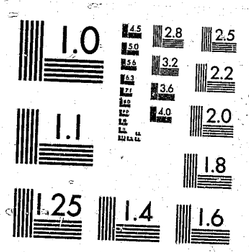
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A RAND NOTE

COURT-ANNEXED ARBITRATION: THE NATIONAL PICTURE

Patricia A. Ebener, Donna R. Betancourt

February 1985

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The Institute examines the policies that shape the civil justice system, the behavior of the people who participate in it, the operation of its institutions, and its effects on the nation's social and economic systems. Its work describes and assesses the current civil justice system; analyzes how this system has changed over time and may change in the future; evaluates recent and pending reforms in it; and carries out experiments and demonstrations. The Institute builds on a long tradition of Rand research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

The Institute disseminates the results of its work widely to state and federal officials, legislators, and judges, to the business, consumer affairs, labor, legal, and research communities, and to the general public.

PREFACE

This Note reports the results of a national survey to determine how many state and federal court jurisdictions have authorized court-annexed arbitration for civil cases in their general jurisdiction trial courts. For those jurisdictions that have adopted mandatory arbitration, we present an outline of their program's features. In the jurisdictions where no program yet exists but alternative dispute resolution programs are being considered, we identify the options officials are exploring.

This research was supported by the National Institute for Dispute Resolution.

Other Institute for Civil Justice publications related to the current effort include:

Introducing Court-Annexed Arbitration. A Policymaker's Guide. E. Rolph, R-3167-ICJ, 1984.

Simple Justice. How Litigants Fare in the Pittsburgh Court Arbitration Program. J. W. Adler, D. R. Hensler, and C. E. Nelson, R-3071-ICJ, 1983.

Judicial Arbitration in California. The First Year. D. R. Hensler, A. J. Lipson, and E. S. Rolph, R-2733-ICJ, 1981.

Court Efforts To Reduce Pretrial Delay. A National Inventory. P. A. Ebener with the assistance of J. Wilson-Adler, M. Selvin, and M. S. Yesley, R-2732-ICJ, 1981.

SUMMARY

This Note reports the findings of a national survey to determine the current status of court-annexed arbitration among state and federal trial courts. It provides an update of a similar Institute for Civil Justice survey conducted in 1980. At that time we found ten states and three federal courts had authorized court-annexed arbitration. Since then the number of jurisdictions around the country where court-annexed arbitration is authorized has doubled. Currently sixteen states have authorized arbitration programs and all but two of those have active programs underway in one or more major courts. On the federal side recent funding has resulted in an expansion of court-annexed arbitration to eight additional districts bringing to ten the number of active programs in the federal district courts.

Program features show considerable variation. For example, while most programs provide some upper limit on the value of cases eligible for the program, the range is from a low of $3,000 in Alaska (where for this reason the program has not been implemented) to $150,000 in a number of the federal district courts. Other design features such as the disincentive to appeal arbitrator awards, the number of arbitrators and their rate of compensation also vary from jurisdiction to jurisdiction.

We also found that eight states are considering court-annexed arbitration programs as part of ongoing investigations of alternative dispute resolution options. Some states plan to propose legislation in 1985, while others are conducting much broader inquiries that may not result in actual program proposals in the near future. In other jurisdictions where arbitration is voluntary or little used efforts are underway to expand its scope. Recent interest in arbitration has rekindled among the federal courts where nearly twenty percent of the districts applied for funds to introduce new court-annexed arbitration programs. While the federal funding currently can support only ten programs further expansion may occur over the next few years.

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Finally, court officials in 26 states reported that the current demand on judicial resources did not warrant the use of alternative dispute resolution programs. About half of this group felt that arbitration might be attractive in the future, while the balance indicated that adding more judges would be a more likely option for their courts if civil delay became a pressing concern.

ACKNOWLEDGMENTS

We would like to thank the many court officials and representatives of bar associations, special government task forces, study groups, and other organizations who contributed so generously of their time and expertise during our telephone interviews. We would also like to express our appreciation to the National Institute for Dispute Resolution which provided the funding for this research. In addition we are grateful to Deborah Hensler for reviewing the manuscript and to Stephen Carroll and Elizabeth Rolph for their helpful suggestions that assisted in guiding the research.

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INTRODUCTION

During the past few years, courts, bar associations, and legislatures around the country have been examining problems of excessive delay and costs of civil litigation in state and federal trial courts. Much attention has been paid to alternative dispute resolution, especially court-annexed arbitration, as a tool for diverting substantial portions of civil court caseloads to a less expensive, more efficient forum for disposition. Chief Justice Burger has endorsed court-annexed arbitration and called for extending its use around the country.[1] Although it was not declared a panacea for problems of court delay and congestion, the American Bar Association concluded in a 1984 report on arbitration that "court-annexed arbitration programs have met with a great deal of acceptance and support from the courts, attorneys, and the actual parties assigned to arbitration.... Most studies of the arbitration programs have also found widespread satisfaction from all of those involved in the programs."[2] In addition, the U.S. Senate directed attention to court-annexed arbitration by including a session on arbitration in a recent series of hearings on court delay convened by the Judiciary Committee Subcommittee on the Courts.

But what has been the effect around the country of the largely positive evaluation of arbitration at the national level? In 1980 the ICJ conducted a survey to determine how many states had authorized court-annexed arbitration for civil cases in the general jurisdiction trial courts, but since that time no systematic update had been done.[3] To obtain a more current picture, we conducted a similar survey of the status of court-annexed arbitration as of November 1984. This Note describes our results.

---

[1]Warren E. Burger. *1983 Year-end Report on the Judiciary,* January 1984, p. 16.

[2]*Report on Court-Annexed Arbitration,* American Bar Association, Litigation Section, Committee on Arbitration, Committee on Federal Procedure, Committee on Litigation Management and Economics, Committee on Corporate Counsel, Committee on Liaison with the Judiciary, 1984, p. 3.

[3]P. A. Ebener with the assistance of J. Wilson-Adler, M. Selvin, and M. S. Yesley, *Court Efforts to Reduce Pretrial Delay. A National Inventory,* The Rand Corporation, R-2732-ICJ, July 1981.

We telephoned officials in state court administration in every state where arbitration had not been authorized as of 1980. In several states we also talked with bar association officials. We determined the current status of court-annexed arbitration in the federal district courts but did not conduct interviews in each district. We not only catalogued the jurisdictions where arbitration has been authorized but also inquired about current proposals and investigations that could result in future adoption of a court-annexed arbitration program.

Other ICJ work has evaluated individual arbitration programs,[4] and a recently published handbook provides a guide for policymakers in designing arbitration programs.[5] These topics are beyond the scope of this survey, whose resources limited us to an investigation of court-annexed arbitration at the state and federal district court level. We did not systematically interview local court officials and have only limited information about the extent to which arbitration has been implemented in local courts within the states and federal jurisdictions where it is currently authorized. Some individual trial courts may have adopted their own arbitration programs, but we have included information about local court programs only to the extent that we learned of them from state level interviews.

Table 1 summarizes the survey results. As of January, 1985, 16 states and 11 federal district courts had authorized court-annexed arbitration. The number of jurisdictions has increased by 60 percent at the state court level and almost tripled at the federal level since our 1980 survey, when ten states and three federal courts had authorized arbitration. In January 1985 eight new programs were approved for the federal district courts. Among the state courts, three new programs were added in 1983 and three more in 1984. Although the Connecticut

[4]J. W. Adler, D. R. Hensler, C. E. Nelson with the assistance of G. J. Rest, *Simple Justice. How Litigants Fare in the Pittsburgh Court Arbitration Program,* The Rand Corporation, R-3071-ICJ, 1983; and D. R. Hensler, A. J. Lipson, and E. S. Rolph, *Judicial Arbitration in California. The First Year,* The Rand Corporation, R-2733-ICJ, April 1981.

[5]E. Rolph, *Introducing Court-Annexed Arbitration: A Policymaker's Guide,* The Rand Corporation, R-3167-ICJ, January 1984.

Table 1

COURT-ANNEXED ARBITRATION:
THE NATIONAL PICTURE AS OF JANUARY 1985

AUTHORIZED PROGRAMS:

State Courts

Alaska
Arizona
California
Connecticut
Delaware
Michigan
Minnesota
Nevada
New Hampshire
New Jersey
New Mexico
New York
Ohio
Oregon
Pennsylvania
Washington

Federal Courts

California--Northern District
Connecticut
Florida--Middle District
Michigan--Western District
Missouri--Western District
New Jersey
North Carolina--Middle District
Oklahoma--Western District
Pennsylvania--Eastern District
Texas--Southern District
--Western District

INVESTIGATION OF PROGRAMS UNDER WAY:

State Courts

Florida
Georgia
Hawaii
Illinois
Maryland

Federal Courts*

North Carolina
Texas
Wisconsin
District of Columbia

NO CURRENT AUTHORIZATION OR INVESTIGATION:

State Courts

Alabama
Arkansas
Colorado
Idaho
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Mississippi
Missouri
Montana
Nebraska
North Dakota
Oklahoma
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virginia
West Virginia
Wyoming

*We did not individually contact each federal court district. The large number of districts that applied for the funds made available to add eight new program in 1985 suggest that further expansion would occur if additional appropriations are made.

federal program is the only one that has been repealed, implementation never took place in Alaska and in Nevada the program has never been actively implemented. Table 2 and accompanying text briefly describe the extent of implementation within the jurisdictions where programs have been authorized. Eight states and the District of Columbia are considering arbitration either singly or as part of a broad investigation of alternative dispute resolution. The federal district court for Northern Illinois recently rejected an arbitration program proposal, while at least 17 federal districts applied for funds to begin new programs in 1985. Current investigations range from recently formed study committees still formulating agendas to final reports and draft proposals under review by the final decisionmaking organization. In the 26 states that have no program in place and none formally under consideration, our survey respondents generally felt that their courts were not severely delayed or in need of alternative means of case disposition.

COURT-ANNEXED ARBITRATION--PATTERN OF ADOPTION NATIONWIDE

Sixteen states and 11 of the 94 federal district courts have authorized compulsory court-annexed arbitration for civil damages cases. These programs all provide for involuntary assignment of cases within specific eligibility criteria to a hearing by arbitrators. Although assignment to arbitration is not voluntary, the arbitrators' award is nonbinding; any party may appeal and request a trial *de novo*. These programs must be distinguished from traditional labor and contract dispute arbitration, which is usually private, voluntary, and binding upon the parties.

Table 2 shows the date each jurisdiction first authorized its program and the scope of implementation within each jurisdiction as of November 1984. In the six years between 1978 and 1984, the number of jurisdictions with arbitration programs more than tripled. No federal courts and only six states had authorized court-annexed arbitration in their general jurisdiction courts before 1978. New York and Pennsylvania were the only states among the six that had extensively

Table 2

MANDATORY COURT-ANNEXED ARBITRATION PROGRAMS

Jurisdiction	Program Title	Authorization	Earliest Date Authorized	Current Scope (As of Nov. 1984)
State Courts				
Alaska	Arbitration of Small Claims	State Law--A.S. §09 43.190	1972	Never implemented; jurisdictional limit too low to make program useful
Arizona	Arbitration of Claims	State Law--A.R.S. §12-133	1974	Operational in at least 2 counties including Phoenix and Tucson
California	Judicial Arbitration	State Law--C.C.P. §1141.10-32	1978	Operational in 15 counties with 10 or more judges and slowly being adopted in smaller courts
Connecticut	Fact Finding and Arbitration	State Law--Conn. Statutes §52-549N	1983	Statewide implementation but far more cases processed by fact-finding than by arbitration
Delaware	Compulsory Pretrial Arbitration	Superior Court Rule 16(C)	1984	Program began statewide in mid-1984
Michigan	Mediation	Supreme Court Rule (except Wayne County Court): General Court Rule 316	1980	Program under revision; 29 counties expected to implement new program in March 1985
Minnesota	Judicial Arbitration	State Law--Minn. Statutes §484.73	1984	Program to commence in February 1985 in Hennepin County (Minneapolis)
Nevada	Motor Vehicle Damage Actions Arbitration	State Law--N.R.S. §38.215-245	1971	Very little application, but efforts are underway to launch an expanded voluntary arbitration program for all civil damages cases
New Hampshire	Compulsory Arbitration	Supreme Court Rule, Temporary Rules of Compulsory Arbitration	1978	2 counties (Merrimack, Rockingham)
New Jersey	Judicial Arbitration	State Law--Laws of N.J. Ch.358	1983	Being implemented statewide
New Mexico		Supreme Court Rule	1984	Program to commence in 2 counties in July '85 (Albuquerque and Santa Fe)
New York	Alternative Dispute Resolution by Arbitration	State Law 22 N.Y.C.R.R. Part 28	1970	Operational in 31 counties, including New York City

Table 2 (cont.)

Jurisdiction	Program Title	Authorization	Earliest Date Authorized	Current Scope (As of Nov. 1984)
Ohio	Varies by county	Local Judicial Rules-- Hamilton County Rule 24 Stark County Rule 16 Cuyahoga County Rule 29	1970	Operational in approximately 15 counties including Cleveland and Cincinnati
Oregon	Arbitration Program	State Law--Ch.670 Oregon Laws	1983	Operational in 5 counties and expanding statewide by 12/31/84
Pennsylvania	Compulsory Arbitration	State Law--Pa. Con. Stat. Ann. Title 42 §7101	1952	Operational in 53 counties, including Philadelphia and Pittsburgh
Washington	Mandatory Arbitration of Civil Actions	State Law--R.C.W. Ch.7.06	1979	Operational in at least 3 counties (King, Pierce, Yakima)
<u>Federal District Courts</u>				
California-- Northern Dist.	Court-annexed Arbitration	Local Rule--Rule 500	1978	Ongoing program
Connecticut	Court-annexed Arbitration	Local Rule	1978	Disbanded after experimental period concluded
Florida-- Middle Dist.	Court-annexed Arbitration	Local Rule	1985	Program to commence January 1985
Michigan-- Western Dist.	Court-annexed Arbitration	Local Rule	1985	Program to commence by September 1985
Missouri-- Western Dist.	Court-annexed Arbitration	Local Rule	1985	Program to commence by September 1985
New Jersey	Court-annexed Arbitration	Local Rule	1985	Program to commence by September 1985
North Carolina-- Middle Dist.	Court-annexed Arbitration	Local Rule--Part VI Rules of Practice and Procedure	1984	Program to commence January 1985
Oklahoma-- Western Dist.	Court-annexed Arbitration	Local Rule	1985	Program to commence by September 1985
Pennsylvania-- Eastern Dist.	Court-annexed Arbitration	Local Rule--Civil Procedure 8	1978	Ongoing program
Texas-- Southern Dist. Western Dist.	Court-annexed Arbitration	Local Rule	1985	Program to commence by September 1985

implemented programs at that time. Between 1978 and 1980 three U.S. District Courts began experimenting with arbitration; and four more states authorized programs, including California where the legislature ordered that all counties with ten or more judges must adopt arbitration. Since 1980, California, Michigan, Ohio, and Washington have had considerable increases in the number of counties adopting arbitration; as far as we know, only the federal district for Connecticut has discontinued its program. Since 1982, six more states have authorized court-annexed arbitration. Congress appropriated $400,000 to expand federal court arbitration to eight additional districts. Two of these, the Middle District Court of Florida and the Middle District of North Carolina began in early 1985, while the additional six districts are expected to have launched their programs by September 1985. Four of the most recently authorized state programs (Connecticut, Delaware, New Jersey, and Oregon) were adopted statewide, and the other two (Minnesota and New Mexico) are getting underway only in the large metropolitan courts in each state.

Eleven of the 16 state programs were authorized by state legislation, and the remainder and the federal programs were established by court rule. Often the legislative or court authority specified only broad design criteria and allowed individual courts to decide whether to adopt the program and to specify their own rules for implementation. Individual programs vary considerably within states as a result of this pattern of authorization.

FEATURES OF COURT-ANNEXED ARBITRATION AROUND THE COUNTRY

Types of Disputes and Jurisdictional Limits

Most courts have authorized court-annexed arbitration for civil cases where the claimant seeks only money damages. Contract, debt, and personal injury litigation make up the bulk of cases subject to arbitration. Two jurisdictions currently limit their program only to automobile litigation, and others exclude such categories as malpractice cases.

Over the past several years, jurisdictional limits on the programs have increased. The lowest ceiling among the most recently introduced programs is $15,000 (Connecticut, New Jersey, New Mexico, and Oregon). The Delaware program has a $30,000 limit and Minnesota has $50,000. The federal program in North Carolina has a limit of $150,000. In addition, several state and federal programs in place for longer periods have recently raised their dollar ceilings. For example, the federal court in Northern California has increased its limit from $50,000 to $100,000; in the Eastern District of Pennsylvania the new ceiling effective January 1985 will be $75,000. Arizona, California, and Pennsylvania state courts have also had legislative action to expand arbitration by increasing the ceiling and thus capturing a larger percentage of the courts' civil caseloads. Table 3 shows the types of disputes eligible and the jurisdictional limit for each jurisdiction that has authorized a program.

The system for valuing cases to determine their eligibility for arbitration is an important feature of local programs and varies considerably around the country. Elizabeth Rolph's guide for arbitration policymakers provides a useful discussion of the issues and tradeoffs involved in designing this component of an arbitration program.[6]

Arbitrators and Their Compensation

Most programs provide that the parties in a case assigned to arbitration can choose a mutually agreeable arbitrator or accept an arbitrator chosen at random by the program's administrative process. Programs vary considerably in how they assign arbitrators to cases and how hearings are scheduled. Most programs use attorneys from the local bar membership as arbitrators and set certain qualifications for them. The number of arbitrators and their rate of compensation is shown on Table 3. Compensation of arbitrators and program support personnel are the main costs for arbitration programs.[7]

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[6]Rolph, *Introducing Court-Annexed Arbitration*, pp. 21-28.

[7]Rolph includes a discussion of funding arbitration programs on pp. 13-14.

Table 3

FEATURES OF COURT-ANNEXED ARBITRATION PROGRAMS IN THE UNITED STATES

Jurisdiction	Types of Disputes	Jurisdictional Limit	Number of Arbitrators	Arbitrator Compensation	Appeal Disincentive
State Courts					
Alaska	Money damage suits	$3,000	To be provided by rule	To be provided by rule	To be provided by rule
Arizona	Money damage suits	$15,000	1 unless parties stipulate to 3(a)	$50/day	Arbitrator fee
California	All civil actions except: class actions, equitable matters, small claims, unlawful detainer and Family Law Act proceedings	$15,000; 25,000 ($25,000 in Los Angeles and San Bernardino Cos., Santa Barbara and Ventura) other counties have been given authority to raise limit to $25,000	1(a,b)	$150/day	Arbitration and trial costs plus other party's trial costs (if trial results are not more favorable to party requesting trial)
Connecticut	Money damage suits	$15,000	Determined by chief court administrator	$100/day plus $25 for each decision filed with the court	None
Delaware	Money damage suits	$30,000	1	$250/case	Arbitrator fee and costs of arbitration (including but not limited to expert witness fees, costs for issuing subpoenas and sheriff's mileage)
Michigan	All civil actions except child custody	None	3	Each party must pay $75 to attorneys on panel	If trial verdict does not better the appellant's position by at least 10%, must pay other party's actual costs and attorney fee as determined by the trial judge
Minnesota	Most civil actions except family, juvenile, mental health	$50,000	1 or 3 depending on experience of arbitrator	$150/day	None
Nevada	Motor vehicle cases	$3,000	1 or more as stipulated by parties or appointed by the court	As provided by award	Appellant must pay all costs of arbitration
New Hampshire	Money damage except malpractice suits	$50,000	1 or 3(b)	None	None

Table 3 (cont.)

Jurisdiction	Types of Disputes	Jurisdictional Limit	Number of Arbitrators	Arbitrator Compensation	Appeal Disincentive
New Jersey	Money damage suits related to motor vehicle use	$15,000	Stipulated by mutual consent of all parties	Set by rules of Supreme Court	Arbitrator fees; in addition, court costs or other reasonable costs of other party assessed if appellant does not better his position
New Mexico(d)	Money damage suits	$15,000	3	$100-150/day	$300 flat fee
New York	Money damage suits	$6,000	1 or 3(b)	$35/case $45/chairman	Arbitration fee plus costs subsequent to award(c)
Ohio	All civil actions except equitable matters and actions relating to title of realty	$10,000-15,000	1 or 3 subject to local rule	Subject to local rule	Appellant must bear all costs and attorney fees incurred after appeal if position not improved
Oregon	Money damage suits	$15,000	1	$150-300/case (depending on local rule)	Appellant pays $150 plus other party's costs if position not improved
Pennsylvania	All civil matters except actions relating to title of realty	$10,000-20,000(e)	3	$200/day	Arbitrators' fee(c)
Washington	Money damage suits	$15,000	1	Same rate as judges pro tem of the Superior Court	Trial and attorney costs if appellant does not better position
Federal District Courts(g)					
California--Northern Dist.	Money damage suits	$100,000	3 unless parties stipulate to 1	$75/day as member of panel $150/day as single arbitrator	Apellant may be assessed costs if position not improved
Connecticut	Money damage suits	$50,000	(f)	(f)	(f)
North Carolina--Middle Dist.	Money damage suits	$150,000	3 unless parties stipulate to 1	$250/day	Arbitration fees and costs if appellant does not improve position
Pennsylvania--Eastern Dist.	Money damage suits	$75,000	3 unless parties stipulate to 1	$75/case	Arbitration fees if appellant does not improve position

(a)Parties may stipulate to their own arbitrator.
(b)Court may substitute retired judges.
(c)Not recoverable.
(d)Rules not yet finalized.
(e)Proposed legislation would raise the limit to $40,000 for some courts.
(f)Program discontinued.
(g)Features of seven newest federal programs (see Table 2) not yet available.

Appeal Disincentives

All court-annexed arbitration programs preserve the parties' right to trial by allowing appeal of the arbitration award and trial *de novo* of the case. However, the objective is to make a final disposition of as many cases as possible at the arbitration hearing. Therefore, most programs include disincentives to appeal. These usually involve payment by the appealing party of the arbitrators' fees and costs of arbitration. In some cases the appealing party must pay the subsequent court costs for trial. Often the disincentives are aimed at those who appeal only to delay the disposition of the case, because the penalty is refundable if the appellant considerably betters his or her position as a result of trial. Rolph describes some of the problems associated with imposing the appeal disincentive and providing a mechanism for its administration.[8] Table 3 briefly describes the component for limiting appeals in each jurisdiction that has authorized court-annexed arbitration.

JURISDICTIONS CONSIDERING ADOPTION OF COURT-ANNEXED ARBITRATION

State Courts

From our telephone interviews with state court officials where court-annexed arbitration is not currently authorized, we learned that several states are examining options for diverting portions of their civil caseload to alternative forums for disposition. In some states the planning is specifically aimed at judicial arbitration; in others, broader examination of a range of alternative dispute resolution options is under way. We found that the status of investigations in most states was still at a stage where recommendations had not yet been formulated. In some places report preparation is under way, and in others the agenda for topics to consider is still under consideration. Some local courts around the country are no doubt also interested in the feasibility of court-annexed arbitration, but our inquiry did not systematically extend to the local court level. We also did not investigate current plans to extend arbitration to additional courts in the states where programs

[8] Ibid., pp. 43-47.

have already been authorized, although expansion of this nature appears to be fairly steady in several of those states.

A proposal to adopt judicial arbitration in Illinois is currently under review by the Executive Committee of the Illinois Judicial Council. A committee headed by the chief justice of the Illinois supreme court has completed an investigation of arbitration programs around the country and has recommended for Illinois circuit courts a program patterned after the system that has been in place for many years in the Philadelphia, Pennsylvania Court of Common Pleas. The current Illinois proposal calls for compulsory arbitration of all civil cases under $15,000 in the law division of the circuit courts. Like many already established programs, the Illinois plan calls for a panel of three arbitrators who would enter nonbinding awards after a hearing of the dispute.

The Florida state court system has instituted a study commission on alternative dispute resolution that "was created to examine the feasibility of trial court administered means of dispute resolution."[9] At the time of our survey this commission had met only a couple of times and had not yet decided on what recommendations it would make to the supreme court and the Florida legislature. The commission has scheduled public hearings on the issues and plans to submit a report on its findings by March 1985. This report is expected to include drafts of legislation and court rules, but we do not know whether judicial arbitration will be among the commission's proposals.

In Georgia, a commission appointed by the governor and headed by the chief justice is exploring a wide range of proposals for improvement of the judicial process statewide. This commission plans to explore the feasibility of judicial arbitration as part of its efforts, but it is still a long way from deciding on recommendations for new legislation for the courts in Georgia. We do not know what priority judicial arbitration will attain. However, in Atlanta a proposal to introduce mandatory arbitration for civil cases is pending before the Fulton County Superior Court.[10] A program may be approved and in place in that

[9]State Court Administrator Memorandum from Chairman of the Study Commission on Alternative Dispute Resolution, October 30, 1984.

[10]See Appendix A for a copy of the draft rules for Fulton County. An index may be found on the first page of this appendix.

court by July 1985. The proposed rules call for compulsory nonbinding arbitration for all civil cases seeking exclusive money damages of $20,000 or less. In addition, a party may request arbitration and a judge may order a case to arbitration at his or her discretion. Should the proposed program be approved, cases would be arbitrated by a panel of three attorneys who meet program qualifications. Compensation of arbitrators is proposed at $200 per day. The proposal requires that a written award be entered by the arbitrators but does not require written findings of fact or conclusions of law. The draft rules state that either party may file notice of appeal of the award and obtain a trial *de novo*. It is left to the trial judge's discretion to assign the arbitrators' fees against an appealing party that does not substantially improve its position at trial.

