceeding is usually faster than a regular lawsuit on the merits, especially if no party challenges the award.
- A motion to confirm. If a lawsuit involving the arbitration is already pending (for example, because a party previously moved to compel or stay arbitration), a party does not need to start a new proceeding by filing a petition to confirm. The party instead files a motion to confirm the award in the same case.

The party seeking enforcement must serve and file with the petition or motion:

- The arbitration agreement, including any party agreement:
  - on selecting an arbitrator; and

- extensions of time, such as an agreement extending the deadline for the arbitrator to issue the award.
- A copy of the award.
- Any documents a party submitted relating to any application to modify or correct the award.

[\(9 U.S.C. § 9.\)](#)

The moving party must serve notice of the confirmation application on the adverse party, which gives the court personal jurisdiction over the adverse party as though the adverse party had appeared generally in the proceeding. If the adverse party resides in the district where the award was made, the moving party must serve either the party or its attorney in the same manner that a party serves notice of a motion in that court. [\(9 U.S.C. § 9.\)](#) If the adverse party does not reside in the district, the moving party may serve notice either:

- By the marshal of any district in which the adverse party is found.
- In the same way as it serves any other [process](#).

[\(9 U.S.C. § 9.\)](#)

An application to confirm an arbitration award is a summary proceeding. The court may hear argument but does not hold a hearing, and parties do not present evidence. The court confirms the arbitration award based on the parties' submissions and argument, if any. If no party challenges the enforcement and the court finds no grounds for modification or vacatur, the court confirms the award and enters judgment on it (see [Vacating an Award Under the FAA](#)).

For more information on confirming an arbitration award in federal court, see [Practice Note, Enforcing Arbitration Awards in the US: General Confirmation Procedure: Application by Motion or Petition](#). For a sample petition to confirm an arbitration award in federal court, see [Standard Document, Petition to Confirm Arbitration Award \(Federal\)](#). For a sample petition to enforce an international award under the New York Convention, see [Standard Document, Petition to Confirm Foreign Arbitration Award \(Federal\)](#).

## Confirming Awards Under the WAA

Under the WAA, once a party to an arbitration proceeding receives notice of an award, the party may file an application for an order confirming the award. After the party files the application, the court must grant the order unless there are grounds to vacate, modify, or correct the award. ([Wis. Stat. § 788.09](#).)

### **Standard for Confirmation Under the WAA**

The court assumes a supervisory role in reviewing an arbitration award, to ensure the parties receive the benefit of their bargained-for arbitration. The Wisconsin courts defer to the arbitrator's factual and legal conclusions. (See [Baldwin-Woodville Area School Dist. v. W. Cent. Ed. Assn'-Baldwin Woodville Unit](#), 766 N.W.2d 591, 596 (Wis. 2009); [Racine Cty. v. Int'l Ass'n Machinists & Aerospace Workers](#), 751 N.W.2d 312, 317 (Wis. 2008).)

### **Wisconsin Court Jurisdiction**

The WAA does not address the courts' jurisdiction to hear applications. The Wisconsin Circuit Courts have:

- Original jurisdiction in all civil and criminal matters within the state, unless exclusive jurisdiction is given to another court ([Wis. Const., art. VII, § 8](#)).
- Unlimited subject matter jurisdiction over actions of any nature (see [Heideman v. Am. Family Ins. Grp.](#), 473 N.W.2d 14, 19 (Wis. Ct. App. 1991)).

There are no monetary thresholds for actions commenced in the Circuit Courts. A litigant can choose to bring its claim in the Circuit Court even if the claim is eligible to be brought as a small claims action (see [State of Wis. Higher Educ. Aids Bd. v. Hervey](#), 335 N.W.2d 607, 610-11 (Wis. 1983)).