In Hawaii, where no judicial arbitration program is currently in place, the court has adopted a unique approach to planning for future programs to divert civil cases from the trial list. The court has submitted a proposal for funding to establish a two-year program for experimenting with many dispute resolution alternatives, including judicial arbitration.

The Chairman of the Maryland Bar Association Joint Committee on Alternative Dispute Resolution informed us that the committee is looking at all areas of alternative dispute resolution, including judicial arbitration, but the committee's report has not yet been drafted.

In North Carolina, where the federal court Middle District is planning to initiate a judicial arbitration program early in 1985,[11] there is also a bar association task force examining methods for alternative resolution of civil cases for the state courts. A state bar association representative on this task force informed us that the group plans to complete its work and submit a report to the governor, the legislature, the state bar, and the court by summer 1985.

In Texas and Wisconsin, the state court administrative offices reported that proposals for statutes for upcoming legislative sessions are currently under discussion. In Texas, that legislation will probably propose a mandatory arbitration program for civil cases involving amounts under $15,000. In Wisconsin, a pilot program to

[11]See Appendix B for program rules.

explore several alternative dispute resolution options, including judicial arbitration, might be proposed.

In the District of Columbia, which has operated a voluntary court-sponsored arbitration program since 1982, a committee of the bar association is currently considering the pros and cons of expanding that program by making arbitration compulsory for certain civil cases. The committee plans to report to the bar association in the near future.

Federal Courts

Until recently only the U.S. District Courts for the Eastern District of Pennsylvania[12] and the Northern District of California had ongoing court-annexed arbitration programs. One other district had abandoned use of arbitration since an experimental program conducted several years ago was completed. However, the U.S. District Courts for the Northern District of Illinois and the Middle District of North Carolina have proposed their own court-annexed arbitration programs. The Illinois program has recently been rejected by the court, but in North Carolina the court has adopted rules and the program will become effective January 1, 1985.[13]

Elsewhere in the federal courts, recent appropriations have been made to fund court-annexed arbitration demonstration programs in several additional district courts. The Administrative Office of the Courts recently selected eight districts from among 17 or 18 applicants for program funding. The demonstration programs which will bring the number of active federal programs up to ten districts are expected to get under way during 1985.

COURT-ANNEXED ARBITRATION NOT UNDER INVESTIGATION

In our interviews with state court administrators, we learned that 26 states have no court annexed-arbitration program in place and do not expect to have such a program in the near future.[14] Table 4 lists the states where court-annexed arbitration has not been authorized and is not currently under consideration. In most of these states, backlog and

[12]See Appendix B for program rules.
[13]See Appendix B for a copy of the arbitration rules.
[14]We did not contact local courts in these states, but some state court administrators mentioned that individual courts had initiated their own investigations of arbitration and other alternative dispute resolution options. These efforts, while beyond the scope of our

Table 4

STATES NOT USING OR CONSIDERING COURT-ANNEXED ARBITRATION AS OF NOVEMBER 1984

Alabama	Maine	South Carolina
Arkansas	Massachusetts	South Dakota
Colorado	Mississippi	Tennessee
Idaho	Missouri	Utah
Indiana	Montana	Vermont
Iowa	Nebraska	Virginia
Kansas	North Dakota	West Virginia
Kentucky	Oklahoma	Wyoming
Louisiana	Rhode Island	

delay of civil cases is not a problem facing the majority of courts; several court officials stated that cases are tried promptly in their jurisdictions. One court official suggested that too many, rather than too few, judges was a problem in his courts.

We asked officials in these states whether they would consider adoption of arbitration in the future if court delay becomes a serious problem. Some court administrators indicated that arbitration might become a useful tool in the future should an alternative form of disposition for civil cases be needed. One court official said there was sufficient interest in arbitration that it was among a list of topics that the court might pursue in the next year or so. In South Carolina, an arbitration program is in place in the appellate courts. Familiarity with arbitration among the bench and bar there might lead to consideration of arbitration as an option for the trial courts at some point in the future. Similarly, in Virginia the Circuit Court in Fairfax County has an investigation of arbitration underway which could stimulate new interest around that state. Other administrative offices indicated that they are monitoring the programs in place in other jurisdictions.

Court officials in several states told us about alternative dispute resolution programs for small claims, divorce, and other cases. In Maine and Oklahoma, recent legislation has provided for courts to establish more economical and accessible alternatives for resolution of disputes. Some courts in Colorado have experimental voluntary mediation programs for various types of cases. Our 1980 survey of court efforts to expedite litigation identified other states and local courts with mediation and settlement programs.[15]

Other court officials indicated that they would look at different options, such as adding judges and improving case management, rather than arbitration, to solve future court delay problems. Two state court administrators commented that they didn't believe the programs they knew about were completely successful in reducing costs and time to disposition, and others felt their judges were philosophically opposed to arbitration or threatened by the prospect of an alternative form of disposition. In North Dakota, a supreme court advisory committee found little interest in arbitration.

CONCLUSION

Our survey results show that court-annexed arbitration continues to be adopted and implemented around the country as an alternative means of dispute resolution intended to reduce court delay and provide a less expensive forum for civil case disposition. Among the 16 states and 11 federal districts that have authorized arbitration, most have viable programs under way and have continued to expand the scope of their programs. Only two states have never implemented a program after authorization and only the Connecticut federal court has repealed its authorization. Program evaluations conducted in several jurisdictions consistently report favorably on the operation of court-annexed arbitration. In Washington the Seattle program was generally approved of by 90 percent of the lawyers and *pro se* litigants who responded to an evaluation survey. More than 80 percent of the respondents felt the

survey, may stimulate new interest at the state level in the near future.

[15]Ebener et al., *Court Efforts to Reduce Pretrial Delay*.

program produced faster case dispositions, was less expensive, and produced fair outcomes.[16] In Pittsburgh, where a program has been in place for many years, an ICJ study found that most litigants interviewed about their arbitration experience were quite satisfied with the program.[17]

We found few jurisdictions seriously opposed to court-annexed arbitration, although many respondents indicated that in their courts they would be able to add judges if delay became a problem and would prefer that option. In the jurisdictions considering adoption of arbitration we learned that supporters expect the most serious opposition to come from trial lawyers, whose efforts in some jurisdictions have contributed to defeat of proposals to authorize programs. This opposition has centered in the past on the issue of whether programs like arbitration restrict litigants' access to the courts.

In the future, more jurisdictions that attempt to reduce the time and expense of disposing of small civil cases are likely to adopt court-annexed arbitration programs. We found enthusiastic supporters of arbitration in the eight states and the District of Columbia where alternative dispute resolution options are under consideration. In addition, the renewed federal interest in arbitration may result in additional funding for further expansion among the district courts. Finally, within states where programs are already authorized, we believe the generally positive evaluations by current users will influence other courts to implement their own programs.

[16]Greg Walters, Wayne Blair, and Carole Greene, "Mandatory Arbitration: Is It Working?" *Seattle-King County Bar Bulletin*, April 1983. See Appendix A.

[17]Adler, Hensler, and Nelson, *Simple Justice*.

Appendix A

ARBITRATION STATUTES AND RULES: STATE AND LOCAL COURTS

This appendix includes statutes and court rules for those states where an arbitration program is in place, as well as rules for selected counties within some states. Also included are draft local rules and reports for several states.

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ALASKA

Article 2. Arbitration of Small Claims.

Section
190. Arbitration under court rules
200. Appointment and compensation of arbitrator.
210. Practice and procedure
220. Judgments and appeals

Sec. 09.43.190. Arbitration under court rules. The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for $3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed $3,000. (§ 2 ch 94 SLA 1972)

Sec. 09.43.200. Appointment and compensation of arbitrator. Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.210. Practice and procedure. The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.220. Judgments and appeals. Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules. (§ 2 ch 94 SLA 1972)

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ARIZONA

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Arizona Revised Statutes

COURTS AND CIVIL PROCEEDINGS § 12-133

§ 12-133. Arbitration of claims; agreement of reference; arbitration award; powers of arbitrators; compensation of arbitrators; appeals; deposits

A. The superior court may, by rule of court, provide that the parties to all cases which are filed in superior court including motor vehicle accidents and which the court finds or the parties agree that the amount in controversy does not exceed five thousand dollars shall submit their disputes to arbitration. The court shall maintain a list of qualified persons within its jurisdiction who have agreed to serve as arbitrators, subject to the right of each person to refuse to serve in a particular assigned case and subject further to the right of any party to show good cause why an appointed arbitrator should not serve in a particular assigned case. The court rules shall provide that the case subject to arbitration shall be assigned for hearing to a panel of three arbitrators, or in the alternative, to a single arbitrator, each of whom shall be selected by the court.

B. Cases which are not at issue and whether or not suit has been filed may be referred to arbitration by agreement of reference signed by the parties or their respective counsel for both sides in the case. Said agreement of reference shall define the issues involved for determination in the arbitration proceeding and may also contain stipulations with respect to agreed facts, issues or defenses. In such cases, the agreement of reference shall take the place of the pleadings in the case and shall be filed of record.

C. The arbitration award shall be in writing, signed by a majority of the arbitrators, and filed with the court. The award shall be entered by the court in its record of judgments, and shall have the effect of a judgment upon the parties unless reversed upon appeal.

D. The arbitrators shall have such power to administer oaths or affirmations and to conduct the hearings as the rules of court shall provide. The clerk of the superior court shall issue subpoenas, which shall be enforceable as provided by law.

E. Each arbitrator shall be paid a reasonable sum, not to exceed fifty dollars per day, to be specified by the rules of the appointing court, for each day necessarily expended by him in the hearing and determination of the case. The compensation of the arbitrators shall be paid by the county, in which the court has jurisdiction, from its general revenues and shall not be taxed as costs.

F. Any party to the arbitration proceeding may appeal from the arbitration award to the court in which the award is entered by filing, within the time limited by rule of court, a demand for trial de novo on law and fact. Upon appeal, at the time of filing the demand for trial de novo, and as a condition of filing, the appellant shall deposit a sum equal to the total compensation of the arbitrators, but not exceeding ten per cent of the amount in controversy, which sum shall be forthwith deposited with the county. If, on appeal, the appellant fails to receive judgment which is more favorable to the appellant than the amount awarded by the arbitrators, the deposit shall then be paid to the county; otherwise, it shall be refunded to the appellant. If the court finds that the appellant is unable to make such deposit by reason of lack of funds, the court shall allow the filing of the appeal without such deposit. Added Laws 1971, Ch. 142, § 1. As amended Laws 1978, Ch. 35, § 1.

Cross References

Arbitration agreements, see § 12-1501 et seq.

Cases requiring arbitration, see 17A A.R.S. Uniform Arbitration Rules, rule 1.

Law Review Commentaries

Union Rules for Arbitration. 10 Ariz. Bar J. No. 3, p. 15 (1975).

Index to Notes

Deposit 1
Review 2

1. Deposit

Timely deposit of prescribed amount of money was jurisdictional prerequisite to obtain de novo review of arbitration award and provision of Civil Rule 6(b) that court for cause shown may at any time in its discretion permit act to be done after time specified, where failure to act was result of excusable neglect, did not apply. Varga v. Hebern (App. 1977) 116 Ariz. 539, 570 P.2d 226.

2. Review

While filing of arbitration award divests arbitrator of jurisdiction, further steps provided by this section and Arbitration Rule 7(b) are essential to invoke jurisdiction for de novo appeal. Varga v. Hebern (App.1977) 116 Ariz. 539, 570 P.2d 226.

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Arizona Rules of Court

UNIFORM RULES OF PROCEDURE FOR ARBITRATION

Adopted by the Supreme Court January 10, 1974
Effective February 1, 1974

Rule

1. Compulsory Arbitration.
2. Appointment of Arbitrators.
3. Applicability of Rules of Civil Procedure.
4. Hearings, Evidence and Procedure.
5. Award.
6. Compensation of Arbitrators.
7. Right of Appeal.

Rule 1. Compulsory Arbitration

(a) When the Superior Court of a county, by a majority vote of the judges thereof, decides to provide for arbitration of claims pursuant to A.R.S. § 12–133, then the "Uniform Rules of Procedure for Arbitration" set forth below shall apply. The above decision shall be incorporated into a Superior Court order which shall be filed with the Clerk of the Supreme Court. and a copy thereof filed with the Clerk of the Superior Court of the applicable county.

(b) Cases Requiring Arbitration. In accordance with the provisions of A.R.S. § 12–133, all civil cases, except as hereinafter provided, which are now or later at issue in the Superior Court in counties which have adopted these rules, when the sole relief sought by the complaint, counterclaim, cross-claim or third-party complaint is a money judgment and when the amount in controversy, considered individually and not cumulatively, including punitive damages, but exclusive of interest, attorneys' fees, and costs, is $5,000 or less, including cases arising out of motor vehicle accidents, except appeals from Municipal or Justice Courts, shall be submitted to and decided by an arbitrator or arbitrators. No case which on the effective date of these Rules, in that county, has been set for trial shall be placed on the Arbitration Calendar, except that a case otherwise subject to compulsory arbitration and whose trial date is more than ninety (90) days after the effective date of these rules may be placed on the Arbitration Calendar by the judge to whom the case has been assigned.

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(c) Arbitration by Agreement of Reference. Claims which would be subject to compulsory arbitration under these Rules may at any time, whether or not suit has been filed, be referred to arbitration by Agreement of Reference signed by all parties or their counsel. The Agreement of Reference shall define the issues involved for determination in the arbitration proceedings and may contain stipulations with respect to agreed facts, issues or defenses. In such cases, the Agreement of Reference shall take the place of the pleadings in the case and shall be filed of record and assigned a civil case number. Filing of the Agreement of Reference shall have the same effect on the running of the statute of limitations as the filing of a civil complaint.

(d) Arbitration Calendar. The Superior Court Clerk or Court Administrator shall maintain an Arbitration Calendar containing a list of cases which are subject to arbitration.

(e) Procedure for Determining Arbitration Cases.

(1) On filing the Certificate of Readiness provided by Rule V, Uniform Rules of Practice of the Superior Court of Arizona, the party filing the same shall certify whether or not the case is subject to this Rule by noting thereon as follows: "Amount of Controversy, $_____. I certify this case (is) (is not) subject to arbitration under the Rules for Compulsory Arbitration."

(2) Subject to sub-paragraph (4) below, such certification shall be conclusive unless within ten (10) days after a Certificate of Readiness has been served and filed, any party controverts such certification as provided in Rule V(b), Uniform Rules of Practice of the Superior Court of Arizona.

(3) Any such Controverting Certificate shall be referred to the judge to whom the case has been assigned for determination of the issues raised thereby. The judge shall meet with all counsel, may hear testimony, and shall promptly render his decision.

(4) If the judge determines that the case is subject to compulsory arbitration, it shall be placed on the Arbitration Calendar.

(5) At the time the arbitrators render their decision, should they find that the amount in controversy exceeds $5,000, they shall enter an award for the full amount, even though this amount may exceed $5,000.

Amended June 12, 1978, effective Sept. 3, 1978; amended Feb. 14, 1979, effective April 1, 1979.

Rule 2. Appointment of Arbitrators

(a) Board of Arbitration. The parties, by written stipulation filed with the Clerk of the Superior Court within ten days after the filing of the Certificate of Readiness, or within ten days after determination

by a judge that the case is subject to compulsory arbitration, may agree that the case be assigned to a Board consisting of a single non-lawyer arbitrator named in the stipulation, or to a Board of three arbitrators, including one or more non-lawyers named in the stipulation. The selection of non-lawyer arbitrators shall be approved by the judge to whom the case has been assigned. All other cases subject to compulsory arbitration shall be heard by a Board composed of one arbitrator selected as provided below.

(b) List of Arbitrators. Except as the parties may stipulate under the provisions of paragraph (a) above, the member or members of the Board of Arbitration shall be appointed by the Court Administrator or Superior Court Clerk from a list of members of the Bar of the State of Arizona residing within the county in which the Court is located. Any attorney who wishes to be eliminated from the list may so notify the Superior Court Clerk or Court Administrator by letter.

(c) Appointment of Arbitrators from List.

(1) The Court Administrator or Superior Court Clerk under the supervision of the presiding judge shall devise a method of selecting names at random from the list of arbitrators, such as by the method provided for selecting prospective jurors. By means of such method, the Court Administrator or Superior Court Clerk shall select and assign to each case on the Arbitration Calendar seven names from the list of arbitrators, arranging the names in the order in which they were selected. In the event there is selected an arbitrator who is a law partner or associate of one previously selected for the same case or who is a law partner or associate of any counsel of record in the case, as shown by the latest published State Bar Directory, that name shall not be used but another selection shall be made.

(2) The Superior Court Clerk shall promptly notify the parties of the names so selected by mailing written notice thereof. Within seven (7) days after the mailing of such notice, each side may peremptorily strike from the list up to three names if the Board is to be composed of one arbitrator, or up to two names if it is to be composed of three arbitrators, by filing with the Clerk of the Superior Court their written request that the names be stricken. The case shall then be assigned to the first one or three arbitrators remaining on the list, as is appropriate, and all names, including those stricken and those appointed to serve, shall be returned to the list of arbitrators for subsequent selection at random as above provided.

(d) Notice of Assignment of Case to Arbitrators. The Superior Court Clerk shall promptly mail to all parties and to the arbitrators written notice of the assignment of the case.

Rule 2 UNIFORM RULES OF PROCEDURE

(e) Chairman of Board. When a case is assigned to three arbitrators, the first arbitrator remaining on the list shall act as Chairman.

(f) Disqualifications and Vacancies. Appointment to a Board of Arbitration is subject to the right of each arbitrator to refuse to serve in a particular assigned case and subject further to the right of any party to show good cause to the judge to whom the case is assigned why an appointed arbitrator should not serve in a particular assigned case.

A vacancy on a three-member Board and a one-member Board of Arbitration shall be filled by assigning the case to the first arbitrator remaining on the list, and if none remain, by repeating the procedure set forth in (c) above, after which selection the case shall be reassigned to the newly constituted Board.

Amended Feb. 14, 1979, effective April 1, 1979.

Rule 3. Applicability of Rules of Civil Procedure

The Rules of Civil Procedure, where not inconsistent with these Rules for Compulsory Arbitration, shall be applicable to all cases in arbitration. After a case has been assigned to an arbitrator or arbitrators, the arbitrator or arbitrators shall make all legal rulings, including rulings on motions. In ruling on motions pertaining to discovery, the arbitrator making the ruling shall consider the purpose of compulsory arbitration to be to provide for the efficient and inexpensive handling of small claims and shall limit discovery whenever appropriate to insure that the purpose of compulsory arbitration is complied with. In the event that an appeal is taken from an arbitration award, any legal rulings made by the arbitrator or arbitrators shall not be binding on the Court or the parties and any discovery had while the case was assigned to arbitration may be used in the Superior Court proceeding.

Rule 4. Hearings, Evidence and Procedure

(a) When and Where Held. Hearings shall be held at a place designated by the Chairman of the Board. The Chairman shall fix a time for hearing, which hearing shall be held not more than ninety days after the appointment of the Board of Arbitrators, and the Chairman shall, unless waived by the parties, give at least thirty days' notice in writing to the arbitrators and the parties or their counsel of the time and place of the hearing. The ninety-day period may be extended by the Chairman of the Board for good cause shown. No hearings shall be fixed for Saturdays, Sundays, legal holidays, or evenings, except upon agreement by counsel for all parties and the arbitrators.

(b) Issuance of Subpoenas. The Clerk of the Superior Court shall issue subpoenas in matters assigned to a Board of Arbitration, and the subpoenas shall be served and enforceable as provided by law.

(c) Powers of Arbitrators. The arbitrators shall have the power to administer oaths or affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case submitted to them.

(d) Conduct of Hearings. The arbitrators shall conduct the hearings according to the established rules of evidence except as hereinafter provided.

(e) Documentary Evidence. In actions involving personal injury or damage to property, the arbitrators shall allow the bills or estimates hereinafter listed to be offered and received in evidence without further proof as evidence of the value and reasonableness of the charges for services, labor and material stated therein and, where applicable, the necessity for furnishing the same, provided that a copy of said bill or estimate has been served upon the adverse party at least twenty days prior to the date of the hearing. The adverse party may not dispute the value or reasonableness of such charges or the necessity therefor, unless he files and serves written objection thereto within ten days after receipt of said copy.

(1) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.

(2) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.

(3) Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor.

(4) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.

(5) Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs were made in full or in part and the cost thereof.

(f) Doctors' Medical Reports. In actions involving personal injury, doctors' medical reports may be offered and received in evidence without further proof, for whatever weight the arbitrator or arbitrators may deem they are entitled, provided that a copy of said report has been filed and served upon the adverse party at least twenty days prior to the date of the hearing. The adverse party may not object to the admissibility of the report unless he files and serves written objection thereto within ten days from the receipt of said copy stating

the objections and the grounds therefor that he will make if the report is offered at the time of the hearing.

(g) Assessment of Damages Against Defaulted Parties. In cases involving more than one defendant, where a default has been entered against one or more, but less than all, of the defendants prior to the arbitration hearing, the arbitrators may assess as part of the award damages against the defendant or defendants against whom default has been entered.

(h) List of Witnesses. Within five (5) days prior to the date of the arbitration hearing, each party shall file and serve upon all of the other parties a statement containing a list of witnesses whom the party intends to call at the arbitration hearing. The statement shall contain a brief description of the matters about which the witness will be called to testify.

(i) Receipt of Court File. The Chairman of the Board of Arbitration shall, within four days prior to the date of the hearing, sign for and receive from the Superior Court Clerk or the Court Administrator the original Superior Court file.

(j) Record of Proceedings. The arbitrators shall not be required to make a record of the proceedings before them. If any party shall desire the presence of a reporter, this shall be done solely by application to the Chairman of the Board of Arbitration made at least five days prior to the date of the hearing. The Chairman shall thereupon provide a court reporter and cause a record of the entire proceedings to be made. The party requesting the reporter shall pay the cost thereof and shall deposit with the Chairman at the time of his request the sum of $50, and such additional amount as the Chairman shall require to secure payment thereof. Thereafter, any party, at his own expense, may independently order notes of testimony directly from the reporter. Any overpayment shall be returned by the Chairman. The charges of the reporter shall not be considered costs in the case.

Rule 5. Award

(a) Filing of Award. Within twenty days after the hearing, the Board of Arbitrators shall return the original Superior Court file to the Court and shall file an award with the Clerk of the Superior Court and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. The award shall be signed by a majority of the arbitrators who heard the case.

(b) Referral of Case to Judge. If the Board does not file an award with the Clerk of the Superior Court within six months after the appointment of the Board of Arbitrators, the Superior Court Clerk or the Court Administrator shall refer the case to the judge to whom the case has been assigned for appropriate action.

(c) Legal Effect of Award. Upon expiration of the time for appeal and if no appeal has been taken, the award shall become final and binding as a judgment of the Superior Court and the Clerk of the Superior Court shall enter the award in the judgment docket.

(d) Statement of Costs. A Statement of Costs shall be filed within ten days after the filing of the award.

Rule 6. Compensation of Arbitrators

(a) Amount of Compensation. Each member of a Board of Arbitrators shall receive as compensation for his services in each case a fee of $50.00 per day for each day, or part thereof, necessarily expended by him in the hearing of the case. When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned.

(b) Payment of Compensation. The members of a Board shall not be entitled to receive their fee until after an award is filed with the Clerk of the Superior Court.

Rule 7. Right of Appeal

(a) Notice of Appeal. Any party to the arbitration proceedings may appeal from the award by filing a notice of appeal with the Clerk of the Superior Court within twenty days after the filing of the award. The notice of appeal shall be entitled "Appeal From Arbitration" and shall request that the case be set for trial in the Superior Court. At the time of filing the notice of appeal, a copy of the notice of appeal shall be served upon the adverse party or parties.

(b) Deposit on Appeal. At the time of filing the notice of appeal, and as a condition of filing, the appellant shall deposit with the Clerk of the Superior Court a sum equal to the total compensation of the arbitrators, but not exceeding ten per cent of the amount in controversy. If on appeal the appellant fails to receive judgment which is more favorable to the appellant than the amount awarded by the arbitrators, the deposit shall then be paid by the Clerk of the Superior Court to the county; otherwise, it shall be refunded to the appellant. If the Court finds that the appellant is unable to make such deposit by reason of lack of funds, the Court shall allow the filing of the appeal without deposit.

(c) Appeals De Novo. All appeals shall be de novo on law and fact.

(d) Change of Judge. Upon filing of a notice of appeal all rights to change of judge are renewed and no event prior thereto shall constitute a waiver.

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§ 1141.20 CODE OF CIVIL PROCEDURE

§ 1141.20 Compensation of arbitrators

Each arbitrator shall receive reasonable compensation for his services from funds appropriated to the Judicial Council for that purpose.

(Added by Stats.1975, c. 1006, p. 2364, § 1, operative July 1, 1976.)

Repeal

Section 1141.20 is repealed by Stats.1978, c. 743, p. —, § 1, operative July 1, 1979.

For § 1141.20, added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979, see Chapter 2.5, post.

For subject matter of section after repeal, see § 1141.18.

Library References
Arbitration ⊂⊃41.
C.J.S. Arbitration § 75.

CHAPTER 2.5 JUDICIAL ARBITRATION [NEW]

Sec.
1141.10 Legislative findings and declarations and intent.
1141.11 At-issue civil actions in superior courts if amount in controversy under $15,000 and municipal court districts; exceptions.
1141.12 At-issue civil actions in superior courts upon stipulation of parties; uniform system in other courts; stipulation of parties and election to limit award.
1141.13 Inapplicability of chapter to civil action with prayer for equitable relief; exceptions.
1141.14 Rules for practice and procedure.
1141.15 Exceptions for cause to arbitration in § 1141.11; rules.
1141.16 Determination of amount in controversy; conference; submission to arbitration; time.
1141.17 Tolling limitations on dismissal for lack of prosecution.
1141.18 Arbitrators; qualifications; compensation; selection; disqualification.
1141.19 Arbitrators; powers.
1141.20 Finality of award; de novo trial; limitation; calendar.
1141.21 Judgment upon trial de novo less favorable for party electing; payment of nonrefundable costs and fees.
1141.22 Grounds for correction, modification or vacation of award.
1141.23 Award; writing, signature and filing; entry in judgment book; force and effect.
1141.24 Prohibition of discovery after award.
1141.25 Reference to arbitration proceedings or award during trial; grounds for new trial.
1141.26 Awards in excess of $15,000; validity; inapplicability of § 1141.21.
1141.27 Application of chapter to actions with public agency or entity as party.
1141.28 Administrative costs; payment.
1141.29 Filing of data by superior and municipal courts; report by Judicial Council.
1141.30 Construction of chapter in relation to provisions in title on arbitration.
1141.31 Operative date of chapter; date of adoption of arbitration rules.
1141.32 Repeal of chapter.

Chapter 2.5 was added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.

Repeal

Chapter 2.5, added by Stats.1978, c. 743, p. —, § 2, is repealed under the provisions of § 1141.32 on January 1, 1985.

For chapter 2.5, added by Stats.1975, c. 1006, p. 2364, § 1, operative until July 1, 1979, see §§ 1141.10, 1141.20, ante.

§ 1141.10 Legislative findings and declarations and intent

(a) The Legislature finds and declares that litigation involving small civil claims has become so costly and complex as to make more difficult the efficient resolution of such civil claims that courts are unable to efficiently resolve the increased number of cases filed each year, and that the resulting delays and expenses deny parties their

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right to a timely resolution of minor civil disputes. The Legislature further finds and declares that arbitration has proven to be an efficient and equitable method for resolving small claims, and that courts should encourage or require the use of arbitration for such actions whenever possible.

(b) It is the intent of the Legislature that:

(1) Arbitration hearings held pursuant to this chapter shall provide parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes.

(2) Arbitration hearings shall be as informal and private as possible and shall provide the parties themselves maximum opportunity to participate directly in the resolution of their disputes, and shall be held during nonjudicial hours whenever possible.

(3) Members of the State Bar selected to serve as arbitrators should have experience with cases of the type under dispute and are urged to volunteer their services without compensation whenever possible.

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

For § 1141.10 operative until July 1, 1979, see Chapter 2.5, ante.

Sections 4, 6 of Stats.1978, c. 743, p. —, provides:

"Sec. 4. The Auditor General shall conduct studies of the effects of this act on superior court workload in each county affected by this act. The studies shall include but not be limited to, an analysis of the reduction in superior court workload, which resulted in a decreased need for additional superior court judgeships. The report shall also include a statement of the costs avoided in each affected county due to the effect of this act. The results of these studies shall be reported annually to the Legislature and the State Controller beginning on October 31, 1980.

"Sec. 6. Section 1 of this act shall become operative July 1, 1979."

Library References
Arbitration ⇐1.2.
Reference ⇐1 et seq.
C.J.S. Arbitration § 2.
C.J.S. References § 1 et seq.

§ 1141.11 At-issue civil actions in superior courts if amount in controversy under $15,000 and municipal court districts; exceptions

(a) In each superior court with 10 or more judges, all at-issue civil actions pending on or filed after the operative date of this chapter shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifteen thousand dollars ($15,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifteen thousand dollars ($15,000) for each plaintiff, which decision shall not be appealable.

(c) In each municipal court district, the municipal court district may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter in such judicial district, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. The provisions of this section shall not apply to any action maintained pursuant to Section 1781 of the Civil Code or Section 116.2, 378, or 1161 of this code.

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐4.1.
C.J.S. Arbitration § 6.

§ 1141.12 At-issue civil actions in superior courts upon stipulation of parties; uniform system in other courts; stipulation of parties and election to limit award

(a) In each superior court in which arbitration may be had pursuant to subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

(b) In all other superior, municipal, and justice courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(i) Any cause upon stipulation of the parties, and

(ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the total sum of fifteen thousand dollars ($15,000).

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Derivation: Former § 1141.10, added by Stats.1975, c. 1006, p. 2264, § 1.

Library References
Arbitration ⇐6.1.
C.J.S. Arbitration §§ 17, 22.

§ 1141.13 Inapplicability of chapter to civil action with prayer for equitable relief; exceptions

This chapter shall not apply to any civil action which includes a prayer for equitable relief, except that if the prayer for equitable relief is frivolous or insubstantial, this chapter shall be applicable.

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐3.
C.J.S. Arbitration § 11.

§ 1141.14 Rules for practice and procedure

Notwithstanding any other provision of law except the provisions of this chapter, the Judicial Council shall provide by rule for practice and procedure for all actions submitted to arbitration under this chapter. The Judicial Council rules shall provide for and conform with the provisions of this chapter.

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.15 Exceptions for cause to arbitration in § 1141.11; rules

The Judicial Council rules shall provide exceptions for cause to arbitration pursuant to subdivision (a), (b), or (c) of Section 1141.11. In providing for such exceptions, the Judicial Council shall take into consideration whether the civil action might not be amenable to arbitration.

(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.16 Determination of amount in controversy; conference; submission to arbitration; time

(a) The determination of the amount in controversy, under subdivision (a) or (b) of Section 1141.11 and Section 1141.12, shall be made by the court and the case submitted to arbitration at any conference at which all parties are present or represented by counsel. Such conference shall be held no sooner than nine months after the case has been placed on the civil active list and no later than 90 days before trial, whichever occurs first. At that time the court shall make a determination whether any prayer for equitable relief is frivolous or insubstantial, which decision shall not be appealable. The date of such conference may be postponed upon motion of any party for good cause shown. No determination pursuant to this section shall be made if all defendants stipulate in writing that the amount in controversy exceeds fifteen thousand dollars ($15,000).

(b) The determination of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo. The determination shall be based on the total amount of damages, and the judge shall not consider questions of liability or comparative negligence or other defenses.

(c) The case shall be submitted to arbitration at an earlier time upon the written request of all plaintiffs, subject to a motion by a defendant for good cause shown to delay the arbitration hearing.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐6.1.
C.J.S. Arbitration §§ 17, 22.

§ 1141.17 Tolling limitations on dismissal for lack of prosecution

Submission of an action to arbitration pursuant to this chapter shall not toll the running of the time periods contained in Section 583 as to actions filed on or after the operative date of this chapter. Submission to arbitration pursuant to a court order within six months of the expiration of the statutory period shall toll the running of such period until the filing of an arbitration award.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Limitation of Actions ⇐131.
C.J.S. Limitations of Actions § 296.

§ 1141.18 Arbitrators; qualifications; compensation; selection; disqualification

(a) Arbitrators shall be retired judges or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators, except that no compensation shall be paid prior to the filing of the award by the arbitrator, or prior to the settlement of the case by the parties. Compensation for arbitrators shall, unless waived in whole or in part, be one hundred fifty dollars ($150) per day, except that the board of supervisors of a county or a city and county may set a higher level of compensation for that county or city and county.

(c) The board of governors of the State Bar shall provide by rule for the method of selection of arbitrators after consulting with administrative committees established pursuant to Rule 1603 of the Judicial Arbitration Rules for Civil Cases and with county bar associations in counties where there are no administrative committees. These rules shall provide for specialized panels and shall become operative upon approval of the Judicial Council.

(d) Any party may request the disqualification of the arbitrator selected for his case on the grounds and by the procedures specified in Section 170 or Section 170.6 within five days of the naming of the arbitrator.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Derivation: Former § 1141.20, added by Stats.1975, c. 1006, p. 2264, § 1.

Library References
Arbitration ⇐26, 27.
C.J.S. Arbitration §§ 60 to 66.

§ 1141.19 Arbitrators; powers

Arbitrators approved pursuant to this chapter shall have the powers necessary to perform duties pursuant to this chapter as prescribed by the Judicial Council.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐29.
C.J.S. Arbitration §§ 58, 68, 107, 109.

§ 1141.20 Finality of award; de novo trial; request; limitation; calendar

An arbitration award shall be final if a request for a de novo trial is not filed within 20 days after the date the arbitrator files the award with the court. Any party may elect to have a de novo trial, by court or jury, both as to law and facts. Such trial shall be calendared, insofar as possible, so that the trial shall be given the

same place on the active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

For § 1141.20 operative until July 1, 1979, see Chapter 2.5, ante.

Library References
Arbitration ⇐80.
C.J.S. Arbitration §§ 123 to 125.

§ 1141.21 Judgment upon trial de novo less favorable for party electing; payment of nonrefundable costs and fees

(a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(i) To the county, the compensation actually paid to the arbitrator.

(ii) To the other party or parties, all costs including, but not limited to, those specified in Sections 1032.5, 1032.6, 1032a, and 1032b, and the party electing the trial de novo shall not recover his costs.

(iii) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case.

Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (ii) and (iii) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under paragraph (i) of subdivision (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Costs ⇐158.
C.J.S. Costs § 188.

§ 1141.22 Grounds for correction, modification or vacation of award

The Judicial Council rules shall specify the grounds upon which the arbitrator or the court, or both, may correct, modify or vacate an award.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐76.
C.J.S. Arbitration §§ 149, 157, 159, 164, 167, 177.

§ 1141.23 Award; writing, signature and filing; entry in judgment book; force and effect

The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. If there is no request for a de novo trial and the award is not vacated, the award shall be entered in the judgment book in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and

it may not be attacked or set aside except as provided by Section 1286.2 or Judicial Council rule.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐49 et seq.
C.J.S. Arbitration § 96.

§ 1141.24 Prohibition of discovery after award

In cases ordered to arbitration pursuant to Section 1141.16(a), absent a stipulation to the contrary, no discovery shall be permissible after an arbitration award except by leave of court upon a showing of good cause.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐11.
C.J.S. Arbitration § 89.

§ 1141.25 Reference to arbitration proceedings or award during trial; grounds for new trial

Any reference to the arbitration proceedings or arbitration award during any subsequent trial shall constitute an irregularity in the proceedings of the trial for the purposes of Section 657.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.26 Awards in excess of $15,000; validity; inapplicability of § 1141.21

Nothing in this act shall prohibit an arbitration award in excess of fifteen thousand dollars ($15,000). No party electing a trial de novo after such award shall be subject to the provisions of Section 1141.21 if the judgment upon the trial de novo is in excess of fifteen thousand dollars ($15,000).
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Arbitration ⇐29.6.
C.J.S. Arbitration § 69.

§ 1141.27 Application of chapter to actions with public agency or entity as party

This chapter shall apply to any civil action otherwise within the scope of this chapter in which a party to the action is a public agency or public entity.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.28 Administrative costs; payment

All administrative costs of arbitration, including compensation of arbitrators, shall be paid for by the county in which the arbitration costs are incurred, except as otherwise provided in Section 1141.21.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

Library References
Counties ⇐137.
C.J.S. Counties § 211.

§ 1141.29 Filing of data by superior and municipal courts; report by Judicial Council

The Judicial Council shall, by rule, require each superior and municipal court subject to the provisions of this chapter to file with it such data as will enable it to provide, on or before January 1, 1984, a report to the Governor and the Legislature which shall serve as a comprehensive review of the effectiveness of this chapter, and which shall include recommendations for future action.

The Judicial Council, in consultation with the Department of Finance and the Auditor General, shall include in its study an estimate of the potential costs or savings, if any, should the program be continued beyond the life of the act.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.30 Construction of chapter in relation to provisions in title on arbitration

The provisions of this chapter shall not be construed in derogation of the provisions of Title 9 (commencing with Section 1280) of Part 3, and, to that extent, the provisions of this chapter and that title are mutually exclusive and independent of each other.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.31 Operative date of chapter; date of adoption of arbitration rules

The provisions of this chapter shall become operative July 1, 1979, except that the Judicial Council shall adopt the arbitration rules for practice and procedures on or before March 31, 1979.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979.)

Operative July 1, 1979

§ 1141.32 Repeal of chapter

This chapter shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.
(Added by Stats.1978, c. 743, p. —, § 2, operative July 1, 1979).

Operative July 1, 1979

CHAPTER 3. DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS [REPEALED]

Chapter 3 was repealed by Stats.1973, c. 20, p. 36, § 12.

§§ 1143 to 1154. Repealed by Stats.1973, c. 20, p. 36, § 12

Law Revision Commission Comment
1973 Repeal

Sections 1143–1154, providing for discharge of persons imprisoned on civil process, are repealed since execution may no longer issue against the person of the judgment debtor in a civil action. See Code Civ.Proc. § 478 and Comment thereto.

These sections also provided a remedy for a person imprisoned for contempt of court for failure to pay court-ordered support. *See, e. g.*, Ellery v. Superior Court, 25 Cal. App.2d 225, 77 P.2d 250 (1938). Even though the imprisonment for civil contempt may have been initially lawful under Code of Civil Procedure Section 1219, which provides for imprisonment until performance, the subsequent inability to comply with the court order is ground for discharge from imprisonment. *Cf.* In re Wilson, 75 Cal. 580, 17 P. 698 (1888). It has been stated that a person entitled to release because of his subsequent inability to comply might apply for discharge under the statutory procedure. In re Wilson, 75 Cal. 580, 17 P. 698 (1888); Ex parte Levin, 191 Cal. 307, 215 P. 808 (1923) (*semble*); In re Brune, 113 Cal.App. 254, 298 P. 80 (1931) (*semble*). The statutory procedure, however, was simply an alternative means of discharge, and release on habeas corpus for subsequent inability to comply is also available. See In re Johnson, 92 Cal.App.2d 467, 207 P.2d 123 (1949).

Repeal of Sections 1143–1154 will not affect the ability of a person imprisoned for civil contempt to obtain his release upon a subsequent inability to comply with the court order. The writ of habeas corpus is available in such a contingency. PENAL CODE §§ 1485 and 1487(2). As under the prior provisions, the prisoner may obtain his release on habeas corpus following summary procedures for court hearing. PENAL CODE § 1484. And, as under the prior provisions, once discharged, a person may not be again imprisoned for the prior obligation. PENAL CODE § 1496. *Cf.* Ex parte Batchelder, 96 Cal. 233, 31 P. 46 (1892).

CHAPTER 4. SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY IN CERTAIN CASES

Law Review Commentaries
Right to reasonable rent regulation: A newer economic due process. (1977) 65 C. L.R. 804.
Unlawful detainer—storage and sale of evicted tenant's property—exemption statutes. (1971) 9 San Diego L.Rev. 94.

Library references
Recommendations relating to landlord-tenant relations—Abandonment of leased real property, 11 Cal.L.Revision Comm'n Reports 951, 957 (1973).

Title Four

SPECIAL RULES FOR TRIAL COURTS

Division III

JUDICIAL ARBITRATION RULES FOR CIVIL CASES

Amended Effective July 1, 1979

Rule

1600. Actions subject to arbitration.
1600.5 Actions exempt from arbitration.

Rule 1600. ACTIONS SUBJECT TO ARBITRATION

Except as provided in rule 1600.5 the following actions shall be arbitrated:

(a) Upon stipulation, any action in any court, regardless of the amount in controversy.

(b) Upon filing of an election by a plaintiff, any action in any court in which the plaintiff agrees that the arbitration award shall not exceed $15,000.

(c) In each superior court with 10 or more judges all civil actions where the amount in controversy does not exceed $15,000 as to any plaintiff.

(d) In a superior court with fewer than 10 judges that so provides by local rule, all actions where the amount in controversy does not exceed $15,000 as to any plaintiff.

(e) All actions in a municipal court that so provides by local rule.

Adopted, effective July 1, 1979.

Rule 1600.5 ACTIONS EXEMPT FROM ARBITRATION

The following actions are exempt from arbitration:

(a) Actions that include a prayer for equitable relief that is not frivolous or insubstantial;

(b) Class actions;

(c) Small claims actions or trials de novo on appeal from the small claims court;

(d) Unlawful detainer proceedings;

(e) Family Law Act proceedings;

(f) Any action otherwise subject to arbitration that is found by the court to be not amenable to arbitration on the ground that arbitra-

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tion would not reduce the probable time and expense necessary to resolve the litigation;

(g) Any category of actions otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that under the circumstances relating to the particular court arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation;

(h) Actions involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $15,000;

(i) Actions included in the Economical Litigation Project provided for in part 3.5 of the Code of Civil Procedure.

Adopted, effective July 1, 1979.

Rule 1601. ARBITRATION HEARING LIST

(a) When the parties stipulate to arbitration, the action shall be placed on the arbitration hearing list forthwith. The stipulation shall be filed not later than 30 days before the date set for trial.

(b) Upon written request of a plaintiff to submit an action to arbitration, the action shall be placed on the arbitration hearing list subject to a motion by defendant for good cause to delay the arbitration hearing. The request shall be filed at the time the at-issue memorandum is filed, or at such later date as is permitted by the court.

An action involving a cross-complaint where a plaintiff has elected to arbitrate shall be removed from the arbitration hearing list if upon motion of the cross-complainant made within 15 days after notice of the election to arbitrate the court determines that the amount in controversy relating to the cross-complaint exceeds $15,000.

(c) Absent a stipulation or a request by plaintiff to submit to arbitration: (1) in superior courts, actions shall be placed on the arbitration hearing list at the conference when the court determines the amount in controversy, which conference shall be held no sooner than nine months after the action has been placed on the civil active list and no later than 90 days before the date set for trial, whichever occurs first; (2) in municipal courts, actions shall be placed on the hearing list at such time as is designated by local rule.

(d) When pursuant to subdivision (c) an action is placed or remains on the arbitration hearing list more than four years and six months after the date the action was filed, the time during which the action is pending on the arbitration hearing list shall not be included in computing the time periods specified in section 583 of the Code of Civil Procedure.

Amended, effective July 1, 1979.

Rule 1602. DESIGNATION OF ARBITRATOR BY STIPULATION

The parties may by stipulation designate any person to serve as arbitrator. The designation shall be effective if the designated person files a written consent and the oath required of panel arbitrators under these rules within 15 days of the date of the stipulation. A stipulation may specify the maximum amount of the arbitrator's award.

Amended, effective July 1, 1979.

Rule 1603. ADMINISTRATION

(a) The presiding judge shall designate the clerk, executive officer or other court employee to serve as arbitration administrator. The arbitration administrator shall supervise the selection of arbitrators for the cases on the arbitration hearing list, generally supervise the operation of the arbitration program and perform any additional duties delegated by the presiding judge.

(b) In each superior court having 10 or more authorized judges there shall be an administrative committee composed of, insofar as may be practicable:

(1) the presiding judge or a judge designated by the presiding judge;

(2) the arbitration administrator;

(3) two or more active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent plaintiffs in personal injury tort actions before the court;

(4) an equal number of active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent defendants in personal injury tort actions before the court.

(5) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try other civil cases.

It may also include:

(6) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try cases before the court in any specialized area for which the presiding judge establishes a specialized arbitration panel.

The members of the administrative committee shall serve for terms of 2 years; they may be reappointed, and may be removed by the presiding judge.

(c) Any other court may by rule establish an administrative committee as provided in subdivision (b). Otherwise, the presiding judge

or a judge designated by the presiding judge shall perform the functions and have the powers of an administrative committee as provided in these rules.

(d) The administrative committee shall have power:

(1) to select its chairman and provide for its procedures;

(2) to appoint the panels of arbitrators provided for in rule 1604;

(3) to remove a person from a panel of arbitrators;

(4) to establish procedures for selecting an arbitrator not inconsistent with these rules or local court rules;

(5) to review the administration and operation of the arbitration program periodically and make recommendations to the Judicial Council as it deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

Amended, effective July 1, 1979.

Rule 1604. COMPOSITION OF THE PANELS

(a) In every court there shall be a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(b) The panels of arbitrators shall be composed of active members of the State Bar and retired judges.

Each person appointed shall serve as a member of a panel of arbitrators at the pleasure of the administrative committee. A person may be on arbitration panels in more than one county.

(c) The administrative committee shall determine the size and composition of the panels of arbitrators. The number of attorneys on a personal injury panel who usually represent plaintiffs shall, to the extent feasible, equal the number of those who usually represent defendants.

(d) An appointment to a panel is effective when the person appointed agrees to serve and files an oath or affirmation to justly try all matters submitted to him.

(e) Lists showing the names of panel arbitrators available to hear cases shall be available for public inspection in the arbitration administrator's office.

(f) A superior court and a municipal court may by local rule of each court agree to jointly use the superior court panel of arbitrators and share the administrative duties subject to such terms and conditions as are mutually agreeable, including membership of a municipal court representative on the administrative committee.

Amended, effective July 1, 1979.

Rule 1605. ASSIGNMENT OF CASES

(a) Unless the arbitrator has been designated by stipulation, within 15 days after a case is placed on the arbitration hearing list the administrator shall select at random at least three names from the appropriate panel in accordance with procedures established by the administrative committee. The procedures shall also provide a method by which each party or side may within 10 days reject in writing an equal number of names so that, if each party or side rejects the maximum number of names permitted, a single name will remain and that arbitrator will be deemed appointed. If at the end of 10 days two or more names have not been rejected, the administrator shall appoint at random one of the remaining arbitrators.

In the absence of local procedures to the contrary: (1) The administrator shall determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the number or identity of sides shall be decided by the presiding judge as are disputes in determining sides entitled to peremptory challenges of jurors. (2) The administrator shall select at random a number of names equal to the number of sides, plus one. (3) The list of randomly selected names shall be mailed to counsel for the parties, and each side has 10 days from the date of mailing to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name. (4) Promptly on the expiration of the 10-day period, the administrator shall appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.

The administrator shall assign the case to the arbitrator appointed and shall give notice of the appointment to the arbitrator and to all parties.

(b) In the event the arbitrator declines to serve or does not hold a hearing within 60 days from the date of the assignment of the case to him, except where a case has been continued, the administrator shall vacate the appointment of the arbitrator, and shall return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator pursuant to subdivision (a).

(c) When a case has been returned to the arbitration hearing list after being reassigned to two arbitrators pursuant to subdivision (b), the case shall be certified by the administrator to the court, which shall summon the parties or their counsel. If the inability to hold a hearing has been due to the neglect or lack of cooperation of a party who elected or stipulated for arbitration, the cause shall be removed from the arbitration hearing list and restored to the civil active list;

in other cases, the cause may be ordered reassigned for arbitration, or the court may make any other appropriate order to expedite disposition of the case.

Amended, effective July 1, 1979.

Rule 1606. DISQUALIFICATION FOR CONFLICT OF INTEREST

(a) It shall be the duty of the arbitrator to determine whether any cause exists for disqualification upon any of the grounds set forth in section 170 of the Code of Civil Procedure governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision 4 of section 170, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator shall promptly notify the administrator of any known ground for disqualification and another arbitrator shall be selected as provided in rule 1605.

(b) A copy of any request by a party for the disqualification of an arbitrator pursuant to sections 170 or 170.6 of the Code of Civil Procedure shall be sent to the administrator.

Amended, effective July 1, 1979.

Rule 1607. CONTINUANCES

(a) The parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. Notice of the continuance shall be sent to the arbitration administrator.

(b) If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown under the standards recommended in Section 9 of the Standards of Judicial Administration, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance shall notify the arbitrator and the arbitrator shall reschedule the hearing, giving notice to all parties to the arbitration proceeding.

Amended, effective July 1, 1979.

Rule 1608. ARBITRATOR'S FEES

(a) The arbitrator's award, or a notice of settlement signed by the parties or their counsel, must be timely filed with the clerk of the court before a fee may be paid to the arbitrator.

(b) On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee when the award was not timely filed.

(c) The arbitrator's fee statement shall be submitted to the administrator promptly upon the completion of the arbitrator's duties, and shall set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

Amended, effective July 1, 1979.

Rule 1609. COMMUNICATION WITH THE ARBITRATOR

No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

Amended, effective July 1, 1979.

Rule 1610. REPRESENTATION BY COUNSEL; PROCEEDINGS WHEN PARTY ABSENT

(a) A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(b) The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award shall not be based solely upon the absence of a party. In the event of a default by defendant, the arbitrator shall require the plaintiff to submit such evidence as may be appropriate for the making of an award.

Amended, effective July 1, 1979.

Rule 1611. HEARINGS; NOTICE; WHEN AND WHERE HELD

The arbitrator shall set the time, date and place of the hearing, and shall give notice of the hearing date to the parties at least 30 days prior to the date set for the arbitration hearing. No hearings shall be set for Saturdays or legal holidays, except upon the agreement of all parties and the arbitrator. Hearings shall be scheduled to take place not sooner than 35 days, nor later than 60 days from the date of the assignment of the case to the arbitrator. Hearings shall take place in appropriate facilities provided by the court or selected by the arbitrator.

Amended, effective July 1, 1979.

Rule 1612. DISCOVERY.

The parties to the arbitration shall have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and shall be subject to all of the same duties, liabilities, and obligations as provided in Part 4, Title 3, Chapter 3 of the Code of Civil Procedure, except that all discovery shall be completed not later than 15 days prior to the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of time within which discovery must be completed.

Amended, effective July 1, 1979.