### **Wisconsin Venue**

The WAA permits a party to submit an application to confirm an arbitration to the court in the county where the arbitrator made the award ([Wis. Stat. § 788.09](#)). If the arbitrator made the award outside Wisconsin, venue for an application to confirm the award is governed by Wisconsin's general venue statute (see [Minerals Dev. & Supply Co., Inc. v. Superior Silica Sands, LLC](#), 2013 WL 5943132, at \*5 (Wis. Ct. App. Nov. 7, 2013)). Under the general Wisconsin venue statute, venue for any civil action or special proceeding is proper in the county:

- Where the claim arose.
- Where all or part of the real or tangible personal property at issue is located.
- Where a defendant resides or does substantial business.
- Any county, if no other venue provision applies.

([Wis. Stat. § 801.50\(2\)](#).)

Forum selection clauses are also presumptively valid in Wisconsin (see *Pietroske, Inc. v. Globalcom, Inc.*, 2004 WI App 142, ¶ 1, 275 Wis. 2d 444, 685 N.W.2d 884, 886 (Wis. Ct. App. 2004)). Therefore, if the parties' arbitration agreement specifies the court where the parties may enforce the award, the Wisconsin courts honor that forum selection.

### **Time Limits**

The WAA, like the FAA, requires a party to bring an application for confirmation within one year after the arbitrator makes the award ([Wis. Stat. § 788.09](#)). Wisconsin courts deem the arbitrator to make the award when the arbitrator signs it (see *Pick Indus., Inc. v. Gebhard-Berghammer, Inc.*, 60 N.W.2d 254, 255 (Wis. 1953)).

### **Confirmation Procedure Under the WAA**

Under the WAA, a party seeks to confirm an arbitration by submitting an "application," which the court treats as a motion ([Wis. Stat. § 788.05](#)). However, parties and courts also variously refer to the application as a motion, petition, or complaint. The requesting party must serve notice of the application on all other parties five days before the court hearing on the application ([Wis. Stat. § 788.09](#)).

If the application starts a proceeding, the requesting party must:

- Include a summons ([Wis. Stat. § 801.09](#)).
- Serve the application and summons under [Wisconsin Statutes § 801.10](#).

In all Wisconsin counties, parties represented by counsel must e-file case-initiating pleadings in civil actions ([Wis. Stat. § 801.18](#)). *Pro se* parties may voluntarily participate in e-filing. For more information about e-filing in Wisconsin, see [Wisconsin Court System, Circuit Court eFiling](#).

## Vacating, Modifying, or Correcting an Award

Both the FAA and the WAA permit a party to challenge or request modification or correction of an arbitration award. For detailed information on vacating, modifying, or correcting arbitration awards in federal court, see [Practice Note, Vacating, Modifying, or Correcting an Arbitration Award in Federal Court](#). For a sample petition to vacate an arbitration award in federal court, see [Standard Document, Petition to Vacate, Modify, or Correct Arbitration Award \(Federal\)](#).

## Vacating an Award Under the FAA

### Standard for Vacating Under the FAA

Under the FAA, a court may vacate an award because:

- The award was obtained by corruption, fraud, or undue means.
- The arbitrator was partial or corrupt.
- The arbitrator engaged in misconduct by:
  - refusing to postpone the hearing on sufficient cause shown;
  - refusing to hear evidence pertinent and material to the controversy; or
  - any other behavior that has prejudiced the rights of any party.
- The arbitrator exceeded his powers or so imperfectly executed them that the arbitrator did not make a mutual, final, and definite award on the matters the parties submitted to arbitration.

[\(9 U.S.C. § 10.\)](#)

Some US courts also have held that courts may vacate arbitral awards governed by the FAA on the common law ground of manifest disregard of the law. However, the continued viability of this holding as

a ground for *vacatur* is uncertain after the US Supreme Court's decision in *Hall St. Assocs. LLC v. Mattel, Inc.*, which held that:

- The FAA lists the exclusive grounds for refusing to enforce an award, and it does not list manifest disregard of the law as one of the grounds.
- Parties may not agree to expand the scope of judicial review of arbitral awards.

(552 U.S. at 586.)

The federal courts of appeals are split on whether manifest disregard remains a proper ground for *vacatur* after *Hall Street*. The Seventh Circuit Court of Appeals has applied a narrow version of the manifest disregard doctrine, holding that the court may vacate an award that either directs the parties to violate the law or does not adhere to the legal principles specified by the contract (see [Affymax, Inc. v. Ortho-McNeil-Janssen Pharm, Inc.](#), 660 F.3d 281, 285 (7th Cir. 2011); [George Watts & Son, Inc. v. Tiffany & Co.](#), 248 F.3d 577, 581 (7th Cir. 2001)). More recently, the Seventh Circuit has held the court may vacate an award if the arbitrator deliberately disregards what he knows to be the law (see [Renard v. Ameriprise Fin. Services, Inc.](#), 778 F.3d 563, 567 (7th Cir. 2015)).

Although the New York Convention does not expressly provide for vacating awards, it provides grounds for opposing enforcement of awards. These grounds include challenges to the validity of:

- The arbitration agreement, including its scope.
- The capacity of the parties to the arbitration agreement.
- The arbitral authority or procedure it used.
- The award.

(New York Convention, Art. V(1), (2).)

For information on opposing enforcement of awards under the New York Convention, see [Practice Note, Enforcing Arbitration Awards in the US: Defending Against Enforcement](#).

## Procedure to Vacate Under the FAA

Under the FAA, a party seeking to vacate an arbitral award must serve an application to vacate on the adverse party or its attorney within three months after the filing or delivery of the award (9 U.S.C. § 12). If the losing party fails to challenge an arbitral award within that three month period, the award is final and the party may not assert the *vacatur* grounds as defenses to the winning party's later application to confirm the award (see *Int'l Union of Operating Eng'rs*, 831 F.2d 1309, 1311 (7th Cir. 1987); *Int'l Bhd. of Elec. Workers Local Union 159 v. Circuit Elec., L.L.C.*, 2006 WL 623792, at \*4 (W.D. Wis. Mar. 10, 2006)).

If a party previously filed a lawsuit relating to the arbitration, such as an application to compel arbitration or confirm the award, then the party seeking to vacate the award must bring the *vacatur* application as a motion in the same court (see *IDS Life Ins. Co. v. Royal All. Assocs., Inc.*, 266 F.3d 645, 653 (7th Cir. 2001)).

If there is no lawsuit already pending involving the arbitration, a party seeking to vacate, modify, or correct an arbitration award must commence an action by filing a petition (see [Confirmation Procedure Under the FAA](#)).

The application to vacate is a summary proceeding. The court may hear oral argument but does not hold a hearing. The court decides the application on the parties' submissions and argument, if any. If the court finds sufficient grounds for *vacatur* and the time within which the agreement required the award has not yet expired, the court may direct a rehearing by the same arbitrators.

## Vacating an Award Under the WAA

### Standard for Vacating Under the WAA

The WAA permits a court to vacate an arbitration award on the same grounds as those available under the FAA ([Wis. Stat. § 788.10](#); see [Standard for Vacating Under the FAA](#)). Wisconsin common law also allows courts to vacate awards when:

- The arbitrators exceed their powers because of:
  - perverse misconstruction;
  - positive misconduct; or
  - manifest disregard of the law.

- The award either:
  - is illegal; or
  - violates a strong public policy.

(See [Baldwin-Woodville](#), 766 N.W.2d at 596; [Racine County](#), 751 N.W.2d at 317.)

The public policy ground for *vacatur* is limited to situations where there is a well-defined and dominant public policy that is based on laws and legal precedents and not from general considerations of supposed public interests (see [Sands v. Menard, Inc.](#), 787 N.W.2d 384, 397 (Wis. 2010) (an attorney's ethical obligations and duty of loyalty to a client embody strong public policy warranting *vacatur* of award that leads to the violation of that policy)).

The courts do not disturb an arbitral award unless the party challenging the award demonstrates grounds for *vacatur* by clear and convincing evidence (see [Nicolet High Sch. Dist. v. Nicolet Educ. Ass'n](#), 348 N.W.2d 175, 178 (Wis. 1984)). If the court finds sufficient grounds for *vacatur* and the time within which the agreement required the award has not yet expired, the court may direct a rehearing by the arbitrators ([Wis. Stat. § 788.10\(2\)](#)).