Rule 1613. RULES OF EVIDENCE AT HEARING

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The rules of evidence governing civil actions apply to the conduct of the arbitration hearing, except:

(1) Any party may offer, and the arbitrator shall receive in evidence written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all opposing parties at least 20 days prior to the hearing. Any other party may subpena the author of a report, bill or estimate as a witness and examine him as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied by a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, and by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if: (i) they are made by affidavit or by declaration under penalty of perjury, (ii) copies have been delivered to all opposing parties at least 20 days prior to the hearing, and (iii) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence

a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(3) The deposition of any witness may be offered by any party and shall be received in evidence, subject to objections available under Code of Civil Procedure Section 2016(e), notwithstanding that the deponent is not "unavailable as a witness" within the meaning of Section 240 of the Evidence Code and no exceptional circumstances exist, if: (i) the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules, and (ii) not less than 20 days prior to the hearing the proponent of the deposition delivered to all opposing parties notice of his intention to offer the deposition in evidence. The opposing party, upon receiving the notice, may subpena the deponent and if he does so, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpenaed him. These limitations are not applicable to a deposition admissible under the terms of Section 2016 of the Code of Civil Procedure.

For purposes of this subdivision, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by mail, the times prescribed in this subdivision for delivery of documents, notices and demands are increased by 5 days.

(c) Subpenas shall issue for the attendance of witnesses at arbitration hearings as provided in the Code of Civil Procedure, in Section 1985 and elsewhere of Part 4, Title 3, Chapters 2 and 3. It shall be the duty of the party requesting the subpena to modify the form of subpena so as to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpenaed witness may be a ground for an adjournment or continuance of the hearing. If any witness properly served with a subpena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpena on penalty of contempt may be had before the superior court as provided in Code of Civil Procedure Section 1991 for other instances of refusal to appear and answer before an officer or commissioner out of court.

Amended, effective July 1, 1979.

Rule 1614. CONDUCT OF THE HEARING

(a) The arbitrator shall have the following powers:

(1) to administer oaths or affirmations to witnesses;

(2) to take adjournments upon the request of a party or upon his own initiative when deemed necessary;

(3) to permit testimony to be offered by deposition;

(4) to permit evidence to be offered and introduced as provided in these rules;

(5) to rule upon the admissibility and relevancy of evidence offered;

(6) to invite the parties, on reasonable notice, to submit trial briefs;

(7) to decide the law and facts of the case and make an award accordingly;

(8) to award costs, not to exceed the statutory costs of the suit; and

(9) to examine any site or object relevant to the case.

All other questions arising out of the case are reserved to the court.

(b) The arbitrator may, but is not required to make a record of the proceedings. Any records of the proceedings made by or at the direction of the arbitrator shall be deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator shall not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpena issued in a criminal investigation or prosecution for perjury. No other record shall be made, and the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this rule.

Amended, effective July 1, 1979.

Rule 1615. THE AWARD; ENTRY AS JUDGMENT; MOTION TO VACATE

(a) The award shall be in writing and signed by the arbitrator. It shall determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate. The arbitrator is not required to make findings of fact or conclusions of law.

(b) Within 10 days after the conclusion of the arbitration hearing the arbitrator shall file his award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award. Within the time for filing the award, the arbitrator may file and serve an amended award.

(c) The clerk shall enter the award as a judgment forthwith upon the expiration of 20 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules. Promptly upon entry of the award as a judgment the clerk shall mail notice of entry of judgment to all parties who have appeared in the case and shall execute a certificate of mailing and place it in the court's file in the case. The judgment so entered shall have the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in subdivision (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(d) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in subdivisions (a), (b), and (c) of Section 1286.2 of the Code of Civil Procedure, and upon no other grounds. The motion shall be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

Amended, effective July 1, 1979.

Rule 1616. TRIAL AFTER ARBITRATION

(a) Within 20 days after the arbitration award is filed with the clerk of the court, any party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 20-day period within which to request trial may not be extended.

(b) The case shall be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration pro-

ceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) In assessing costs after the trial, the court shall apply the standards specified in section 1141.21 of the Code of Civil Procedure.

Amended, effective July 1, 1979.

Rule 1617. ARBITRATION NOT PURSUANT TO RULES

These rules do not prohibit the parties to any civil action or proceeding from entering into arbitration agreements pursuant to Part 3, Title 9 of the Code of Civil Procedure. Neither the administrative committee nor the arbitration administrator shall take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

Amended, effective July 1, 1979.

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JUDICIAL COUNCIL OF CALIFORNIA

Report and Recommendation
on
Effectiveness of Judicial Arbitration*

Superior Court Committee

November 5, 1983

* The Judicial Council adopted this report on November 19, 1983.

I. INTRODUCTION

Effective July 1, 1979, the Legislature enacted a comprehensive program for mandatory judicial arbitration in superior courts having 10 or more judges and in all other courts which elected through local rule to make the program available (Stats. 1978, ch. 743)[1/]. Judicial arbitration was also provided in any case where the plaintiff elected or the parties stipulated to it. (Code Civ. Proc., § 1141.12(b)(i)(ii).) The act originally applied to cases which the court determined had an amount-in-controversy of $15,000 or less and which did not require equitable relief. The amount was raised to $25,000 for the counties of Los Angeles, San Bernardino, Santa Barbara, and Ventura (Stats. 1982, ch. 1522). The $25,000 limit also applies to any county where the board of supervisors agrees to the increased limit (Stats. 1983, ch. 978).

Since January 1, 1982, the law provides for the assignment of a case to the arbitration hearing list within 90 days after a party declares the case to be at issue[2/]. (Code Civ. Proc., § 1141.16.) After a case is placed on the arbitration hearing list, either by court order, election of plaintiff, or stipulation of the parties, an arbitration hearing is generally held within 90 days. A neutral arbitrator -- who is usually an attorney selected from a list maintained by the court, but sometimes a retired judge -- hears the evidence and must make an award within 10 days after the

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1/ Chapter 743 supplanted previous legislation which made voluntary arbitration available by election of plaintiff or stipulation of the parties in cases where the amount in controversy was $7,500 or less. (Stats. 1975, ch. 1006)

2/ This may mean considerably earlier assignments than under previous procedures where the assignment of cases to the arbitration hearing list generally occurred during trial setting conferences, and occasionally at pretrial or mandatory settlement conferences. As a result, cases were usually diverted to judicial arbitration no earlier than the time they would have been set for trial.

conclusion of the hearing.[3/] Any party wishing to reject the award must file a request for trial de novo within 20 days after the award is filed with the court. If the request is timely, the case is restored to the list of civil cases awaiting trial and processed in the same manner as conventional cases. A case which is eventually tried and results in a judgment that is not more favorable than the arbitration award may subject the requesting party to paying various costs and fees, such as the arbitrator's fee and the expert witness costs of the other party.[4/]

3/ The rules of evidence apply to an arbitration hearing. However, reports and records of health care providers, documentary evidence of special damages, and police reports of an accident which is the subject of the lawsuit may be received in evidence if copies are provided to all opposing parties at least 20 days before the hearing. Any party may subpena the author of a report, bill, or estimate as a witness and examine the author as if under cross-examination. The written statement of any other witness, including a nonmedical expert witness, may also be received in evidence if it is delivered to all opposing parties at least 20 days before the hearing and no opposing party, at least 10 days before the hearing, demands that the witness be produced in person to testify at the hearing. Procedures also exist for placing in evidence the deposition of any witness, regardless of whether the witness is "unavailable" under Evidence Code section 240.. (Cal. Rules of Court, rule 1613.)

4/ Code of Civil Procedure section 1141.21 provides that a party to a judicial arbitration proceeding who requested a trial de novo and failed to improve his or her position shall pay the following costs:

(1) compensation actually paid to the arbitrator (normally $150);

(2) the costs of the other party's expert witnesses reasonably incurred or necessary in preparation or trial of the case;

(3) costs otherwise obtainable under Code of Civil Procedure sections 1032.5, 1032a and 1032b; and

(4) compensation paid under Code of Civil Procedure section 1141.28 by the other parties to the arbitrator when the arbitration resulted solely from the stipulation of the parties.

The Legislature's declared purpose in creating judicial abtitration was to reduce the cost, complexity, and increasing delay of litigating modest civil claims. It sought to do this by creating simplified and economical procedures which provided the parties with maximum opportunity to participate directly in the resolution of their disputes through procedures that were as informal and private as possible. (Code Civ. Proc., § 1141.10.)

In attempting to determine whether the law achieved these goals, the Legislature required the Judicial Council to

> provide, on or before January 1, 1984, a report to the Governor and the Legislature which shall serve as a comprehensive review of the effectiveness of this chapter, and which shall include recommendations for further action.
>
> The Judicial Council, in consultation with the Department of Finance and the Auditor General, shall include in its study an estimate of the potential costs or savings, if any, should the program be continued beyond the life of the act. (Code Civ. Proc., § 1141.29.)

This report is submitted by the Mandatory Arbitration Rules Advisory Committee to assist in compliance with the section.[5/] It offers conclusions and recommendations drawn from the committee's in-depth study of the judicial arbitration program and its effect on the court system and users of the program.

4/ (continued)

These costs and fees may be avoided if the court finds in writing and upon motion that their imposition would "create such a substantial economic hardship as not to be in the interest of justice." (Code Civ. Proc., § 1141.21(a).)

5/ The advisory committee was orginally appointed by the Chairperson of the Judicial Council to advise and assist in the development of rules for judicial arbitration. The committee's function was expanded to include assisting the council in preparing the report pursuant to section 1141.29. The committee is chaired by Judge John Flaherty (Santa Clara Superior Court) and consists of superior court judges Henry Ramsey, Jr. (Alameda), Reginald Watt (Butte), Richard Bancroft (Alameda), Martin Rothenberg (Contra Costa), Jack Tenner (Los Angeles); municipal court judges

II. CONCLUSIONS AND RECOMMENDATIONS

The committee finds that judicial arbitration is a valuable dispute resolution mechanism which has favorably affected the cost, complexity, and time associated with litigating smaller civil cases. The users of the program -- litigants and their attorneys -- confirm that dispositions resulting from judicial arbitration generally tend to be more prompt, inexpensive, and predictable, and are frequently more satisfactory to all parties.

The program has emerged as an essential calendar management tool for the courts, permitting the disposition of civil active cases, including those not ordered to arbitration, to occur on the whole more quickly and economically, while providing litigants in smaller civil cases with a desirable alternative to conventional litigation.

Based on its study of the effects of the judicial arbitration program, the committee recommends that legislation be enacted indefinitely retaining judicial arbitration beyond its current repeal date of January 1, 1986.[6/]

5/ (continued)

Earl Cantos (San Diego) and Isabel Cohen (Los Angeles); superior court arbitration administrators Michael Tamony (San Francisco) and Arnold Pena (Los Angeles); and attorneys Richard Crow (Sacramento) and Terence Mix (Los Angeles). Serving as consultants were court of appeal justices Robert Rickles (Fourth District) and Donald King (First District), superior court executive officer Alan Slater (Orange), and attorney Ronald Whyte (San Jose).

6/ Code of Civil Procedure section 1141.32 provides:

This chapter shall remain in effect only until January 1, 1986, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends such date. (Stats. 1983, ch. 1253.)

III. DATA SOURCES

Summarized below are the sources of information and data which the committee used in reaching its conclusions.

A. Docket Review

The superior courts of Alameda, Contra Costa, San Francisco, and Santa Clara Counties [hereafter study group] were chosen as study sites for an in-depth docket review of all long cause matters[7] which were calendared for trial setting conference, pretrial conference, or arbitration determination hearing between January 1, 1980, and March 31, 1980.[8]

It was assumed that the diversity of the Bay Area courts would provide an acceptable sampling of judicial arbitration activity and that conclusions drawn from these courts would be generally valid statewide.

A study period of January 1, 1980, to March 31, 1980, was selected to allow sufficient time for the start-up and stabilization of arbitration assignment procedures, which were developed when the program began on July 1, 1979. The time frame also assured that most of the cases reviewed in the summer of 1982, when the study data was collected, would by then be disposed of.

In order to follow the progress of all cases affected by judicial arbitration, the four Bay Area courts provided the monthly calendars for trial setting conferences, pretrial conferences, and arbitration determination hearings held during the first quarter of 1980 for all long cause civil cases ready

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7/ Long cause matters, in contrast to short causes, are actions which are estimated to require more than one day of trial. Short causes are not subject to judicial arbitration and therefore were not considered in the study.

8/ The larger superior courts in Southern California were contacted about participating in the study. None could indentify and retrieve the necessary case files for the period in question.

for trial setting or placement on the arbitration hearing list. Of these cases, only long causes classified as "personal injury, death and property damage - motor vehicle" [hereafter PI-Motor Vehicle], "personal injury, death and property damage - other" [hereafter PI-Other], and "other civil complaints" -- a total of 2,394 cases -- were considered for the study.[9]

The cases were selected for examination in this manner because the courts generally determined a case's suitability for placement on the arbitration hearing list at these conferences or hearings. During the study period, two of the courts (Alameda and San Francisco) used trial setting conferences almost exclusively for this purpose. Santa Clara County Superior Court used both trial setting and pretrial conferences. Contra Costa County Superior Court employed an arbitration determination hearing. In all four courts, cases judged not appropriate for judicial arbitration were generally assigned trial dates at the time of the conference or hearing. Consequently, virtually all long cause matters that were to be either tried or arbitrated were placed on these calendars.

2,394 cases were examined to determine the general case type, elapsed time between various procedural events, and manner of disposition. Cases placed on the arbitration hearing list were examined more closely, primarily to determine the specific type of case, when and how disposition occurred, and the results of arbitration hearings and trials de novo.

B. Data from the Administrative Office of the Courts

The superior courts furnish monthly calendar reports to the Administrative Office of the Courts. This data was reviewed in evaluating judicial arbitration's effect on the

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9/ The Administrative Office of the Courts' monthly reporting system classifies the types of cases which may be subject to judicial arbitration by these categories. The categories are used in this study to facilitate comparisons.

calendars of the courts. Particularly helpful were data concerning:

(a) number of filings, dispositions, and contested trials by type of case;

(b) number and relative age of civil cases awaiting trial; and

(c) median elapsed time to trial after the filing of the at-issue memorandum.

Much of this monthly data is tabulated and presented in the Judicial Council's Annual Reports.

C. Monthly Report of Arbitration Proceedings

Since July 1979, the courts have been providing monthly reports detailing their arbitration activity. The reporting forms were revised in July 1982 to collect additional data concerning trials de novo. These have been tabulated for the 14 largest courts for the period of July 1982 through May 1983, and indicate the number of cases placed on the arbitration hearing list, the number of trials de novo, the length, result, and whether the trial was by jury or court.

D. Arbitration Workshops Organized by the Administrative Office of the Courts

The Administrative Office of the Courts has organized two workshops involving judicial arbitration, which were held in San Francisco in April 1980 and San Diego in April 1982. Attending were those judges, attorneys, representatives of the insurance industry, and court administrators who were most familiar with the operation of judicial arbitration in the various superior and municipal courts statewide. The purpose of the workshops was to provide a forum to exchange information about the effectiveness of the program and to suggest means of improving it. Subjects such as the time and cost of disposing of cases through judicial arbitration and the subjective impact of informal arbitration proceedings on the litigants were discussed.

IV. EFFECTIVENESS OF JUDICIAL ARBITRATION

The issue of "effectiveness" has been addressed from two perspectives. The first is the effect on court calendars. The second is the effect on the ultimate users, the attorney and litigant. The calendar effect was analyzed by observing changes in relative trial frequency[10/] and in court calendar status, using such conventional indicators as the number and age of cases awaiting trial and the time from the filing of the at-issue memorandum to jury trial. The effect on the program users was observed inferentially by noting the specific types of cases undergoing judicial arbitration and the comparative speed and results of the process. Also considered were the reported impressions of counsel for plaintiffs, defendants, and representatives of the insurance industry about the effect of the program on the parties' interests.

A. Calendar Status

The data suggest that judicial arbitration is a beneficial calendar control device which accelerates case turnaround time -- the time from at-issue memorandum filing to disposition. This development is reflected in most of the conventional measures of calendar status. It is caused by the removal from the civil active list of cases which are assigned to the arbitration hearing list. The civil active list contains all civil cases awaiting trial. Cases are placed on this list only after a party files a memorandum which states that the case is at-issue as to all parties and is ready for the setting of a trial date. A case is removed from the civil active list when it is placed on the arbitration hearing list.

10/ Changes in civil trial frequency necessarily affect calendar conditions, but frequently in ways which are not obvious because of the presence of such variables as criminal trial activity, available judicial resources, court productivity levels, and changing legal cultures. Consequently the effect of lower trial frequency, even where it can be proven, may be difficult to isolate.

A reduction of the number of cases on the civil active list means that with the same court resources the cases remaining on the civil active list are set for trial earlier. Turnaround time therefore decreases because most dispositions of cases set for trial occur at or close to the trial date. The sooner a case is exposed to trial, the sooner it is disposed of.[11/]

Faster turnaround time results from the circumstance that, once diverted to the arbitration hearing list, some number of the cases never return to the civil active list. When coupled with Code of Civil Procedure section 1141.16, which provides for an arbitration determination conference within 90 days after filing the at-issue memorandum, judicial arbitration's effect on a court's calendar may be sizeable, depending on the number of cases permanently diverted and how early in the litigation process the diversion occurs.

For example, in 1981-82, 28,061 cases were placed on the arbitration hearing lists of the 14 largest superior courts. Sixty-three percent (17,764) of these were disposed of either by settlement before the arbitration award or by award, and therefore never returned to the civil active list. Of the cases that were arbitrated to award (11,383), 50 percent (5,678) resulted in the filing of a request for trial de novo. (Appendix A.) These, too, were disposed of largely before trial.

Further, the docket review of the four Bay Area courts shows that 57 percent of the 714 cases receiving an arbitration award were disposed of within six months of the award. The percentages range from 38 percent to 76 percent depending on the court. (See Appendix B.)

11/ See Church, et al., Justice Delayed: The Pace of Litigation in the Urban Trial Courts, National Center for State Courts, 1978, p. 76; Sipes, et al., Managing to Reduce Delay, National Center for State Courts, 1980, pp. 12-14.

The calendar effect resulting from the removal of a large number of cases from the civil active list is striking. It is most noticeable in Los Angeles where the court reports:

> From July 1, 1979 to October 31, 1982, 42,016 cases have been placed on the arbitration hearing list, while 25,446 have been removed, 55 percent by arbitration awards, 43 percent by pre-arbitration settlement and the balance, 2 percent, for administrative reasons. (Los Angeles Superior Court, Press Release, December 20, 1982, p. 3.)

In that court the number of civil cases awaiting trial decreased almost by one-half between 1979 and 1982, a trend observable only slightly less dramatically statewide among courts having mandatory judicial arbitration, where the decrease was 35 percent. (Appendix C.) Similarly, the percentage of total civil jury cases awaiting trial for more than one year fell by approximately one-third in Los Angeles Superior Court between 1980 and 1982 -- a trend also reflected statewide where only eight of the 21 largest courts failed to improve in this respect during the same period. (Appendix D.)

The trend is further noted in the number of civil cases awaiting trial per authorized judge. Between 1979 and 1982, the number of cases on the civil active list per judge has declined 40 percent for all courts with six or more judges.[12/] All but two of these courts have mandatory judicial arbitration programs. (Appendix E.)

Notwithstanding the calendaring improvements, the reported median time from at-issue filing to jury trial has yet to show similar improvement. (Appendix F.) This median value, however, appears to be an indicator of calendar status which historically lags behind other measurements in reflecting existing calendar conditions.

12/ The development is only partially explained by the increase to $15,000 from $5,000 in the jurisdictional amount required of cases filed in superior court after July 1979. Statewide, superior court filings in the categories of PI-Motor Vehicle, PI-Other, and Other Civil Complaints declined 11 percent in 1979-80 compared to 1978-79, the years before and after the change.

It should also be noted that courts with mandatory programs, impressed by the observable effects of judicial arbitration on calendar operation, have unanimously expressed the view that the program is an invaluable calendar management tool without which adequate caseflow control would be made significantly more difficult, if not impossible, in the face of long civil active lists, longer and more complex civil cases, and criminal calendars.[13/]

B. Trial Frequency[14/]

Trial frequency in the 14 largest superior courts having mandatory judicial arbitration has declined dramatically in the two-year period after the program went into effect compared to the two-year period before its implementation.[15/] Between 1977-79 and 1980-82, trials as a percentage of contested dispositions decreased 34.2 percent for PI-Motor Vehicle cases, 12.4 percent for PI-Other cases, and 4.9 percent for Other Civil Complaints. (Appendices G, H, and I.)

It is tempting to infer a relationship between this decline and judicial arbitration, particularly in those courts where the decline has been startling. For example, the trial rate among PI-Motor Vehicle cases decreased 74 percent in Riverside Superior Court, 58 percent in the Kern and Ventura Superior Courts, 53 percent in San Mateo Superior Court,

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13/ Typical of this view is the statement issued by the Los Angeles Superior Court that "[m]andatory arbitration of smaller civil cases has been a major factor in reducing case backlog and time to trial for civil cases in Los Angeles Superior Court." (Los Angeles Superior Court, News Release, December 21, 1983.)

14/ Unless otherwise indicated, trial frequency is the ratio of contested trials to total dispositions during a specified period. Contested trials are trials in which both parties participate that reach judgment.

15/ The year 1979-80 was considered transitional and therefore not included in the calculation.

40 percent in Sacramento Superior Court, and 36 percent in Los Angeles Superior Court in the two-year period 1980-82 compared to 1977-79. (Appendix G.)

On the other hand, during the last decade the percentage of total civil dispositions by contested trial has been declining almost continuously at a rate comparable to that in courts having judicial arbitration since July 1979. (Appendix J.) Further, decreasing trial frequencies are noted in rural courts with no significant judicial arbitration.[16/]

The absence of a controlled study makes impossible conclusive statements about the relationship between decreasing trial frequency and judicial arbitration. A controlled study -- which the statute does not permit (Code Civ. Proc., § 1141.11) -- would have involved randomly excluding a share of all cases from the provisions of the judicial arbitration statutes. This would have made possible a meaningful comparison between the trial frequencies of the two groups by ruling out such independent variables as more vigorous pretrial settlement procedures, increasing costs of expert witnesses and trial preparation, and delay in reaching trial. The effect of these variables in causing relatively more cases to be disposed of without contested trial than in earlier years remains undetermined.

16/ The conditions and volume of litigation in these small rural courts make inappropriate and potentially misleading a trial frequency comparison with largely metropolitan courts having judicial arbitration, particularly since the 14 largest courts themselves accounted for 87 percent of all statewide dispositions of personal injury and other civil complaint cases in 1981-82. It may nevertheless be noted that in 15 selected small superior courts, which had no mandatory arbitration program or significant arbitration activity through election or stipulation, trial frequency in 1980-82 compared to 1977-79 decreased 32 percent for PI-Motor Vehicle cases, 30 percent for PI-Other cases, and 9 percent for Other Civil Complaints. The courts included in the calculation were Butte, Inyo, Kings, Lake, Lassen, Madera, Mendocino, Monterey, Nevada, Placer, San Luis Obispo, Solano, Tulare, Tuolomne, and Yuba.

However, the sizeable decline in trial frequency, particularly among PI-Motor Vehicle cases, suggests an arbitration related phenomenon. In the 14 largest superior courts, trial frequency for this case type declined 34 percent in 1980-82 compared to 1977-79. This appears significant when it is noted that within the Bay Area study group 70 percent (574) of all PI-Motor Vehicle cases calendared for trial setting conference, pretrial conference, or arbitration determination hearing were assigned to the arbitration hearing list. PI-Motor Vehicle cases also represented 41 percent (815) of all cases disposed of in the study group (1,975). (Appendix K.)

In comparison 45 percent (263) of PI-Other cases were placed on the arbitration hearing list. The PI-Other group represented 30 percent (584) of all cases disposed of. (Appendix K.) Twenty-eight percent (160) of Other Civil Complaints (generally contract matters) were assigned to the arbitration hearing list. Other Civil Complaints represented 29 percent (576) of the cases disposed of in the study group. (Appendix K.) It is worth noting that this last category, which was least frequently assigned to the arbitration hearing list compared to the other case types, also showed the smallest relative trial frequency decline statewide between 1977-79 and 1980-82 (4.9 percent). (Appendix I.)

Regardless of the relationship between judicial arbitration and changing trial disposition rates, it seems certain that cases placed on the arbitration hearing list produce relatively little trial activity compared to cases not placed on the list.

Study group data show that 1,975 long cause cases were considered for placement on the arbitration hearing list.[17/] Of those, 997 were actually placed on the list either by court

17/ Another 319 cases reviewed in the study were either still pending or were disposed of before arbitration suitability was determined and therefore not considered for assignment. These cases have been excluded from the analysis.

order, stipulation or election. Sixty-nine of the cases (6.9 percent) proceeded to trial de novo. Of the remaining 978 cases which were found not suitable for arbitration, 199 (20.3 percent) were disposed of by trial. (Appendix K.)

In the aggregate, cases placed on the arbitration hearing list tended to be tried only one-third as frequently as cases not placed on the list and litigated conventionally. No data exist clarifying whether this phenomenon is attributable to the effects of judicial arbitration, whether it reflects a qualitative difference in the cases assigned to arbitration, or whether it is a combination of both.

Monthly arbitration reports supplied by the courts show trial de novo frequency for July 1982 through May 1983 to be noticeably lower than the corresponding study group figure of 6.9 percent. The four Bay Area courts report a trial frequency of 2.3 percent overall during this ten-month period, a figure consistent with the 2.7 percent statewide frequency reported by the 13 largest superior courts, excluding Los Angeles. The statewide frequency is 1.4 percent with the Los Angeles Superior Court included. (Appendix L.) The reason for the dissimilarity between the study group findings and the monthly arbitration reports is not apparent.[18/]

C. Study Group Case Effect

Study group data provide details about the comparative case effects of arbitration proceedings on litigants. This data is summarized below.

18/ Possibly the study failed to capture all cases considered for arbitration or trial setting during the period in question, resulting in a smaller denominator and therefore a larger percentage, although this is unlikely as the study group files also reflect a disproportionately high number of contested trials.

(i) Types of cases arbitrated and tried de novo

Within the study group, PI-Motor Vehicle cases accounted for 55.6 percent (586) of total arbitration activity. In contrast, this case type represented 44.8 percent (31) of all trials de novo. PI-Other cases accounted for 27.8 percent (292) of the cases placed on the arbitration hearing list and 26 percent (18) of the trials de novo. Breach of contract cases involving services, goods, or money loaned represented only 8 percent (85) of the cases assigned to arbitration but 17.4 percent (12) of all trials de novo. In general, trial tended to be relatively less attractive to litigants with personal injuries than to those with breach of contract actions. (Appendix M.)

(ii) Arbitration awards and trial de novo verdicts

Of the cases that were both arbitrated and tried de novo (69 cases), the total damages awarded in arbitration were approximately equal to the total damages awarded at trial ($411,020 compared to $403,792). Excluding defense awards, the mean arbitration award was $7,211 while the mean verdict was $8,778. The corresponding median award and verdict were $6,500 and $4,691. Almost twice as many defense awards were reported at trial compared to arbitration. (Appendix N.)

Statistically, plaintiffs more frequently received damages and in higher amounts in arbitration proceedings than at trial. At trial, however, plaintiffs had the higher probability of getting the extreme award -- the "bell ringer." Additionally, only 40 percent (16) of all plaintiffs (40) who requested trial de novo improved their position after trial, while 70 percent (21) of all defendants (30) did so. (Appendix O.)

(iii) Disposition time

Judicial arbitration generally appears to reduce diposition time of cases (that is, the time measured from the filing of the at-issue memorandum to final disposition). The average reduction was 14 percent (74

days) in PI-Motor vehicle cases and 13 percent (72 days) in PI-Other cases, although disposition time for arbitrated Other Civil Complaints was 18 percent (89 days) longer than for cases of the same type not placed on the arbitration hearing list. The combined weighted average for all three case types indicates that cases placed on the arbitration hearing list were disposed of 4.3 percent faster than cases not placed on the list. (Appendix P.)

Affecting this average disposition time were the assignment procedures used in early 1980 by the study group courts. Unless an election or stipulation to arbitrate was filed, assignment to the arbitration hearing list occurred at the equivalent of the trial setting conference. Litigants could encounter a substantial delay if a request for trial de novo were filed, since the case would then be restored to the civil active list, re-calendared for trial setting conference, and thereafter set for trial.

In certain instances these procedures would produce longer disposition times for arbitrated cases compared to nonarbitrated cases, since matters not placed on the arbitration hearing list generally "fall out" at some point between trial setting conference and trial date without intermediate procedural delays.

These circumstances affected Other Civil Complaint cases in the study group disproportionately because a relatively larger share of this case type was tried de novo (12.5 percent) compared to PI-Motor Vehicle (5.4 percent) and PI-Other (6.8 percent), and also because of the high percent of Other Civil Complaint cases tried relative to the percent of this case type placed in arbitration.[19/]

19/ 16.5 percent of the study group cases assigned to the arbitration hearing list were Other Civil Complaints; yet, 28 percent of the trials de novo involved this case type. In comparison, 83.5 percent of the cases arbitrated were personal injury matters. These cases involved 71 percent of the trials de novo. (Appendix M.)

CONTINUED

1 OF 5

The potential effect of Code of Civil Procedure section 1141.16 is again noteworthy. Only in courts with no appreciable delay between at-issue memorandum filing and trial date will arbitrated cases potentially fail to benefit from this provision.

(iv) Acceptability of arbitration awards

In 1981-82, one-half of all awards were accepted. The remaining half were largely settled before trial. Within the study group, 6.9 percent of all cases placed on the arbitration hearing list were tried to finality. Monthly arbitration data from the courts suggest that the statewide frequency is 1.4 percent (2.7 percent if the Los Angeles Superior Court is excluded).

The statewide 50 percent request for trial de novo rate has little practical significance for predicting trial activity because of the high rate of dispositions before trial. The figures do, however, suggest that judicial arbitration assists in creating appropriate conditions for settlement.

V. COST EFFECT OF JUDICIAL ARBITRATION

A. User Cost Effect

At workshops held in April 1980 and 1982, counsel for plaintiffs and defendants and representatives of the insurance industry expressed the view that cases ordered to arbitration were being disposed of more quickly and inexpensively than through conventional litigation. Insurance industry representatives particularly stressed the cost savings caused by relatively fewer trials and earlier preparation and evaluation of cases. Plaintiffs' counsel emphasized both that trials were less frequent and that presentation of cases at the arbitration hearings was less expensive compared to trial, primarily because of the simplified procedure for presenting medical and other expert witness testimony. Also noted was the general satisfaction among parties of having obtained "a day in court." In

cases where the arbitration award was not accepted, a neutral estimate of a case's value from an arbitrator frequently facilitated settlement -- much in the manner of a rigorous settlement conference.

The reported economy of judicial arbitration has positive implications for the courts, litigants, and attorneys. The courts, with the same resources, can assist in resolving more disputes or disposing of the same number of disputes more quickly. The overall efficiency of the court system increases, thereby reducing the cost to the public.

For litigants, earlier resolution of cases means that the financial loss of delayed compensation for personal injuries and business damages is minimized. In this respect, all cases, regardless of whether they are ordered to arbitration, benefit from the program's effect of reducing the size of the civil active list, since the average turnaround time even of cases not placed on the arbitration hearing list necessarily decreases because of the sizeable diversion of cases to judicial arbitration -- from which approximately one-half never return. The economic benefit of faster case dispositions potentially runs to every user of the court system.

The lower cost of litigation through judicial arbitration enables a litigant to retain a greater share of the final recovery, permitting an aggrieved party to be more fully compensated for a wrong. A collateral benefit is that individuals may now rationally pursue some legal claims through judicial arbitration which otherwise might be too small to justify court action -- in effect expanding the types of claims for which legal services may be available to the public. Additionally, it may be expected that cost economies to institutional litigants, particularly insurance carriers, will be passed on to consumers. In sum, justice may be available to more people at less cost as a result of judicial arbitration.

B. County and State Fiscal Effect

Judicial arbitration program costs in 1981-82 were $3,382,436 for the 13 largest counties required under Code of

Civil Procedure section 1141.11 to have a mandatory program.[20] (Appendix Q.) Based on an analysis of estimated superior court costs for 1982-83 by the Administrative Office of the Courts, this figure is the equivalent of the annual cost of 7.9 trial courts or 1.1 percent of the total cost of the 737 authorized superior court judicial positions in existence on January 1, 1982.[21]

The average cost of processing a case placed on the arbitration hearing list was $123.28. The average cost of a case actually arbitrated was $298.53.[22] These costs do not

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20/ Costs for the ten-judge Kern County Superior Court, which placed 81 cases on the arbitration hearing list in 1981-82 are unavailable. The costs presented in Appendix Q also include municipal court arbitration costs, involving somewhat less than 2,000 cases placed on hearing lists.

21/ Reliable estimated trial court costs for 1981-82 are not available. The following is a summary of total estimated trial court costs for 1982-83:

Superior Courts	Estimated Average Annual Cost Per Judicial Position	Judicial Positions As of 1/1/82	Estimated Total Trial Court Costs
Judicial Position ($63,267+11%)	$ 70,226		
Nonjudicial Personnel	128,791		
Services & Supplies	119,184		
Subtotal	$ 318,201		
Indirect Costs (13.5%)	42,957		
Total Costs Excluding Court Reporter & Bailiff	$ 361,158		
Total Costs Including Court Reporter & Bailiff	$ 428,360	737 jud. pos. (642 judges)	$314,800,000a/ (1982-83)

a/ Total adjusted for "other judicial" salaries calculated at 15 percent less than salary of judge.

22/ The figures were obtained by dividing the claimed costs of administering the program ($3,382,436) by (1) the number of cases placed on the arbitration hearing list in 1981-82 in the 13 affected courts (27,980), and (2) the number of cases removed from the arbitration hearing list by the arbitrator's award (11,212).

include court expenses associated with arbitration determination procedures under Code of Civil Procedure section 1141.16.

The fiscal effect of the program is theoretically determined by multiplying the number of cases which avoided trial and other proceedings because of judicial arbitration by the estimated cost of those trials and proceedings.[23]

The first question, which is not answered by the data, is how many cases have avoided trial and other proceedings because of judicial arbitration. An answer would be speculative in the absence of a controlled study to estimate what share of the observed statewide decrease in trial frequency is attributable to the program. As noted, a controlled study was impossible in light of the requirement of section 1141.11 of the Code of Civil Procedure that all cases be submitted to arbitration if found suitable under the statute. This methodological problem precludes the development of specific cost figures concerning the program's fiscal effect.

One available method of evaluating the fiscal effect of judicial arbitration on the courts is by means of the weighted caseload system, which will express changing judicial workload and staff needs of the courts, whether caused by judicial arbitration or other factors.[24] The last weighted

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23/ These other proceedings include mandatory settlement conferences and law and motion hearings. No data exist to establish the frequency by which these proceedings have been reduced.

24/ Judicial workload in the trial courts is measured using a "weighted caseload system." This system provides an objective basis for estimating the number of judicial positions (judges, commissioners, and referees) needed in a particular court. The system presupposes that different kinds of cases vary in terms of complexity and, therefore, the time required to process them will vary. The weights, or workload measures, are obtained by surveying different courts for about two months to determine the actual time needed to process cases in each general category. For example, a weight of 81 for personal injury and property damage matters means that, on the average, a personal

caseload surveys were undertaken in 1976 and 1979. The Administrative Office of the Courts has begun preparation for new judicial weighted caseload studies in the superior courts. The studies are expected to be completed by July 1984.

The weighted caseload studies can be of assistance in the following way. If judicial arbitration has increased the rate of dispositions without trial or reduced the frequency of other proceedings, the courts will realize a demonstrable cost benefit in the number of judicial positions needed to handle their business. If the courts' other business has grown, the positive effect of judicial arbitration will nevertheless limit the rate of growth of demands on the courts' resources. In

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24/ (continued)
injury and property damage case will take 81 minutes of judicial time to complete, excluding Los Angeles. In contrast, the average other civil complaint case is estimated to take 131 minutes, excluding Los Angeles, to decide.

A judge-year is subsequently determined by multiplying the number of days a judge is expected to work in a year (216) by the time the average judge actually spends on cases, as determined by periodic surveys. By dividing the judge-year factor into the number of weighted filings a given court receives, an estimate is obtained of the number of judicial positions needed to process the court's workload.

In 1976 and 1977, the Administrative Office of the Courts conducted surveys in 32 superior courts and 56 municipal courts, respectively. These surveys were subsequently approved by the Judicial Council for use in performing judgeship needs studies. Based on these studies, the average superior court judge in a metropolitan court is assumed to handle 74,000 weighted caseload units annually (approximately 216 5-1/2 hour days). In smaller courts, the standards are set at a lower level becuase it is assumed that judges will be required to spend more time on non-case related activities and larger courts are able to achieve certain economies of scale.

An analogous weighted caseload system exists for nonjudicial staff needs. It is purely advisory for the courts and has no fiscal implications for the state.

either event the cost benefit of the program will be felt within the weighted caseload system, with the state and counties sharing in appropriate measure from the reduction or decreased growth of judicial workload and staff needs in the courts.

For example, the 1977 judicial weighted caseload study may indicate that a particular court took an average of 80 minutes to process a personal injury case to completion. If judicial arbitration has caused this type of case to avoid trial or other proceedings, the 1984 survey may show a change in the average workload measure for personal injury cases. The magnitude of change will depend both on the impact of this work avoidance and on other variables affecting the extent of direct judicial involvement in these cases. If, hypothetically, the impact of judicial arbitration is substantial and all other things are equal, the average processing time may now be 60 minutes rather than 80. The 60 minute weight will then be included in calculating the projected number of judicial positions needed to handle the court's total workload.

Whether the new judicial need projection will show a need for fewer, more, or the same number of judicial positions will depend on other variables, such as the rate of filings, criminal trial activity, a change in the length and complexity of cases filed, or any other condition independent of judicial arbitration which affects the court's total workload. But the cost benefit to the state and counties will be felt because the projected judicial need in this hypothetical situation will be less than it would have been without judicial arbitration.

The net fiscal effect on the state will be the expense of avoided judgeships less the costs of funding the program. This may be substantial because the state provides 30 percent of the annual cost of each new judgeship, that is $128,189, based on estimated superior court trial court costs for 1982-83. The difference between this amount and the total estimated cost of each new superior court judgeship, which is

$428,360, is borne by the county in the amount of $300,071.[25/]

On the other hand, if the expense of operating the judicial arbitration program exceeds the cost avoidance of future judgeships, a net cost is produced which may nevertheless be justified by the salutary effect of the program on court calendars, litigants, and the public generally.

In sum, if the program reduces judgeship needs as reflected in overall judicial caseload weights, the effect will translate into cost benefits that the state and county will share. However, if there is no direct net cost avoidance to the courts (because the costs of judicial arbitration exceed the savings of avoided trials and other proceedings), the program may still remain desirable through its positive effect on court calendar congestion, case turnaround time, and litigation costs.

It should be emphasized that a pre- and post-judicial

25/ The Administrative Office of the Courts' calculation of state assistance for each new superior court judgeship is as follows:

(1) Eight percent of salary to Judges' Retirement Fund ($63,267 @ 8% = $5,061) plus a pro rata share of the budget act appropriation made each year to meet liabilities of the fund ($5,775) for a total of $10,836.

(2) State pays salary except for fixed county share of $9,500 for counties over 250,000 population, $7,500 for counties between 40,001 - 249,999 population, and $5,500 for counties 40,000 population or under. The calculation here is based on the larger sized county. Thus, the current annual salary of $63,267 less $9,500 = $53,767 as the state share.

(3) Annual block grant of $60,000 for support costs.

(4) Pro rata share of legislative mandates @ $3,586.

In summary, total assistance per new superior court judgeship as calculated here includes $10,836 retirement, plus $53,767 salary, plus $60,000 annual block grant, plus $3,586 legislative mandates for a total of $128,189 per judgeship.

arbitration comparison of weighted caseload values for personal injury, property damages, and other civil complaint cases will not yield a specific cost benefit figure. This is so because such variables as more vigorous pretrial settlement procedures, increasing costs of trial, and delay in reaching trial may be working independently to reduce trial frequency, thereby changing court workloads.

VI. SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Calendar Effect

Judicial arbitration has favorably affected court calendars. Courts having a mandatory program uniformly report that it is an essential tool in managing their civil calendars effectively. These courts accounted for roughly 90 percent of all personal injury and other civil complaint case dispositions in 1981-82. Judicial arbitration also appears to have reduced the average disposition time (that is, the time measured from the filing of the at-issue memorandum to final disposition) for all civil active cases, and particularly for cases placed on the arbitration hearing list compared to cases that were not. It is expected that Code of Civil Procedure section 1141.16 will further improve calendar conditions and shorten average disposition time. The section, effective January 1, 1982, provides for the assignment of a case to the arbitration hearing list within 90 days after the filing of the at-issue memorandum.

2. Trial Activity Effect

Most attorneys, judges, and insurance representatives who have direct familiarity with the operation of judicial arbitration observe that trial frequency has appreciably diminished among those cases subject to it. The statewide trial de novo rate for cases placed on the arbitration hearing list appears to be 1.4 percent (2.7 percent, excluding Los Angeles). Data

confirm that since the beginning of the program, dispositions by trial as a percentage of total dispositions have declined dramatically for personal injury cases -- the type most likely to be judicially arbitrated. However, no satisfactory means are available to rule out other independent causes which may be implicated in this trend. The phenomenon of decreasing trial frequency has been observed statewide for a substantial number of years before the program's implementation and in a variety of courts thereafter. Quantifying judicial arbitration's effect on trial activity does not therefore appear to be possible in light of present statutory procedures for assigning cases to the arbitration hearing list.

3. User Effect

Representatives of plaintiff and defense counsel and members of the insurance industry report that dispositions resulting from judicial arbitration generally tend to be more prompt, inexpensive, and predictable, and are frequently more satisfactory to all parties. In-depth docket studies of four Bay Area courts also indicate the following:

(a) Personal injury cases involving motor vehicles are the matters most commonly assigned to the arbitration hearing list and represent over one-half of the cases actually heard in arbitration. Other personal injury matters consume approximately 28 percent of the arbitration hearing activity, with another 17 percent involving contractual claims.

(b) Total dollar amounts awarded in all cases both arbitrated and tried de novo are approximately the same, although the median and mean distributions of the awards vary.

(c) Proportionally more defendants than plaintiffs who request trial de novo improve their position compared to the arbitration award.

4. Cost Effect

(a) A determination of the direct fiscal effect of the judicial arbitration program on the state and counties was not possible because of the unavailability of a controlled study to establish accurately the number of cases avoiding trial and other proceedings as a result of the program. However, as an alternative to a controlled study, the committee concludes that the program's fiscal effect is implicitly reflected by means of the weighted caseload analysis, which objectively expresses the changing workloads of courts having judicial arbitration. These changes have a direct fiscal impact on the state and counties in the form of potential costs of additional judgeships.

(b) Judicial arbitration's economic effect on the users of the program -- litigants and their attorneys -- is reported to be positive. Cases appear to be resolved more quickly and inexpensively than would be possible without the program, producing cost benefits to the public generally.

5. Recommendations

The committee recommends that the judicial arbitration program be retained indefinitely beyond its current repeal date of January 1, 1986.

The Judicial Council adopted this report on November 19, 1983.

ARBITRATION STATISTICS
FISCAL 1981–82
SUPERIOR COURTS WITH TEN OR MORE JUDGES

	Alameda	*Contra Costa*	*Fresno*	*Kern*	*Los Angeles*	*Orange*	*River-side*	*Sacra-mento*	*San Bernar-dino*	*San Diego*	*San Francisco*	*San Mateo*	*Santa Clara*	*Ventura*	*Total*
CASES PLACED ON ARBITRATION HEARING LIST															
1. By stipulation	38	79	25	10	774	92	6	79	35	19	8	70	461	8	1,722
2. By election	252	110	29	27	8,873	495	23	91	145	74	146	28	142	38	10,473
3. By court order	530	252	182	44	7,867	2,555	79	860	409	963	975	336	546	248	15,866
TOTAL	818	441	236	81	17,514	3,142	108	1,030	589	1,056	1,129	434	1,169	294	28,061
ARBITRATORS ASSIGNED															
4. By stipulation	4	5	20	1	1,073	974	11	7	14	878	2	46	25	3	3,063
5. By selection from regular panel	803	360	237	83	17,363	1,871	87	1,281	462	220	1,019	378	1,103	280	25,347
TOTAL	807	365	257	84	18,436	2,845	98	1,288	476	1,098	1,021	424	1,128	283	28,610
CASES REMOVED FROM THE ARBITRATION HEARING LIST															
6. By settlement before arbitrator's award	264	145	98	18	2,741	924	27	410	129	436	303	166	476	40	6,381
7. By arbitrator's award	517	262	171	53	5,558	1,419	58	722	231	364	573	260	1,045	190	11,383
8. For administrative reasons	16	3	7	3	129	150	3	65	24	109	120	14	54	12	709
TOTAL	797	410	276	74	8,428	2,493	88	1,197	384	911	1,196	440	1,577	202	18,473
REQUESTS FOR TRIAL DE NOVO FILED															
9. By plaintiff	111	85	44	6	1,368	339	5	225	92	206	168	90	348	53	3,100
10. By defendant	102	71	17	5	1,172	282	3	139	38	176	132	53	333	33	2,576
TOTAL	213	156	61	11	2,540	621	8	364	110	382	300	143	681	86	5,676

PERCENT OF CASES DISPOSED OF AFTER
ARBITRATION AWARD - BAY AREA STUDY GROUP

Court	Days After Arbitration Award						
	0 - 45	46 - 90	91 - 181	181 - 270	271 - 365	365 - or More	Total
Alameda	50.6	7.0	18.6	12.2	4.1	7.6	100
Contra Costa	46.3	5.8	13.2	17.4	5.8	13.2	100
San Francisco	32.7	7.4	22.8	13.6	11.7	11.7	100
Santa Clara	18.2	5.8	14.3	30.1	20.1	11.6	100
Average (Total)	34.0	6.3	17.1	19.9	11.8	10.9	100

CALIFORNIA SUPERIOR COURTS WITH SIX OR MORE JUDGES[a]—NUMBER OF CIVIL CASES AWAITING TRIAL AS OF JUNE 30, 1973 THROUGH 1982

Number of civil cases awaiting trial as of June 30

Court	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Alameda	4,054	4,351	4,415	5,677	5,970	5,482	3,939	3,920	3,940	3,236
Contra Costa	2,110	2,157	2,349	2,291	2,376	2,626	2,926	2,697	2,435	2,694
Fresno	915[b]	879	921	1,232	1,287	1,745	1,849	1,688	1,346	1,154
Kern	643	497	488	878	914	1,124	1,218	1,046	958	1,020
Los Angeles	38,873	37,222	39,131	44,399	53,150	63,433	71,179	72,072	67,715	36,678
Marin	542	593	735	913	1,101	1,087	1,206	764	456	636
★ Monterey	258	391	406	596	513	360	289	290	339	345
Orange	2,826	3,638	5,309	7,390	8,151	10,942	12,940	10,649	10,463	10,450
Riverside	1,194	1,384	1,603	1,788	1,952	2,457	2,422	1,993	2,068	1,888
Sacramento	2,050	2,335	3,072	3,420	3,173	2,822	2,949	2,683	2,017	1,531
San Bernardino	1,301	1,398	1,592	2,323	2,667	2,771	3,030	4,419	3,247	2,440
San Diego	3,433	4,065	5,252	6,472	7,105	7,121	7,694	7,747	8,090	7,159
San Francisco	6,246	5,823	5,559	5,435	4,968	4,654	4,130	6,093[c]	4,661	4,287
San Joaquin	1,059	1,042	1,106	1,064	1,303	1,345	1,510	1,797	2,188	2043
San Mateo	1,331	1,356	1,788	2,001	1,470	1,310	1,068	915	874	750
Santa Barbara	361	426	329	507	746	984	719	774	806	593
Santa Clara	1,594	1,346	1,520	2,164	2,776	3,750	2,727	3,610	2,082	2,701
Sonoma	647	925	875	1,366	1,480	1,572	1,387	636	526	544
Stanislaus	316	318	632	644	411	594	1,109	1,115	1,265	1,060
★ Tulare	215	174	285	438	602	356	354	267	305	241
Ventura	553	779	1,174	1,618	1,258	[d]1,356	1,748	1,719	1,692	1,020
Total	[b]70,821	[b]71,099	[b]78,581	[b]92,416	[b]105,373	[b]117,891	[b]126,392	126,894	117,493	82,470
Total excluding Los Angeles	[b]31,948	[b]33,877	[b]39,450	[b]48,217	[b]50,223	[b]54,458	[b]53,213	54,822	49,778	45,792
Total civil jury cases awaiting trial	[b]43,550	[b]42,780	[b]46,246	[b]54,697	[b]62,245	[b]70,163	[b]75,622	77,031	70,993	49,461

[a] As of June 30, 1982.
[b] July 31, 1973.
[c] Prior to 1980 the San Francisco court did not count at-issue memorandums until a certificate of readiness was filed at the invitation of the court.
[d] Revised

...information program.