### **Procedure to Vacate Under the WAA**

A party seeks to vacate an arbitration award by motion, applying the same procedures as for an application to confirm an arbitration award (see [Confirmation Procedure Under the WAA](#)). The party must serve notice of the motion to vacate within three months after the filing or delivery of the award ([Wis. Stat. § 788.13](#).)

Unlike the statutory time limitation for vacating an arbitration award under the FAA (see [Procedure to Vacate Under the FAA](#)), the WAA forecloses a freestanding motion to vacate after expiration of the three-month limitations period. An aggrieved party may still submit a motion to vacate in response to a party's motion to confirm an arbitration award after expiration of the three-month limitations period. (See [Milwaukee Police Ass'n v. City of Milwaukee](#), 285 N.W.2d 119, 127 (Wis. 1979); [Brown Cty. v. AFSCME Local 1901-F](#), 2005 WL 1719906, at \* 1 (Wis. Ct. App. July 26, 2005).) However, the Seventh Circuit has declined to follow the *Milwaukee Police Ass'n* line of cases in federal court (see [Teamsters Local No. 579 v. B & M Transit, Inc.](#), 882 F.2d 274, 277-78 (7th Cir. 1989)).



Once the challenging party files the motion, the court may issue an order staying enforcement proceedings by the adverse party. ([Wis. Stat. § 788.13.](#))

## Modifying or Correcting Awards Under the FAA

### Standard for Modifying or Correcting Under the FAA

A court may modify or correct an award under the FAA where:

- There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referenced in the award.
- The arbitrator entered an award on a matter that the parties did not submit, unless it does not affect the merits of the decision on the matter submitted.
- The award is imperfect in a matter of form not affecting the merits of the controversy.

([9 U.S.C. § 11.](#))

The FAA also authorizes courts to modify or correct an award to effect the award's intent and promote justice between the parties ([9 U.S.C. § 11](#)).

Neither the New York Convention nor the Panama Convention identifies any grounds for modifying or correcting an award. Courts may have some leeway to do so under the New York Convention, but only where modification or correction does not interfere with the New York Convention's clear preference for confirming awards (see [Admart AG v. Stephen & Mary Birch Found., Inc.](#), 457 F.3d 302, 309 (3d Cir. 2006)).

### Procedure to Modify or Correct Under the FAA

A party seeking to modify or correct an award must serve a petition or motion on the adverse party or its attorney within three months after the filing or delivery of the award ([9 U.S.C. § 12](#)). The proceedings are substantially similar to the proceedings on an application to vacate (see [Procedure to Vacate Under the FAA](#)).

## Modifying or Correcting Awards Under the WAA

### Standard for Modifying or Correcting Under the WAA

The WAA permits a court to modify or correct an arbitration award on the same grounds as under the FAA ([Wis. Stat. § 788.11](#); see [Standard for Modifying or Correcting Under the FAA](#)). In ordering a modification or correction to an arbitral award, the court must effect the intent of the award and promote justice between the parties ([Wis. Stat. § 788.11\(2\)](#)).

### Procedure for Modifying or Correcting Under the WAA

A party applies to modify or correct an arbitration award under the WAA by making a motion in the same way that a party moves to vacate an award (see [Procedure to Vacate Under the WAA](#)). The aggrieved party must serve notice of the motion within three months after the filing or delivery of the award. Once the challenging party files the motion, the court may issue an order staying enforcement proceedings by the adverse party. ([Wis. Stat. § 788.13](#).)

## Awards and Orders Subject to Appeal

Both the FAA and the WAA permit the appeal of certain arbitration orders, including:

- An order:
  - confirming an award;
  - modifying or correcting an award; or
  - vacating an award.
  
- A judgment entered under the FAA or WAA, as applicable.

([Wis. Stat. § 788.15](#); [9 U.S.C. § 16](#).)

Orders and judgments under the WAA are subject to the same procedure as appeals from orders or judgments in other actions. ([Wis. Stat. § 788.15](#).)