PERCENTAGE OF TOTAL CIVIL JURY CASES AWAITING TRIAL FOR MOF 'HAN ONE YEAR (AS OF JUNE 30)

County	1974	1975	1976	1977	1978	1979	1980	1981	1982
Alameda	3.7	11.5	32.4	32.5	40.5	15.4	19.8	14.2	15.9
Contra Costa	33.3	20.4	28.8	29.1	33.4	45.2	74.0	56.5	43.3
Fresno	1.1	1.5	4.7	12.0	18.9	34.0	14.4	16.2	10.6
Kern	6.6	6.5	11.9	9.1	10.2	20.2	31.1	17.0	9.7
Los Angeles	26.6	19.1	23.1	35.3	41.9	78.1	78.0	75.6	51.4
Marin	19.1	2.3	13.9	33.0	40.2	46.7	27.6	1.3	0.4
Monterey	3.8	9.8	10.1	8.8	0.7	0	0	0	0
Orange	12.0	11.0	26.4	32.0	31.7	23.1	13.7	17.2	17.2
Riverside	15.8	21.1	20.2	28.2	35.9	41.2	46.3	39.6	61.0
Sacramento	- -	13.7	6.8	7.1	4.3	0.3	0	2.3	10.0
San Bernardino	34.1	42.8	45.2	35.2	36.3	44.3	48.6	45.6	45.4
San Diego	17.9	22.8	30.9	37.3	38.9	57.4	57.5	60.4	58.8
San Francisco	27.4	45.1	54.6	60.4	71.9	93.7	36.9	18.0	8.6
San Joaquin	- -	40.1	25.9	31.9	18.2	43.5	59.2	86.8	95.3
San Mateo	0.4	0.1	4.6	1.0	0	0	0	0	0
Santa Barbara	- -	- -	- -	0	18.2	0.4	5.3	13.7	6.7
Santa Clara	0.7	- -	- -	0	2.1	4.4	0	0.1	1.1
Stanislaus	- -	- -	- -	0	0	0	0	0	0
Ventura	1.2	10.4	28.3	33.7	19.8	21.2	30.8	41.2	33.2
Sonoma	- -	- -	9.1	24.6	29.8	42.7	34.4	7.2	7.1
Tulare	- -	- -	- -	- -	- -	0	0	0	0

APPENDIX D

CALIFORNIA SUPERIOR COURTS WITH SIX OR MORE JUDGES[a]—NUMBER OF CIVIL CASES AWAITING TRIAL PER AUTHORIZED JUDGE[b] AS OF JUNE 30, 1973 THROUGH 1982

Number of civil cases awaiting trial per authorized judge as of June 30

Court	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Alameda	162	174	177	203	206	183	131	126	127	104
Contra Costa	192	196	214	208	198	219	244	193	174	192
Fresno	114	110	115	154	129	145	142	130	104	89
Kern	107	83	81	110	114	141	152	131	96	102
Los Angeles	241	231	229	258	323	371	416	368	329	178
Marin	166	119	147	183	184	181	201	127	76	106
*Monterey	52	78	81	119	73	51	41	41	48	49
Orange	91	117	171	224	220	274	324	254	228	227
Riverside	100	115	134	138	150	169	151	117	122	111
Sacramento	137	156	171	171	159	128	134	117	75	57
San Bernardino	93	100	106	129	148	134	166	221	153	116
San Diego	116	140	159	196	203	203	192	189	197	175
San Francisco	240	224	215	209	191	179	159	226	173	159
San Joaquin	151	149	158	152	186	192	216	225	274	255
San Mateo	102	104	138	143	105	94	76	65	62	54
Santa Barbara	52	61	47	72	107	141	103	111	115	65
Santa Clara	66	56	58	83	96	129	94	109	63	62
Sonoma	162	231	219	273	247	262	231	106	88	91
Stanislaus	63	64	105	107	69	99	185	186	211	177
*Tulare	54	44	71	110	150	71	71	44	51	40
Ventura	79	111	168	231	140	151	194	156	154	93
Average cases awaiting trial per authorized judge:										
Total for the above courts	[c]169	[c]170	[c]179	[c]203	[c]222	[c]244	[c]257	237	211	148
Total excluding Los Angeles	[c]124	[c]131	[c]147	[c]170	[c]166	[c]175	[c]172	161	142	130

[a] As of June 30, 1982.
[b] Note that comparisons relate to the total number of judges authorized as of June 30 of each fiscal year and are not adjusted to reflect the number actually available to dispose of civil backlog.
[c] July 31, 1973.
[d] Revised.

*Court has no mandatory arbitration program.

Appendix E

CALIFORNIA SUPERIOR COURTS WITH SIX OR MORE JUDGES[a]— MEDIAN INTERVAL TO TRIAL FROM AT-ISSUE MEMO FOR CIVIL JURY CASES TRIED IN JUNE, 1973 THROUGH 1982

Median interval in months from at-issue memo to trial

Court	June 73	June 74	June 75	June 76	June 77	June 78	June 79	June 80	June 81	June 82
Alameda	13	11	13	22	24.5	24	18	13	21	12
Contra Costa	22	23	19	19	22	20	22	32	30	30
Fresno	10.5[b]	10.5	10.5	9	13.5	15	15	19	16.5	14
Kern	9	16	9.5	15	–	14	16	18	10	16
Los Angeles	23	24	20	21	24	31	32.5	35.5	40.5	41.5
Marin	24	11	17	16	20	26.5	15	15	4	6
*Monterey	6	9	10	13	11	3.5	3.5	5	3.5	4
Orange	11	12	13	18	20	22	30	25	33	27
Riverside	14	10	16	18	21	27	23	23	29	35
Sacramento	10	11	13	17	15	12	11.5	11	11	10
San Bernardino	18	23	35	16	32	35	15	16	29	19
San Diego	15	16	17	21	21	31	24	30	40	26
San Francisco	32	25	20	20	20	23	22	22	18	20
San Joaquin	42	31	27	18	22	25	36	25.5	14.5	45.5
San Mateo	9	7	11	15	9	7	5	5	5.5	5.5
Santa Barbara	7	5	6	6	9	18	21	14	21	9
Santa Clara	5	4	4	6	6	6.5	7	11	4.5	8
Sonoma	14	18	18	–	23	27	42	27	16	15
Stanislaus	5	5	7	5	5	7	16	9	8	10
*Tulare	21	21	–	15	16	12	8	7	10	9
Ventura	7	11	13.5	–	21	17	18	36.5	25	22

[a] As of June 30, 1982.
[b] For month of July 1973.

*Court has no mandatory arbitration program.

Trial Frequency -
Personal Injury - Motor Vehicle

	Trial Frequency (%) 1977-79	1980-82	Relative Change (± %)
Alameda	2.4	1.8	-25
Contra Costa	3.5	1.7	-51
Fresno	4.4	3.3	-25
Kern	4.5	1.9	-58
Los Angeles	1.4	0.9	-36
Orange	1.7	1.4	-18
Riverside	3.5	1.1	-74
Sacramento	4.7	2.8	-40
San Bernardino	7.0	4.5	-36
San Diego	3.5	3.8	0
San Francisco	3.6	3.0	-17
San Mateo	3.4	1.6	-53
Santa Clara	2.7	2.5	- 7
Ventura	2.4	1.0	-58
TOTAL	2.25	1.52	-34.2

APPENDIX G

Trial Frequency -
Personal Injury - Other

	Trial Frequency (%) 1977-79	1980-82	Relative Change (± %)
Alameda	3.5	3.9	+11
Contra Costa	4.9	2.3	-53
Fresno	5.8	3.5	-40
Kern	12.1	8.1	-33
Los Angeles	3.9	3.7	- 5
Orange	4.6	3.0	- 9
Riverside	5.8	2.9	-50
Sacramento	7.0	3.6	-49
San Bernardino	8.6	8.7	+ 1
San Diego	5.7	8.4	+47
San Francisco	7.5	5.4	-28
San Mateo	7.1	8.5	+20
Santa Clara	3.4	4.2	+24
Ventura	3.7	1.0	-73
TOTAL	4.85	4.25	-12.4

APPENDIX H

Trial Frequency -
Other Civil Complaint

	Trial Frequency (%) 1977-79	1980-82	Relative Change (±%)
Alameda	10.2	11.4	+12
Contra Costa	11.2	9.2	-18
Fresno	8.2	7.7	- 6
Kern	11.4	7.3	-34
Los Angeles	6.4	6.3	- 2
Orange	6.5	3.9	-40
Riverside	7.3	3.9	-47
Sacramento	12.3	9.7	-21
San Bernardino	18.0	16.5	- 8
San Diego	12.2	13.0	+ 7
San Francisco	12.7	15.8	+23
San Mateo	15.8	10.7	-32
Santa Clara	10.9	15.5	+43
Ventura	14.6	4.9	-66
TOTAL	8.48	8.92	-4.9

APPENDIX I

CALIFORNIA SUPERIOR COURTS
CONTESTED DISPOSITIONS
Fiscal Years 1972–73 through 1981–82

Fiscal Year	Total		Personal injury		Other civil complaints		Criminal[b]		Juvenile[c]	
	Number	Percent of total dispositions[a]	Number	Percent of total dispositions[a]	Number	Percent of total dispositions[a]	Number	Percent of total dispositions	Number	Percent of total dispositions
1972–73	42,360	9.5	3,516	6.5	5,152	12.1	7,881	14.4	7,482	12.1
1973–74	48,811	10.6	3,141	6.1	5,166	12.6	7,802	15.7	8,597	12.0
1974–75	47,621	9.6	2,843	5.3	4,921	11.0	7,486	14.8	8,457	11.4
1975–76	54,948	10.0	2,677	4.6	4,899	10.5	[b]5,089	10.2	[c]13,747	13.3
1976–77	58,906	10.1	2,631	4.4	5,043	10.2	6,133	12.5	14,979	15.0
1977–78	62,359	10.6	2,377	3.8	5,085	10.4	5,810	11.9	14,363	14.5
1978–79	[R]64,065	10.9	2,220	3.5	[R]5,293	10.2	[R]5,200	10.6	14,274	14.6
1979–80	[R]63,388	[R]11.2	[R]2,048	3.3	[R]4,965	9.2	[R]5,094	9.9	[R]14,913	15.7
1980–81	[R]64,971	11.1	1,911	2.8	[R]5,533	9.8	5,241	9.0	14,539	15.6
1981–82	65,440	11.3	2,006	2.9	5,407	9.3	5,609	9.2	14,378	15.2

[a] Exclusive of dismissals for lack of prosecution.
[b] On July 1, 1975, due to changes in reporting instructions, some criminal dispositions which were previously classified as contested matters were reclassified as uncontested matters.
[c] Beginning on July 1, 1975, juvenile dispositions have included subsequent petitions disposed of. In prior periods, dispositions of only initial petitions were counted.
[R] Revised.

BAY AREA STUDY GROUP SUMMARY

Case Type	Number of Cases[1] Considered For Arbitration Hearing List	Percent of Total Dispositions	Number Referred To List	Percent Referred To List
PI - Motor Vehicle	815	41	574	70
PI - Other	584	30	263	45
Other Civil Complaint	576	29	160	28
TOTAL	1975	100	997	50

BAY AREA STUDY GROUP TRIAL FREQUENCY

Case Type	Referred to Arbitration Hearing List[1]			Not Referred to Arbitration Hearing List[1]		
	Number of Cases	Trials de novo	Percent	Number of Cases	Trials	Percent
PI - Motor Vehicle	574	31	5.4	241	24	10.0
PI - Other	263	18	6.8	321	49	15.3
Other Civil Complaint	160	20	12.5	416	126	30.2
TOTAL	997	69	6.9	978	199	20.3

1/ Includes only cases with final dispositions

MONTHLY ARBITRATION REPORTS -
TRIAL DE NOVO FREQUENC July 1982 - May 1983)

COURT	Referred to Arbitration Hearing List	Number of Trials	Frequency (%)
Alameda	958	17	1.8
Contra Costa	634	12	1.9
Fresno[1/]	44	1	2.3
Kern	194	0	0
Los Angeles[2/]	12,529	55	0.4
Orange[3/]	2,637	55	2.1
Riverside	424	7	1.7
Sacramento[4/]	494	28	5.7
San Bernardino	685	31	4.8
San Diego	898	34	3.8
San Francisco	762	22	2.9
San Mateo[5/]	360	17	4.7
Santa Clara[6/]	1,449	36	2.5
Ventura[7/]	277	9	3.2
TOTAL	22,255	318	1.4
TOTAL (exluding Los Angeles)	9,726	263	2.7

1/ July - September only.
2/ Not including May 1983.
3/ Not including May 1983.
4/ Not including July, August, November 1982, and April, May 1983.
5/ Not including March 1983.
6/ Not including April 1983.
7/ Not including May 1983.

APPENDIX L

TYPES OF CASES ACED ON ARBITRATION
HEARING LIS AD TRIED DE NOVO
BAY AREA STUDY GROUP

Type of Case	Arbitration Referrals Number	Percent	Trials de novo Number	Percent
Torts				
1. Motor vehicle - bodily injury	579	55.0	30	43.4
2. Motor vehicle (property damage only)	7	.6	1	1.4
3. Premises liability	131	12.5	7	10.1
4. Professional negligence	23	2.2	0	0
5. Contractor's negligence	9	.9	2	2.9
6. General negligence (miscellaneous injury to Persons or damage to property)	33	3.1	2	2.9
7. Assault, battery, false imprisonment and arrest	42	4.0	2	2.9
8. Animal attack (e.g., dog bite)	3	.3	0	0
9. Products liability	25	2.4	2	2.9
10.Other (e.g., fraud, defamation, conversion)	26	2.5	3	4.3
CONTRACT				
11.Services or goods, or money loaned	85	8.0	12	17.4
12.Real property	43	4.0	5	7.2
13.Landlord-Tenant	5	.5	0	0
14.Employment	8	.8	1	1.4
15.Contractors	9	.9	0	0
16.Insurance	16	1.5	1	1.4
17.Other	8	.8	1	1.4
TOTAL	1052	100	69	100

APPENDIX M

ARBITRATION AWARDS AND TRIAL DE NOVO VERDICTS - BAY AREA STUDY GROUP [1]

	Number[2]	Mean[3]	Median[3]	Defense Awards ("0" Damages)	Total Damages
Arbitration Awards	93	$7,211	$6,500	36	$411,028
Verdicts	108	$8,778	$4,691	62	$403,792

1/ Includes only cases that were both arbitrated and tried de novo. Cross-complaint awards and verdicts are not included.

2/ Includes multiple party arbitration awards and trial verdicts.

3/ Excludes defense awards or verdicts ("0" damages).

TRIAL RESULT BY PARTY REQUESTING TRIAL -
BAY AREA STUDY GROUP[1/]

Result	AMOUNT OF CHANGE							Total	Percent
	0 - $1,000 Number	$1-3,000 Number	$3-6,000 Number	$6-9,000 Number	$9-12,000 Number	$12-15,000 Number	Over $15,000 Number		
Plaintiff request - improved by	4	3	4	2	0	0	3	16	40
Plaintiff request - not improved or worsened by	15	4	4	1	0	0	0	24	60
Defendant request - improved by	5	2	4	3	3	2	2	21	70
Defendant request - not improved or worsened by	4	2	0	0	2	1	0	9	30
TOTAL	28	11	12	6	5	3	5	70	

1/ Includes verdict on both complaint and cross-complaint

AVERAGE DISPOSITION TIME AFTER
AT-ISSUE MEMORANDUM FILING - BAY
AREA STUDY GROUP

COURT	AVERAGE DISPOSITION TIME IN DAYS FOR CASES Placed On The Arbitration Hearing List			AVERAGE DISPOSITION TIME IN DAYS FOR CASES Not Placed On The Arbitration Hearing List			Percent Difference		
	PI-Motor Vehicle	PI - Other	Other Civil Complaint	PI-Motor Vehicle	PI - Other	Other Civil Complaint	Average PI-Motor Vehicle	PI-Other	Other Civil Complaint
Alameda	422	409	326	479	488	442	12	16	-19
Contra Costa	645	688	827	740	610	521	13	-13	-59
San Francisco	569	603	658	668	701	603	15	14	- 9
Santa Clara	244	269	278	306	311	315	28	14	12
	—	—	—	—	—	—	—	—	—
TOTAL (Weighted Average)	445	475	573	519	545	484	14	13	-18

COMBINED AVERAGE (WEIGHTED) = +4.3%

APPENDIX P

Chapter 7/ Statutes of 1978
Judicia, rbitration
Program Costs

County	1978-79 Fiscal Year	1979-80 Fiscal Year	1980-81 Fiscal Year	1981-82 Fiscal Year*	1982-83 Fiscal Year*	Total
Alameda	$ 5,889	$ 142,247	$ 138,848	$ 134,929	$ 143,000	$ 564,913
Contra Costa	9,585	64,285	82,924	83,460	93,500	333,754
Fresno		146,313	129	47,309	19,688	213,439
Los Angeles	14,428	582,845	873,915	1,553,711	2,331,987	5,356,886
Orange	27,445	293,039	322,971	342,987	407,120	1,393,562
Riverside	1,409	35,910	40,999	32,543	35,000	145,861
Sacramento	2,606	91,307	117,682	78,964	104,325	394,884
San Bernardino	11,457	58,895	67,518	116,634	118,750	373,254
San Diego		97,003	118,124	289,859	283,500	788,486
San Francisco		179,477	214,201	244,039	256,755	894,472
San Mateo	10,257	121,902	99,201	109,616	73,866	414,842
Santa Clara	9,325	157,869	197,967	241,691	125,000	731,852
Sonoma		14,346	64,092	8,073	24,000	110,511
Ventura		50,053		106,694	55,000	211,747
Totals	$92,401	$2,035,491	$2,338,571	$3,390,509 ($3,382,436) 1/	$4,071,491	$11,928,463

*Amounts are as claimed. No prepayment audit has been made as of 2/18/83.

1/Without Sonoma County.

Appendix Q

CONNECTICUT

Connecticut General Statute

Ch. 922b FACT-FINDING AND ARBITRATION

Secs. 52-549e to 52-549m. Reserved for future use.

CHAPTER 922b

FACT-FINDING AND ARBITRATION

Sec. 52-549n. Certain contract actions referred to fact-finders. Rules of procedure. In accordance with the provisions of section 51-14, the judges of the superior court may make such rules as they deem necessary to provide a procedure in accordance with which the court, in its discretion, may refer to a fact-finder for proceedings authorized pursuant to this chapter, any contract action pending in the superior court in which only money damages are claimed and which is based upon an express or implied promise to pay a definite sum, and in which the amount, legal interest or property in demand is less than fifteen thousand dollars exclusive of interest and costs. Such cases may be referred to a fact-finder only after the pleadings have been closed, a trial list claim has been filed, no claim for a jury trial has been filed at the time of reference, and the time prescribed in section 52-215 for filing a jury trial claim within thirty days of the return day or within ten days after the issue of fact has been joined has expired.

(P.A. 81-462, S. 8, 13; P.A. 82-441, S. 1, 13, 23.)

History: P.A. 82-441 deleted provisions re arbitration of civil actions and substituted provisions re rules of procedure for fact-finding in certain contract actions, and postponed effective date of section from July 1, 1982, to July 1, 1983.

Sec. 52-549o. Assignment of fact-finders. Hearings. The chief court administrator may assign to each judicial district such number of fact-finders as he deems advisable. The chief court administrator, or his designee, shall designate the holding of fact-finding hearings at such times and in such courthouse facilities as he deems to be in the best interest of court business, taking into consideration the convenience of litigants and their counsel and the efficient use of courthouse personnel and facilities.

(P.A. 82-441, S. 2, 23.)

History: P.A. 82-441, S. 2 effective July 1, 1983.

Sec. **52-549p. Appointment of fact-finders. Compensation. Powers.** (a) Upon publication of a notice in the Connecticut Law Journal, any commissioner of the superior court admitted to practice in this state for at least five years, who is willing and able to act as a fact-finder, may submit his name to the office of the chief court administrator for approval to be placed on a list of available fact-finders for one or more judicial districts. The criteria for selection and approval of the fact-finders shall be promulgated by the judges of the superior court. Upon selection and approval by the chief court administrator, for such term as he may fix, the fact-finders shall be sworn or affirmed to try justly and equitably all matters at issue submitted to them. The chief court administrator, in his discretion, may at any time revoke any such approval.

(b) Each fact-finder shall receive one hundred dollars for each day he is assigned to a courthouse facility to conduct hearings as a fact-finder, and an additional twenty-five dollars for each finding of fact filed with the court. In difficult or extraordinary cases the chief court administrator may, in his

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discretion, make a further allowance not to exceed two hundred dollars for services rendered attendant to but not part of the hearing.

(c) Such fact-finders shall have the power to: (1) Issue subpoenas for the attendance of witnesses and for the production of books, papers and other evidence, such subpoenas to be served in the manner provided by law for service of subpoenas in a civil action and to be returnable to the fact-finders; (2) administer oaths or affirmations; and (3) determine the admissibility of evidence and the form in which it is to be offered.

(P.A. 81-462, S. 9, 13; P.A. 82-441, S. 3, 13, 23.)

History: P.A. 82-441 deleted provision re service of attorneys as arbitrators and added provisions re appointment, compensation and powers of fact-finders, and postponed effective date of section from July 1, 1982, to July 1, 1983.

Sec. 52-549q. Adjournment of meeting of arbitrators. Meeting of arbitrators. Absence of arbitrator. (a) If only one of the parties attends on the day appointed for the meeting of the arbitrators, and the arbitrators, or one or more of them, attend, if the absent party has been prevented from attending by sickness or other unavoidable cause which the arbitrators judge sufficient and notice thereof has been given to the arbitrators, an adjournment shall take place to such subsequent time as such arbitrators fix.

(b) In any such case such arbitrators, or a majority of them, may require from the party making such application, as a prerequisite for adjournment, the payment of the costs of the meeting and the attendance of witnesses.

(c) If the whole number of arbitrators do not attend on the day appointed for the meeting and due notice of the time and place of meeting was given to the arbitrator or arbitrators absent, if both parties are present, either in person or by their agents or attorneys, an arbitrator or arbitrators may be chosen from the list of arbitrators on file with the court clerk by the parties or, if they cannot agree, by such clerk.

(d) When the arbitrators are assembled, they shall be sworn or affirmed justly and equitably to try all matters at issue submitted to them, which oath or affirmation may be administered to them by any person having authority to administer oaths or, in the absence of such person, by one of their number.

(e) If one of the arbitrators dies or becomes incapable or refuses to attend to the duties of his appointment or removes from the state, the remaining arbitrators may proceed with the cause and make an award if they can agree upon the same, but if they cannot agree thereupon, they shall appoint a third arbitrator from the list on file with the court clerk, which arbitrator, together with the other arbitrators, shall proceed with the cause and make an award.

(P.A. 81-462, S. 10, 13; P.A. 82-441, S. 13, 21, 23.) Repealed effective April 1, 1983.

Sec. 52-549r. Rules of evidence to apply to fact-finding proceedings. Finding of fact. Award. In matters submitted to fact-finding a record shall be made of the proceedings and the rules of evidence in civil cases in this state shall apply. The fact-finders shall proceed to determine the matters in controversy submitted to them, and shall prepare and sign a finding of fact, which shall include an award of damages if applicable. Within one hundred twenty days of

completion of the fact-finder's hearing the fact-finder shall file the finding of fact with the clerk of the court together with sufficient copies thereof for the parties and their counsel.

(P.A. 81-462, S. 11, 13; P.A. 82-441, S. 4, 13, 23.)

History: P.A. 82-441 deleted provisions re arbitration and added provisions re rules of evidence in fact-finding proceedings, findings of fact and awards, and changed effective date of section from July 1, 1982, to July 1, 1983.

Sec. 52-549s. Consideration of finding by court. Objections. Authority of court re finding. (a) Not less than fourteen days after the filing of the finding, the clerk shall schedule the matter for consideration by the court. The parties may file objections to the acceptance of the finding of fact in accordance with rules established by the judges of the superior court. The court may (1) render judgment in accordance with the finding; (2) reject the finding and remand the case to the fact-finder who originally heard the matter for a rehearing on all or part of the finding of fact; (3) reject the finding and remand the matter to another fact-finder for a rehearing; (4) reject the finding and revoke the reference or (5) take any other action the court may deem necessary.

(b) The court may correct a finding at any time before the acceptance of the finding, upon the written stipulation of the parties.

(c) The fact-finder shall not be called as a witness, nor shall the decision of the fact-finder be admitted in evidence at another proceeding ordered by the court.

(P.A. 82-441, S. 5, 23.)

History: P.A. 82-441, S. 5 effective July 1, 1983.

Sec. 52-549t. Failure to appear. Payment of fees of fact-finder. Dismissal of action. (a) Where a party fails to appear at the hearing, the fact-finder shall nonetheless proceed with the hearing and shall make a finding of fact, as may be just and proper under the facts and circumstances of the action, which shall be filed with the clerk of the court pursuant to section 52-549r for consideration by the court pursuant to section 52-549s. If, pursuant to section 52-549s, the party who failed to appear files an objection to the acceptance of the finding of fact and the objection is sustained by the court, the court may require that party to pay to the court an amount not greater than the total fees then payable to the fact-finder for services in the case.

(b) If all parties fail to appear at the hearing, the fact-finder shall file a request with the court to dismiss the action. If the court does not dismiss the action it may be heard by the fact-finder upon order of the court. Such order may provide for the payment by any party to the court of an amount not greater than one hundred dollars.

(P.A. 82-441, S. 6, 23.)

History: P.A. 82-441, S. 5 effective July 1, 1983.

Sec. 52-549u. Arbitration of certain civil actions. Rules of procedure. In accordance with the provisions of section 51-14, the judges of the superior court may make such rules as they deem necessary to provide a procedure in accordance with which the court, in its discretion, may refer to an arbitrator, for proceedings authorized pursuant to this chapter, any civil action in which the amount, legal

interest or property in demand is less than fifteen thousand dollars exclusive of interest and costs and in which a claim for a trial by jury and a claim for the trial list have been filed.

(P.A. 82-441, S. 7, 23.)

History: P.A. 82-441, S. 7 effective July 1, 1983.

Sec. 52-549v. Assignment of arbitrators. Arbitration proceedings. The chief court administrator may assign to each judicial district such number of arbitrators as he deems advisable. The chief court administrator, or his designee, shall designate the holding of arbitration proceedings at such times and in such courthouse facilities as he deems to be in the best interest of court business, taking into consideration the convenience of litigants and their counsel, and the efficient use of courthouse personnel and facilities.

(P.A. 82-441, S. 8, 23.)

History: P.A. 82-441, S. 8 effective July 1, 1983.

Sec. 52-549w. Appointment of arbitrators. Compensation. Powers. (a) Upon publication of a notice in the Connecticut Law Journal, any commissioner of the superior court admitted to practice in this state for at least five years, who is willing and able to act as an arbitrator, may submit his name to the office of chief court administrator for approval to be placed on a list of available arbitrators for one or more judicial districts. The criteria for selection and approval of arbitrators shall be promulgated by the judges of the superior court. Upon selection and approval by the chief court administrator, for such term as he may fix, the arbitrators shall be sworn or affirmed to try justly and equitably all matters at issue submitted to them. The chief court administrator, in his discretion, may at any time revoke any such approval.

(b) Each arbitrator shall receive one hundred dollars for each day he is assigned to a courthouse facility to conduct proceedings as an arbitrator and an additional twenty-five dollars for each decision filed with the court. In difficult or extraordinary cases, the chief court administrator may, in his discretion, make a further allowance not to exceed two hundred dollars for services rendered attendant to but not part of the hearing.

(c) Such arbitrators shall have the power to: (1) Issue subpoenas for the attendance of witnesses and for the production of books, papers and other evidence, such subpoenas to be served in the manner provided by law for service of subpoenas in a civil action and to be returnable to the arbitrators; (2) administer oaths or affirmations; and (3) determine the admissibility of evidence and the form in which it is to be offered.

(P.A. 82-441, S. 9, 23.)

History: P.A. 82-441, S. 9 effective July 1, 1983.

Sec. 52-549x. Rules of evidence to apply to arbitration proceedings. Decision of arbitrator. In matters submitted to arbitration a record shall be made of the proceedings and the rules of evidence in civil cases in this state shall apply. Within one hundred twenty days of the completion of the arbitration hearing the arbitrator shall file his decision with the clerk of the court together with sufficient copies thereof for the parties or their counsel. In his decision the arbitrator shall

state the number of days on which hearings concerning that case were held before such arbitrator.

(P.A. 82-441, S. 10, 23.)

History: P.A. 82-441, S. 10 effective July 1, 1983.

Sec. 52-549y. Failure to appear. Judgment. Motion to open or set aside judgment. Dismissal of action. Payment of arbitration fee. (a) Where a party fails to appear at the hearing, the arbitrator shall nonetheless proceed with the hearing and shall make a decision, as may be just and proper under the facts and circumstances of the action, which shall be entered as a judgment forthwith by the court. Such judgment may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which it was rendered. If the court opens or sets aside the judgment, it may resubmit the actions to the arbitrator. Any order opening or setting aside the judgment may be upon condition that the moving party pay into the court an amount not greater than the total fees then payable to the arbitrator for services in the case.

(b) If all parties fail to appear at the hearing, the arbitrator shall file a request with the court to dismiss the action. If the court does not dismiss the action, it may be heard by the arbitrator upon order of the court. Such order may provide for the payment by any party to the court of an amount not greater than one hundred dollars.

(P.A. 82-441, S. 11, 23.)

History: P.A. 82-441, S. 11 effective July 1, 1983.

Sec. 52-549z. Appeal. Trial de novo. (a) A decision of the arbitrator shall become a judgment of the court if no appeal from the arbitrator's decision by way of a demand for a trial de novo is filed in accordance with subsections (d) and (e) of this section.

(b) A decision of the arbitrator shall become null and void if an appeal from the arbitrator's decision by way of a demand for a trial de novo is filed in accordance with subsections (d) and (e) of this section.

(c) For the purpose of this section the word "decision" shall include a decision and judgment rendered pursuant to subsection (a) of section 52-549y, provided the appeal is taken by a party who did not fail to appear at the hearing, and it shall exclude any other decision or judgment rendered pursuant to said section.

(d) An appeal by way of a demand for a trial de novo must be filed with the court clerk within twenty days of the filing of the arbitrator's decision and it shall include a certification that a copy thereof has been served on each counsel of record, to be accomplished in accordance with the rules of court.

(P.A. 82-441, S. 12, 23.)

History: P.A. 82-441, S. 12 effective July 1, 1983.

Sec. 52-549aa. Setting aside award. Trial de novo. The court in which such award is filed may set aside an award of arbitrators and order a trial de novo in the superior court upon proof that the arbitrators acted arbitrarily or capriciously in the course of the hearings before them or that the award was procured by corruption or other undue means.

(P.A. 81-462, S. 12, 13; P.A. 82-441, S. 13, 23.)

History: P.A. 82-441 changed effective date of section from July 1, 1982, to July 1, 1983.

State of Connecticut

JUDICIAL DEPARTMENT
OFFICE OF THE CHIEF COURT ADMINISTRATOR
Drawer N, Station A
Hartford, Connecticut 06106

April 23, 1984

MEMO TO:

HON. MAURICE J. SPONZO
CHIEF COURT ADMINISTRATOR

FACT-FINDING AND ARBITRATION REPORT
CIVIL DIVISION
SEPTEMBER 1, 1983 - MARCH 31, 1984
MARCH 1, 1984 - MARCH 31, 1984

Prepared by:

DAVID M. JACKSON
CIVIL CASEFLOW MANAGER

DMJ:kp

CC's:

HON. JOHN A. SPEZIALE, CHIEF JUSTICE
HON. AARON MENT, DEPUTY CHIEF COURT ADMINISTRATOR
HON. ANGELO G. SANTANIELLO, CHIEF ADMINISTRATIVE JUDGE, CIVIL DIVISION
HON. FRANK KINNEY, CHIEF ADMINISTRATIVE JUDGE, CRIMINAL DIVISION
HON. FRANCIS X. HENNESSY, CHIEF ADMINISTRATIVE JUDGE, FAMILY DIVISION
ADMINISTRATIVE JUDGES
PRESIDING JUDGES
JOSEPH J. KEEFE, EXECUTIVE SECRETARY
GREGORY J. PAC, JUDICIAL STATISTICIAN
JACOB A. SAXE, FAMILY CASEFLOW MANAGER
FRANK M. GOETZ, III, COORDINATOR OF CLERKS
LUKE F. TUOHEY, CONSULTANT
LAWRENCE G. MOORE, DIRECTOR OF COMMUNICATIONS

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FACT-FINDING

Because of the various programs and methods being used at the court locations to expedite the movement of cases on the court trial list, it is becoming extremely difficult to distinguish dispositions resulting from fact-finding or the attorney referee program. This difficulty is not viewed as a "problem" because of the extremely successful reduction in the total court trial pending level throughout the state.

CIVIL DIVISION

FACT-FINDING PROGRAM

March, 1984

LOCATION	NO. CASES SCHEDULED	NO. DISPOSITIONS	NO. SETTLED	NO. HEARINGS HELD *	NO. CASES CONTINUED	NO. CASES NOT QUALIFIED	TOTAL FACT-FINDER DAYS
ANSONIA-MILFORD	7	2	1	3	0	1	2
FAIRFIELD	20	10	2	0	7	1	2
HARTFORD	78	16	21	6	34	1	4
MIDDLETOWN	44	10	5	8	17	4	2
NEW HAVEN	69	17	10	15	26	1	8
STAMFORD	36	13	9	9	5	0	3
WATERBURY	46	7	7	6	13	13	5
TOTAL	300	75	55	47	102	21	26

*Includes hearings started but not completed

CIVIL DIVISION

FACT-FINDING PROGRAM

September 1, 1983 - March 31, 1984

LOCATION	NO. CASES SCHEDULED	NO. DISPOSITIONS	NO. SETTLED	NO. HEARINGS HELD *	NO. CASES CONTINUED	NO. CASES NOT QUALIFIED	TOTAL FACT-FINDER DAYS
ANSONIA-MILFORD	9	2 22%	1 11%	5 56%	0	1 11%	4
FAIRFIELD	206	71 34%	43 21%	36 17%	47 23%	9 4%	20
HARTFORD	448	131 29%	99 22%	19 4%	176 39%	23 5%	26
MIDDLETOWN	86	26 30%	12 14%	17 20%	21 24%	10 12%	4
NEW HAVEN	340	102 30%	34 10%	81 24%	109 32%	14 4%	41
STAMFORD	88	35 40%	16 18%	17 19%	17 19%	3 3%	13
WATERBURY	227	47 21%	43 19%	32 14%	72 32%	33 15%	19
TOTAL	1404	414 29%	248 18%	207 15%	442 31%	93 7%	127

*Includes hearings started but not completed

ARBITRATION

No comment.

CIVIL DIVISION

ARBITRATION PROGRAM

March, 1984

LOCATION	NO. CASES SCHEDULED	NO. DISPOSITIONS	NO. SETTLED	NO. HEARINGS HELD *	NO. CASES CONTINUED	NO. CASES NOT QUALIFIED	TOTAL FACT-FINDER DAYS
ANSONIA-MILFORD	0	0	0	0	0	0	0
FAIRFIELD	20	3	4	1	10	2	2
HARTFORD	41	2	9	1	26	3	4
MIDDLETOWN	28	1	1	0	2	24	2
NEW HAVEN	5	1	1	0	3	0	4
STAMFORD	10	3	1	1	3	2	1
WATERBURY	0	0	0	0	0	0	0
TOTAL	104	10	16	3	44	31	13

*Includes hearings started but not completed

CIVIL DIVISION

ARBITRATION PROGRAM

September 1, 1983 - March 31, 1984

LOCATION	NO. CASES SCHEDULED	NO. DISPOSITIONS	NO. SETTLED	NO. HEARINGS HELD *	NO. CASES CONTINUED	NO. CASES NOT QUALIFIED	TOTAL FACT-FINDER DAYS
ANSONIA-MILFORD	2	1 50%	0	1 50%	0	0	1
FAIRFIELD	204	46 23%	33 16%	32 16%	70 34%	23 11%	21
HARTFORD	217	21 10%	39 18%	7 3%	96 44%	54 25%	22
MIDDLETOWN	28	1 4%	1 4%	0	2 7%	24 86%	2
NEW HAVEN	107	32 30%	5 5%	18 17%	39 36%	13 12%	14
STAMFORD	57	16 28%	7 12%	7 12%	17 30%	10 18%	8
WATERBURY	0	0	0	0	0	0	0
TOTAL	615	117 19%	85 14%	65 11%	224 36%	124 20%	68

*Includes hearings started but not completed

DELAWARE

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Delaware Court Rule

DELAWARE

SUPERIOR COURT

RULE 16(c)

ARBITRATION - ADMINISTRATIVE PROCEDURES MANUAL

Prepared by Arbitration Implementation Committee

JUNE, 1984

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ARBITRATION AND SUPERIOR COURT RULE 16*

SUPERIOR COURT

RULE 16

Rule 16 is amended by the addition thereto of subsection (c) as follows:

(c) All civil cases in which trial is available, in which monetary damages are sought and in which the non-monetary claims are insubstantial shall be subject to compulsory pretrial arbitration except those in which Counsel for claimant certifies that damages exceed thirty thousand dollars ($30,000.00) exclusive of costs and interest; provided that, any case may be submitted to pretrial arbitration pursuant to this Rule, by agreement of all parties. All claims shall indicate whether the case is an arbitration or non-arbitration case in the caption beneath the civil action number, in the form substantially as set forth in Form 31.

COMMENT

Rule 16(c) - See sample form 31 on page 2a.

The $30,000 threshhold will be the total claims of all plaintiffs according to the Ad Hoc Committee. Thus, if there are 3 injured plaintiffs whose sum total of damages is in excess of $30,000 exclusive of costs and interest, plaintiffs' counsel should certify as shown on form 32 on page 3a.

---

*This Rule is sufficient to permit any case existing in the Superior Court as of the effective date of the Rule to be arbitrated. However, it is the intention of the Ad Hoc Committee that initially it should apply to new cases or those filed on the date the Rule becomes effective, September 4, 1984.

FORM 31

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

A, :

Plaintiff, : Civil Action #

v. : ARBITRATION CASE or NON-ARBITRATION CASE

B, :

Defendant. : JURY TRIAL DEMANDED

COMPLAINT

(1) All cases shall be referred to arbitration unless claimant's counsel certifies in good faith on the complaint, counterclaim or crossclaim that damages are in excess of thirty thousand ($30,000.00) exclusive of costs and interest.

COMMENT

Rule 16(c) (1) - See Form 32 attached.

CERTIFICATION OF VALUE*

I, John Johnson, Esquire, attorney for plaintiff(s), hereby certify in good faith at this time in my opinion that the sum of damages of all plaintiffs is in excess of $30,000.00, exclusive of costs and interest.

John Johnson
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19083
Attorney for Plaintiff(s)

---

*This language must be on the complaint or attached to the complaint.

(2) All arbitration cases shall be referred for arbitration within ten (10) days after the filing of all initial responsive pleadings of all parties or if a responsive pleading is not filed by one or more defendants, then within ten (10) days after the filing of all responsive pleadings and/or motions. Any party filing a responsive pleading and/or a motion shall file with the responsive pleading and/or motion the interrogatories and sworn statements required by Civil Rules 3(a) and 5(b), with the following exceptions:

COMMENT

Rule 16(c)(2) - The Prothonotary's Office should have a separate section set aside and/or separate persons to handle cases designated as "arbitration" cases. There should also be a suspense or tickler file in the Prothonotary's Office to monitor all deadlines in the Rules. With respect to the 10 days, the Prothonotary should be made aware of Rule 6(a) if the deadline occurs on Saturday, Sunday or a holiday.

(A) Provided that in any case in which Counsel for claimant(s), or claimant, if he is unrepresented, certifies to the Court that a potential defendant(s) is not ascertainable at the time of the filing of the Complaint, the case shall not be referred for arbitration until 90 days after the filing of all initial responsive pleadings during which period any party may conduct discovery limited to the identity of a potential defendant(s).

COMMENT

Rule 16 (c) (2) (A) - See Form 33 on page 5a.

Furthermore, this section must be read in connection with Rule 16 (c) (2) (B) on page 6.

It is the intent of the Ad Hoc Committee that concurrent 90 day periods are involved with "unascertainable defendants and physical exams." However, when third-party defendants are involved, these periods may be consecutive.

CERTIFICATION OF UNKNOWN DEFENDANTS*

I, John Johnson, Esquire, attorney for plaintiff, do hereby certify in my opinion that plaintiff is unable to ascertain all possible defendants at this time.

John Johnson
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19083
Attorney for Plaintiff

*This language must be on the complaint or this form attached to the complaint.

(B) Provided further that any defendant may request a physical examination of a claimant whose physical condition is in issue if the claimant has not prior to filing of the claim submitted to a physical examination at the request of that defendant. In any case, where a request for a physical examination is made at the time of filing of the initial responsive pleading, the case shall not be assigned for arbitration until the physical examination has been completed or the expiration of 90 days from the request, whichever first occurs.

COMMENT

Rule 16(c) (2) (B) - Refer back to "A" on page 5 and see Form 34 on page 6a.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN A. ALBERT, :

Plaintiff, :

v. : Civil Action #81-C-214

JEAN B. SMITH, :

Defendant. :

REQUEST FOR PHYSICAL EXAM

Defendant, Jean B. Smith, hereby requests a medical examination of plaintiff John B. Albert, regarding the injuries alleged. The examination is to be conducted by Paul Trante, M.D. at his office at 222 Park Road, Wilmington, Delaware, on February 1, 1985 at 2:30 p.m.

JOHNSON & SMITH

By: _____
John Johnson
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19083
Attorney for Defendant

(3) (A) In all cases in which personal injuries are alleged, the party alleging personal injuries shall attach all medical records and reports to his required response under Superior Court Civil Rule 3(a). Additionally, all expert witness reports on which the complaining party intends to rely upon at the hearing shall be attached to the response to Superior Court Civil Rule 3(a).

COMMENT

Rule 16(c) (3) (A) - Requires nothing new by the Prothonotary as it merely requires the plaintiff to attach medical records, reports and expert witness reports in accordance with Rule 3(a).

(B) The answering party to any complaint alleging personal injuries may require an independent medical examination of the party alleging personal injuries at the answering party's cost by attaching to his answer a request for an independent medical examination, setting forth the name and business address of the physician, and the date and time of the examination. Copies of the report obtained shall be provided to all parties and the arbitrator.

COMMENT

Rule 16 (c) (3) (B) - See Form 34 on page 6a.

(4) (A) Cases subject to arbitration pursuant to this Rule will be assigned for arbitration by the President Judge of this Court or his designee to an arbitrator (i) designated by all the parties or their counsel or (ii) in lieu thereof, assigned from a list of arbitrators as provided herein.

COMMENT

Rule 16(c) (4) (A) - A master list of all arbitrators will be prepared by August 1, 1984. See Rule 16(c) (4) (C) on page 11.

It is the suggestion of this Committee that the Superior Court use its discretion to select arbitrators to sit in the County in which they conduct the most substantial portion of their legal work whenever possible.

(B) An arbitrator may be appointed by agreement of the parties in a signed stipulation filed with the Court not later than 10 days after the case is referred to arbitration.

COMMENT

Rule 16(c) (4) (B) - See Form 35 on page 10a.

FORM 35

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN A. ALBERT,	:	
Plaintiff,	:	
v.	:	Civil Action #81-C-214
JEAN B. SMITH,	:	
Defendant.	:	

STIPULATION APPOINTING ARBITRATOR

The parties, by their attorneys, pursuant to Superior Court Civil Rule 16(c)(4)(B), hereby stipulate and agree to the appointment of H. Harold White, Esquire of Larson & White, 18 S. High Street, Dover, Delaware, as arbitrator to conduct the arbitration hearing required by Superior Court Civil Rule 16(c).

NORRIS, KENDALL & CASSIDY

By: _____
William Norris
Norris, Kendall & Cassidy
P.O. Box 4407
Dover, DE 19901
Attorney for Plaintiff

JOHNSON & SMITH

By: _____
John Johnson
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19803
Attorney for Defendant

cc: H. Harold White

(C) In the event the parties fail to file a stipulation appointing an arbitrator, the Court shall select the alternative arbitrators from a list of arbitrators consisting of members of the Bar actively engaged in the practice of law for more than five years and who have demonstrated an interest in litigation, and volunteer members of the State judiciary, including retired judges. None of the arbitrators designated may be a partner or associate of any attorney in the case nor have any conflict of interest that would disqualify a judge under the Code of Judicial Conduct. The Court shall convey the identity of the list of alternative arbitrators to the parties within 20 days after the referral of the case for arbitration.

COMMENT

Rule 16(c) (4) (C) - This will require the Prothonotary to use the suspense or tickler file when the 10 days have expired and no stipulation as to an arbitrator was filed. The Superior Court is required to convey the identity of the list of alternative arbitrators to the parties within 10 days thereafter or within 20 days after the referral of the case for arbitration.

See form letter attached on page 11a.

March 1, 1985

John Johnson, Esquire
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19083

William Norris, Esquire
Norris, Kendall & Cassidy
P.O. Box 4407
Dover, DE 19901

Re: Albert v. Smith
C.A. 83-MR-4147

Gentlemen:

Please be advised that, pursuant to Superior Court Civil Rule 16(c)(4)(C), the following alternative arbitrators have been selected for your consideration in the instant case:

(1) H.T. Murphy, Esquire
H.T. Murphy, P.A.
P.O. Box 147
Newark, DE 19711

(2) Robert Kistel, Esquire
Kistel, Gold & Segal
919 Main Street
Wilmington, DE

(3) Willard P. Ramone, Esquire
Rastin & Ramone
P.O. Box 1119
Wilmington, DE

According to Superior Court Civil Rule 16(C)(4)(D), the plaintiff(s) will have one strike and defendant(s) will have one strike. The letter from plaintiff(s) and the letter from defendant(s) striking an alternative arbitrator must be mailed on or before March 11, 1985. Any alternative arbitrator remaining after the strikes are exercised may be appointed to arbitrate this matter.

Very truly yours,

ADMINISTRATIVE JUDGE - ARBITRATION

cc: Prothonotary

(D) Within 10 days after the Court conveys the list of three alternative arbitrators to the parties, the plaintiffs, jointly, may strike one alternative arbitrator, and defendants may strike one alternative arbitrator. Any remaining alternative arbitrator may be appointed by the Court as arbitrator.

COMMENT

Rule 16(c) (4) (D)* - See Vic Battaglia's letter dated April 24, 1984 on page 12a concerning "waiver."

---

*See form letter for this Rule on page 12b.

3 hole copy was made

BIGGS AND BATTAGLIA
ATTORNEYS AT LAW
GIRARD BANK BUILDING
P. O. BOX 1489
WILMINGTON, DELAWARE 19899

AREA CODE 302
655-9677

VICTOR F. BATTAGLIA
JOHN BIGGS III
SAMUEL R. RUSSELL
ALAN W. BEHRINGER
GARY W. ABER
ROBERT H. HALLSTED, JR.
ROBERT K. BESTE, JR.
CHARLES H. TOLIVER, IV
MARY PAT TROSTLE
J. MICHAEL JOHNSON
WAYNE A. MARVEL
FRANCINE S. GRITZ
PHILIP B. BARTOSHESKY
PAMELA S. TIKELLIS

April 24, 1984

C.F. DICT.
F.F. S.U.S.

APR 25 1984

M.F. FILED
ENC. OTHER

Morton R. Kimmel, Esquire
Kimmel & Spiller, P.A.
401 Market Tower
P. O. Box 272
Wilmington, Delaware 19899

Re: Arbitration

Dear Mort:

Thank you for sending me a copy of the second draft of the Administrative Procedures Manual for the Arbitration Implementation Committee.

I have forwarded to you copies of the drafts of forms developed in my office. Please be assured that there is no pride of authorship in the forms and our effort was to be simply a quick first cut.

The Manual raises some question about the provisions of Rule 16(c)(4)(D). This deals with striking of alternative arbitrators. It was our thought in using the word "may" that both the plaintiff and the defendant might strike the same arbitrator or that one side might waive its right to strike an arbitrator leaving two possible alternative arbitrators for selection by the Court. In that circumstance, it was our thought that the Court might appoint either of the remaining alternative arbitrators.

It was felt not necessary to state any mechanism that the Court should utilize in determining which of the remaining arbitrators would be selected.

If I can be of any help to you, please do not hesitate to call me.

Sincerely,

Victor F. Battaglia

VFB/nej
cc: The Honorable Daniel L. Herrmann
The Honorable Joshua W. Martin, III
O. Francis Biondi, Esquire
Harold Schmittinger, Esquire
William Prickett, Esquire

FORM LETTER-RULE 16(C)(4)(D)

A-120

March 10, 1985

Administrative Judge - Arbitration
Superior Court in and for
of the State of Delaware County

RE: Albert v. Smith
C.A. 83-MR-4147

Dear Judge :

Pursuant to Superior Court Civil Rule 16(C)(4)(D), the defendant strikes Robert Kistel from the list of alternative arbitrators.

Very truly yours

John Johnson

A-121

(E) The arbitrator appointed, except non-retired members of the State Judiciary, shall receive compensation for serving in the amount of $250.00 which shall be charged equally among all parties. Said compensation is to be paid no later than 60 days after the arbitrator is appointed.

COMMENT

Rule 16(c) (4) (E) - This Rule specifically requires that the arbitrator's fee in the amount of $250 "shall be charged equally among all parties." Thus, when there is one plaintiff and three defendants, the plaintiff is only required to pay one-quarter of the fee. When there are two plaintiffs, husband and wife with one spouse's claim being derivative for a loss of consortium, and three defendants, the Superior Court will have to rule whether the plaintiffs pay one-quarter or two-fifths of the compensation.

Administratively, the Court will require that the $250 fee be paid to the Prothonotary rather than the arbitrator. This will eliminate a major problem if the case is settled prior to arbitration. A special escrow account for the Prothonotary will be necessary.

The Committee suspects that it will be a rare case when one wishes to proceed in forma pauperis since most plaintiffs' attorneys advance costs.

(5) The parties may serve and file motions and discovery as allowed by the Superior Court Civil Rules; provided however, that in cases subject to arbitration all responses to discovery and motions shall be stayed until a request for a trial de novo is filed as provided by these rules.

COMMENT

Rule 16(c) (5) - Although motions and discovery are allowed in arbitration cases, all responses to said discovery and motions are stayed until a "request for a trial de novo is filed. Nothing is necessary from this Committee.

The Committee concluded that the form 30 interrogatories should not be amended at this time.

(6) The arbitration hearing:

(A) Shall be scheduled and held by the arbitrator within 40 days of his appointment, after consultation with the parties; except that, where an answering party has requested an independent physical examination, pursuant to subsection (3)(B), the hearing shall be scheduled and held within 40 days of the receipt of the physician's report by the arbitrator.

COMMENT

Rule 16(c)(6)(A) - This section deals with the arbitration hearing and is governed by (A)-(I).

(B) Unless the date of hearing is agreed upon by all parties the arbitrator shall give at least 10 days written notice of the hearing to all parties;

COMMENT

Rule 16(c)(6)(B) - None necessary.

March 14, 1985

Arbitration fee now due
Payable to Prothonotary

John Johnson, Esquire
Johnson & Smith
P.O. Box 100
Wilmington, DE 19803

William Norris, Esquire
Norris, Kendall & Cassidy
P.O. Box 4407
Dover, DE 19901

Re: Albert v. Smith
C.A. 83-MR-4147

Gentlemen:

Willard Ramone is appointed as the arbitrator in this case. He will be contacting you to set a time, date and location of the arbitration hearing, which must be held within 40 days of this date.

Very truly yours,

ADMINISTRATIVE JUDGE - ARBITRATION

cc: Willard Ramone, Esquire
Prothonotary

April 1, 1985

John Johnson, Esquire
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19803

William Norris, Esquire
Norris, Kendall & Cassidy
P.O. Box 4407
Dover, DE 19901

Re: Albert v. Smith
C.A. 83-MR-4147

Gentlemen:

This will confirm that an arbitration hearing in this case will be held on April 18, 1985 at 2:00 p.m. in my office at 2120 Rodney Tower, Wilmington, Delaware.

Pursuant to Rule 16(c)(6)(g), all exhibits must be provided to the adverse party and the arbitrator on or before April 8, 1985. Further, all praecipes for subpoenas should be issued as quickly as possible so they may be served prior to the hearing date.

Your share of the arbitrator's fee must be paid to the Prothonotary prior to the hearing.

Very truly yours,

Willard Ramone, Esquire

cc: Administrative Judge-Arbitration

(C) The arbitrator, in his discretion, may schedule an informal preliminary conference with the parties;

COMMENT

Rule 16(c)(6)(C) - Here, the arbitrator, in his discretion, may schedule an informal preliminary conference. This can be a telephone conference.

(D) The arbitration hearing may proceed in the absence of any party who fails to appear, after notice, but an award of damages shall not be based solely upon the failure of a party to appear, except, that, where a claimant, after notice, fails to appear without just cause, the arbitrator shall enter a decision against the claimant without a hearing;

COMMENT

Rule 16(c)(6)(D) - This concerns a hearing when a party fails to appear but no form is required by this Committee. It can be incorporated in the final decision form.

(E) The Rules of this Court shall apply to compel the attendance of witnesses and production of documents;

COMMENT

Rule 16(c)(6)(E) - Subpoenaes and so forth thru the Court Rules apply to compel attendance of witnesses and production of documents at the hearing.

(F) Unless waived by parties, testimony shall be under oath or affirmation, administered by a notary public;

COMMENT

Rule 16(c)(6)(F) - Unless waived by the parties, testimony is under oath and so forth and administered by a notary public. Nothing is required by this Committee.

(G) The Delaware Uniform Rules of Evidence shall be used as a guide to the admissibility of evidence, provided that evidence may be submitted and considered which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the arbitrator and all parties at least 10 days prior to the hearing. The arbitrator shall consider such exhibits without formal proof unless the parties have been notified at least 5 days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to an adverse party as provided herein. The arbitrator, in his discretion, may view or inspect exhibits or the locus involved in a case in the presence of the parties and/or their attorneys or outside the presence of the parties or their attorneys;

COMMENT

Rule 16(c) (6) (G) - The Delaware Uniform Rules of Evidence are used as a guide. As to the requirement of exhibits being supplied to the parties and the arbitrators 10 days prior to the hearing, no form is required by this Committee. Similarly, nothing is required regarding a view of the scene as indicated in this rule.

Refer back to page 16 and "B". There, 10 days written notice of the hearing is required.

(H) A party may have a recording or a transcript made of the arbitration hearing at his expense;

COMMENT

Rule 16(c)(6)(H) - This deals with a recording or transcript of the arbitration hearing at a party's expense. Refer to page 29 and Rule 16(c)(8)(C). On a trial de novo, recorded testimony given at the hearing may be used in the same manner as testimony taken at a deposition in a trial de novo.

On a trial de novo, the pre-trial stipulation shall contain a notation that a recording or a transcript was made of the arbitration hearing.

(I) An arbitrator, in his discretion, may adjourn the hearing for not more than 10 days.

COMMENT

Rule 16(c)(6)(I) - The arbitrator shall inform the Court immediately of any adjournment.

(7) (A) After the conclusion of the hearing, the arbitrator shall issue a written arbitrator's order to the parties within five days following the arbitration hearing. The order shall be entered as a judgment of the Court after the time for requesting a trial de novo has expired. The judgment shall have the same force and effect as a judgment of the Court in a civil action except that it shall not be subject to appeal. The arbitrator shall certify that he has not examined and is not familiar with the amount of insurance coverage with respect to any claim subject to his order.

COMMENT

Rule 16(c) (7) (A) - Within 5 days following the hearing, the arbitrator issues an order to the parties which shall be entered as a judgment of the Court after the time for requesting a trial de novo has expired. It requires the arbitrator to certify that he has not examined and is not familiar with the amount of insurance coverage with respect to any claims subject to his order. See form 16 (c) (7) (A) on page 24a.

It is the parties' responsibility that the arbitrator not see the answers to the form 30 interrogatories as number 6 sets forth the insurance coverage.

THE PARTIES MAY AGREE TO BINDING ARBITRATION TERMINATING LITIGATION WHEN THE PARTIES IN ADVANCE AGREE, IN WRITING, TO ACCEPT THE AWARD OF THE ARBITRATOR IF IT FALLS WITHIN THE RANGE OF THE DEMAND AND OFFER, i.e., IF THE DEMAND IS $29,000, THE OFFER IS $20,000 AND THE AWARD IS $25,000. SIMILARLY, A "HIGH-LOW" CAN BE USED. See form 16 (c) (7) (A) on page 24a.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN A. ALBERT, :

Plaintiff, :

v. : Civil Action #81-C-214

JEAN B. SMITH, :

Defendant, :

ARBITRATOR'S ORDER

A h aring in the above-captioned action was held on April 18, 1985. After consideration of the evidence, I find for the plaintiff on the Complaint in the amount of $15,000. On defendant's counterclaim, I find for the plaintiff. Costs and interest are assessed against the defendant.

I hereby certify that I have not examined and am not familiar with the amount of insurance coverage with respect to either claim.

IT IS SO ORDERED.

Willard P. Ramone
Arbitrator

DATED: April 23, 1985

cc: William Norris, Esquire
John Johnson, Esquire

(B) Upon the issuance of an arbitrator's order, the Prothonotary shall enter the arbitrator's order in an arbitrator's order docket.

COMMENT

Rule 16(c) (7) (B) - The Prothonotary will establish an arbitrator's order docket.

(C) If the case was submitted to arbitration by agreement of all parties and the amount in controversy, exclusive of interest and costs, exceeds thirty thousand dollars ($30,000.00), the arbitrator's award may exceed thirty thousand dollars ($30,000.00). In all other cases where the amount in controversy, exclusive of interest and costs, is thirty thousand dollars ($30,000.00) or less, the arbitrator's award must not exceed thirty thousand dollars ($30,000.00) exclusive of interest and costs.

COMMENT

Rule 16(c)(7)(C) - None necessary.

(8) (A) Within 20 days after the filing of the arbitrator's order by the arbitrator any party may serve and file a written demand for a trial de novo in the Superior Court. A demand for a trial de novo shall be the sole remedy of any party in a case subject to this Rule.

COMMENT

Rule 16(c)(8)(A)* - The tickler or suspense file shall be used to monitor the 20 day period. If a trial de novo is requested, the case returns to the calendar of the Court and is treated for all purposes as if it had not been referred to arbitration. This is also set forth in (8) (b). See page 28.

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*See form for de novo trial on page 27a.

FORM REQUEST - 16 (c)(8)(A)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN A. ALBERT,	:	
Plaintiff,	:	
v.	:	Civil Action #81-C-214
JEAN B. SMITH,	:	
Defendant.	:	

DEMAND FOR TRIAL DE NOVO

Defendant, by her attorney, hereby requests a trial de novo in the above-captioned action, from the Arbitrator's Order of April 23, 1985.

JOHNSON & SMITH

By: _____
John Johnson
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19083
Attorney for Defendant

cc: William Norris, Esq.

DATED: May 12, 1985

(B) Upon a demand for a trial de novo, the case shall be placed upon the calendar of the Court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury that a party shall otherwise have shall be preserved inviolate. The stay of motions and discovery herein provided shall automatically terminate upon the service and filing of a demand for a trial de novo. The time for responses to motions and discovery shall run from the date of the filing of the demand for a trial de novo.

COMMENT

Rule 16(c) (8) (B) - None necessary.

(C) At the trial de novo the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the order, nor consider any other matter concerning the conduct or outcome of the arbitration proceeding, except that recorded testimony given at an arbitration hearing may be used in the same manner as testimony taken at a deposition in the trial de novo.

COMMENT

Rule 16 (c) (8) (C) - This permits recorded testimony given at an arbitration hearing to be used in the same manner as testimony taken at a deposition if there is a trial de novo.

See page 22 and Rule 16(c) (6) (H).

CONTINUED

2 OF 5

(B) Upon a demand for a trial de novo, the case shall be placed upon the calendar of the Court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury that a party shall otherwise have shall be preserved inviolate. The stay of motions and discovery herein provided shall automatically terminate upon the service and filing of a demand for a trial de novo. The time for responses to motions and discovery shall run from the date of the filing of the demand for a trial de novo.

COMMENT

Rule 16(c) (8) (B) - None necessary.

(C) At the trial de novo the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the order, nor consider any other matter concerning the conduct or outcome of the arbitration proceeding, except that recorded testimony given at an arbitration hearing may be used in the same manner as testimony taken at a deposition in the trial de novo.

COMMENT

Rule 16 (c) (8) (C) - This permits recorded testimony given at an arbitration hearing to be used in the same manner as testimony taken at a deposition if there is a trial de novo.

See page 22 and Rule 16(c) (6) (H).

(D) If the party who demands a trial de novo fails to obtain a verdict from the jury or judgment from the court, exclusive of interest and costs, more favorable to him than the arbitrator's order, he shall be assessed fees and costs* of the arbitration, and the arbitrator's compensation. In addition, if the plaintiff obtains a verdict from the jury or judgment from the court more favorable than the order of the arbitrator, and it was the defendant who demanded a trial de novo, interest on the amount of the arbitrator's order shall accrue in accordance with 6 Del. C. §2301 beginning with the date of the arbitrator's order.

COMMENT

Rule 16(c) (8) (D) - The Prothonotary will have a cross-reference to the arbitrator's order if there is a trial de novo.

---

*The fees and costs of the arbitration include, but are not limited to, any expert witness fees assessed by the Court during arbitration as costs, Prothonotary's costs for issuing of subpoenaes and sheriff's mileage.

(9) In the event that no request for a trial de novo is filed within the time allowed the Prothonotary shall:

(A) Record the arbitrator's order in the proper docket and judgment index.

(B) Notify each party by ordinary mail that the arbitrator's order has been entered as a judgment stating the date and time of the entering of judgment and the amount of costs assessed.

(C) Note in the docket the date of mailing.

COMMENT

Rule 16 (c) (9) - This concerns no request for a trial de novo and (A) - (C) require the arbitrator's order to be placed in the proper docket and judgment index, written notification by ordinary mail to the parties (the attorney if a party is represented), that the arbitrator's order has been entered as a judgment stating the date and time of the entering of the judgment, of the amount of costs assessed; there must be a note in the docket of the date of mailing. See form 31a.

FORM LETTER - RULE 16(c)(9)(B)

May 15, 1985

John Johnson, Esquire
Johnson & Smith
P.O. Box 1000
Wilmington, DE 19803

William Norris, Esquire
Norris, Kendall & Cassidy
P.O. Box 4407
Dover, DE 19901

Re: Albert v. Smith
C.A. 83-MR-4147

Gentlemen:

Please be advised that the time for requesting a trial de novo having expired, the Arbitrator's Order issued in this case by Arbitrator Willard P. Ramone, Esquire, on April 23, 1985 has been recorded in the Judgment Docket as a judgment of the Superior Court in favor of plaintiff John B. Albert in the amount of $15,000.00, plus interest. The Arbitrator's Order was so recorded on May 14, 1985 at 2:35 p.m. The costs assessed were $47.75

Very truly yours,

Prothonotary
New Castle County

(10) Awards entered in arbitration proceedings under this Rule shall not have collateral estoppel effect in any other judicial proceedings.

COMMENT

Rule 16 (c) (10)- None necessary.

GEORGIA

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FULTON COUNTY, GEORGIA SUPERIOR COURT

DRAFT RULES

CIVIL ARBITRATION

1.

All civil actions filed and seeking exclusive money damages of twenty thousand dollars ($20,000) shall go through compulsory but non-binding arbitration. Any party to an action not otherwise qualifying may request arbitration when it is not for the purpose of delay and the trial judge to whom the case has been assigned may order arbitration in his or her discretion; the judge to whom the case has been assigned may determine at any time that such case should go through arbitration and shall set the date for arbitration.

2.

Upon filing, the Clerk shall stamp all cases with an ad damnum of twenty thousand dollars ($20,000) or less with the date and time for arbitration.

3.

The arbitration date shall not be less than 180 days from the time of filing and shall be as close to 180 days as possible.

4.

Arbitration cases, depending upon a predetermined number as established by the Court Administrator or his or her designate, shall be set by the Clerk at the time of filing for 9:00 A.M., 10:00 A.M., 11:00 A.M., or 2:00 P.M.

5.

The place of arbitration will be provided by the Court Administrator of his/her designate either in the Courthouse or adjacent thereto, and the filing stamp of the Clerk shall designate such central location where arbitration cases will be heard.

6.

The Court Administrator or his/her designate shall compile a list of all lawyers with two or more years of trial experience; after determining which of these trial lawyers are willing to participate, the Court Administrator shall divide the list and maintain such list by those who have more than two (2) years experience but less than five (5) years and those who have five (5) years or more experience; the Court Administrator or his/her designate will annually update such list to separate lawyers into the appropriate categories; lawyers may submit their names and application for inclusion on the list with the Court Administrator or his/her designate;

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7.

An arbitration panel shall consist of the Chief Arbitrator who has five (5) or more years of experience and two presiding arbitrators who have less than five (5) years of experience; such arbitrators shall be selected from their respective categories randomly and randomly assigned to a panel; in the event that there are insufficient arbitrators with less than five years experience, then one or both presiding arbitrators may be selected from lawyers having more than five years experience and the Chief Arbitrator shall be the lawyer with the longest admission to practice unless the arbitrators among themselves agree to a different means to select the Chief Arbitrator.

8.

From the time of filing until the arbitration date, the parties may carry on discovery; all discovery disputes and other motions shall be determined by the judge to whom the case has been assigned; discovery or motions pending shall not be a grounds for the removal of a case from an arbitration date; a continuance from from arbitration may only be granted by the judge to whom the case has been assigned.

9.

If the case is settled prior to the arbitration date, then counsel for the parties must notify not only the Calendar Clerk of the Judge to whom the case has been assigned but also the Court Administrator or his/her designate. The Court Administrator shall schedule sufficient arbitration panels on each date to handle the remaining arbitration cases.

10.

On the arbitration date, the Court Administrator or his/her designate shall call the calendar of the arbitration cases of each hour and assign such cases to an arbitration panel as they become available;

11.

The arbitration panel shall swear witnesses and receive evidence; the rules of evidence shall be the same as in a T.R.O. and shall be relaxed; unless an objection and a demand is made twenty (20) days prior to the arbitration hearing date, the following categories of documents may be introduced into evidence without establishing authenticity or having the author present:

a. Police or fire accident report;
b. Medical records, hospital records and medical reports;
c. Medical bills
d. Lost wages/lost profits;
e. Property repair bills/estimates;
f. Business records;
g. Contracts, invoices, demand letters, notes or negotiable instruments.

If objected to timely as to authenticity or as to the right of cross-examination as to the content, then live testimony in support will be required.

12.

At the arbitration hearing the Chief Arbitrator shall rule on all objections and admission of evidence and may confer with the presiding arbitrators on such rulings.

13.

At the arbitration hearing each side shall have five (5) minutes to make an opening statement unless there is a conflict of interest between the parties of such side; in which event each party with a conflict of interest may make a separate opening of five (5) minutes; closing argument shall be fifteen (15) minutes per side unless there is a conflict of interest between the parties of such side; in which event each party with a conflict of interest may make a separate argument of fifteen (15) minutes.

14.

At the close of the arbitration hearing, the arbitrators shall confer and return a written award which shows damages in a stated amount, no damages, or a dissent. A simple majority is all that is required to reach an award. The award is published to the parties and the written award filed with the Court Administrator or his/her designate. No written findings of fact and conclusions of law are required.

15.

The arbitration hearing is not recorded or taken down and a record is not made; however, any party, at their own expense, may have the proceedings recorded.

16.

Either party may file a notice of appeal of the award within thirty (30) days of the filing of the award with the Court Administrator or his/her designate who shall make a notation and entry of such date; such notice of appeal will be substantially in the same form as used in the appeal of civil cases and will entitle the appellant to a de novo trial before the trier of fact in the ordinary course before the judge to whom the case has been assigned, which shall afford and protect any right.

17.

Failure or refusal to file within thirty (30) days a notice of appeal from the arbitration award shall constitute a waiver of jury trial and a consent to the arbitration award; counsel for the parties shall prepare, after the thirty (30) days, either a consent judgment or dismissal with prejudice as they deem appropriate.

18.

Where a party, after appeal from an arbitration award, tries the case to a judge or jury and does not substantially improve his or her position, then the trial judge has the discretion to tax the arbitration panels fees against said party; substantially improving a party's position means either the reversal of the award or the increase or decrease of the arbitration award by 15%, depending upon which party appeals.

19.

Arbitrators shall be paid two hundred dollars ($200) per day for serving or the appropriate proportion of any time less than a day; each arbitrator shall sign at the conclusion of the day a statement as to the time served.

20.

No arbitrator may serve more than four (4) times during any one calendar year.

21.

If the Court Administrator or his/her designate receives two or more complaints as to an arbitrator's conduct from another arbitrator, a party or counsel, then inquiry shall be made to the other arbitrator or arbitrators; if two or more complaints are made, the the Court Administrator or his/her designate shall notify said arbitrator in writing of the charges and ask if he/she wishes a hearing; if a hearing is requested, then it shall be before a panel of arbitrators selected in the normal fashion and evidence of the conduct presented; if the charges are found justified or if no hearing is requested, then the lawyer's name shall be stricken from the arbitration rolls.

MICHIGAN

Michigan General Court Rule

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 23rd day of March in the year of our Lord one thousand nine hundred and seventy- nine.

Present the Honorable

MARY S. COLEMAN,
Chief Justice,

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

ADM 226

Effective
June 1980

PROPOSED new Michigan Court Rule 2.403

GCR 316.

On order of the Court, this is to advise that the Court is considering a PROPOSAL to adopt new GCR 2.403. Before determining whether it should be adopted, changed before adoption, or rejected, this NOTICE is given to afford any interested person the opportunity to comment on the form or the merits of the proposal, the text of which is as follows:

Rule 2.403 Mediation

(A) Scope of Rule. The circuit court may submit any civil case to mediation except that an issue of child custody may not be submitted to mediation. The rule does not apply to other courts.

(B) Manner of Selection of Cases. The judge to whom a case is assigned may select it for mediation by order

(1) on written stipulation by the parties,

(2) on written motion by a party after completion of discovery,

(3) on the judge's own motion after completion of discovery.

(C) Objections to Mediation.

(1) To object to mediation, a party must file a written motion with the clerk of the court and serve a copy on counsel of record within 14 days after notice of the order assigning the case to mediation. The moving party must notice the motion for hearing within 21 days after the filing of the motion, unless the court orders otherwise.

(2) The filing of a motion objecting to mediation does not stay mediation proceedings, unless the court so orders.

(D) Mediation Panel.

(1) Mediation panels will be composed of 3 persons.

(2) The circuit court may adopt by administrative order a procedure for selecting mediation panels.

(3) A circuit judge may be selected as a member of a mediation panel but may not preside at the trial of any case in which he served as a mediator.

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(E) Disqualification of Mediators. The rule for disqualification of a mediator is the same as that provided in GCR 1963, 912 [MCR 2.130] for the disqualification of a judge.

(F) Procedure for Mediation.

(1) Mediation Clerk. The circuit court shall designate the clerk of the court, the court administrator, the assignment clerk, or some other person to serve as the mediation clerk.

(2) Time and Place For Hearing; Notice. The mediation clerk shall set a time and place for the hearing and send notice to the mediators and counsel at least 28 days before the date set.

(3) Fees. Within 10 days after receipt of the notice of the mediation hearing, each injured party and each defendant must send to the mediation clerk a check for $75 made payable jointly to the attorneys on the mediation panel. Derivative claims (husband-wife, parent-child) must be treated as one injury. In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the cases as involving one injury, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a $75 fee must be paid for each injured party, and the mediation panel will then make separate awards for each injury, which may be individually accepted or rejected. The mediation clerk shall deliver the checks to the attorney-mediators on the day of the hearing.

(4) Adjournment of Hearings. Adjournments of hearings are to be avoided whenever possible.

(5) Submission of Documents. At least 10 days before the hearing date, each party must submit 3 copies of all documents pertaining to the issues to be mediated to the mediation clerk and 1 copy to opposing counsel.

Each party may also submit a concise brief or summary setting forth that party's factual or legal position on issues presented by the action.

A failure to submit these proofs within the above-designated time subjects the offending party to a $60 penalty payable at the time of the mediation hearing and distributed equally to the attorney-mediators.

(6) Presence of Parties; Evidence. A party has the right, but is not required, to attend a mediation hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.

The rules of evidence do not apply before the mediation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. The mediation panel may request information on applicable insurance policy limits but may not inquire about settlement negotiations.

Statements of attorneys and the brief or summary are not admissible in any court or evidentiary proceeding.

(7) Decision. Within 14 days after the hearing, the panel will make an evaluation of the case and notify each counsel of its evaluation in writing.

(8) Action on Board's Decision. Each party must file a written acceptance or rejection of the panel's evaluation with the mediation clerk within 21 days after the mailing of the panel's evaluation. The failure to file a written acceptance within 21 days constitutes rejection. There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 21-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

If the evaluation of the mediation panel is rejected, the mediation clerk shall return to each attorney all the documents submitted by that attorney. The mediation clerk shall place a copy of the mediation evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. The envelope may not be opened in a nonjury case until the trial judge has rendered judgment.

If the mediation evaluation does not exceed the jurisdictional limitation of the district court, the mediation clerk shall so inform the trial judge.

(G) Effect of Mediation. If all the parties accept the panel's evaluation, judgment will be entered in that amount, which includes all fees, costs, and interest to the date of judgment.

If any party rejects the panel's evaluation, the matter proceeds to trial in the normal fashion.

If the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the board's evaluation, or pay actual costs to the defendant.

If the plaintiff accepts the evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the evaluation of the board, or pay actual costs to the plaintiff.

If both parties reject the panel's evaluation and the amount of the verdict, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is no more than 10 percent greater or less than the board's evaluation, each party is responsible for his own costs from the mediation date. If the verdict is in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the board's evaluation, the defendant must pay actual costs. If the

verdict is in an amount which, when interest and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the board's evaluation, the plaintiff must pay actual costs.

(H) Actual Costs. Actual costs include those costs taxable in any civil action and a reasonable attorney fee as determined by the trial judge for services necessitated by the rejection of the board's evaluation.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption in its present form. Timely comments will be substantively considered and your assistance is appreciated by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in GCR 1963, 933. Comments on this proposal may be sent to the Supreme Court clerk within 60 days after it is published in the State Bar Journal.

STAFF COMMENT:

Proposed rule 2.403 was drafted by the Michigan Judges Association Rules Committee and is published for comment by the Court as submitted. The number indicates where it would appear if the proposed Michigan Court Rules (402A Mich) are adopted; if they are not, the rule would appear as GCR 1963, 316. Compare proposed GCR 1963, 316 appearing at 55 Mich State BJ 56 (January 1976).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 23rd day of March in the year of our Lord one thousand nine hundred and seventy- nine.

Robin R Davis Clerk.
Deputy

WAYNE CIRCUIT COURT RULES

Rule 403 Mediation

.1 Eligible Cases. The court may submit any civil case to mediation when the relief sought is exclusively money damages or division of property.

.2 Manner of Selection of Cases. A case may be selected for mediation:
(1) by stipulation of the parties at any time as long as mediation does not interfere with trial of the case,
(2) on written motion by a party and order of the court, or
(3) on order of the chief judge.

.3 Objections to Mediation. To object to mediation, a party must:
(1) file a written motion with the clerk of the court and a copy with the mediation tribunal clerk within 15 days after the date of the court's notice assigning the case to mediation, and
(2) serve a copy on opposing counsel and the chief judge.

If the motion is filed, the case may not be assigned for a mediation hearing until the chief judge, or a judge he assigns, has ruled on it.

.4 Mediation Board. There may be one or more mediation boards.
(a) Settlement Value of $20,000 or Less. A board to which cases having a claimed settlement value of $20,000 or less may be assigned must be comprised of three state bar members each having at least 5 years of actual practice experience, one designated by the Detroit Chapter of the American Trial Lawyers Association, one designated by the Detroit Defense Counsel Association, and the third designated by the chief judge. The attorney designated by the chief judge serves as chairperson.
(b) Settlement Value More Than $20,000. A board to which cases having a claimed settlement value more than $20,000 may be assigned must be comprised of three state bar members, one having at least 5 years of actual practice experience designated by the Detroit Chapter of the American Trial Lawyers Association, one having at least 5 years of actual practice experience designated by the Detroit Defense Counsel Association, and one a third circuit judge. The judge serves as chairperson.

When there is a dispute on the claimed settled value, the chief judge shall decide the reasonable settlement value of the case.

.5 Terms of Mediators. The term of a member of a mediation board is one week unless otherwise ordered.

.6 Disqualification of Mediators. The rule for disqualification of mediators is the same as that provided in GCR 1963, 912 for the disqualification of judges.

.7 Procedure for Mediation.
(a) Time and Place for Hearing; Notice. After a case has been selected for mediation by one of the methods set forth in Rule 403.2, the tribunal clerk shall set a time and place for the hearing and send notice to the mediators and opposing counsel at least 30 days before the date set.

(b) Submission of Documents. At least three court days before the hearing date, each party must submit three copies of all documents pertaining to the issues to be mediated to the mediators and one copy to opposing counsel.

Each party shall also submit a concise brief or summary setting forth that party's factual and legal position on issues presented by the action.

A failure to submit these proofs within the above-designated time subjects the offending party to a $60 penalty payable at the time of the mediation hearing and distributed equally to the attorney-mediators.

(c) Presence of Parties: Evidence. A party has the right, but is not required, to attend or be present at a mediation hearing. When scars, disfigurement or other unusual conditions exist, they may be demonstrated to the board by a personal appearance; however, no testimony will be taken or permitted of any party.

(d) Decision. Within 10 days after the hearing, the board will make an evaluation of the case and notify each counsel of its evaluation in writing.

(e) Action on Board's Decision. Written acceptance or rejection of the board's evaluation must be given to the tribunal clerk within 40 days of the mailing of the board's evaluation. There may be no disclosure of a party's acceptance or rejection of the board's evaluation until the expiration of 40 days following notification. At the expiration of the above period, the tribunal clerk shall send a notice indicating each counsel's acceptance or rejection of the board's evaluation. If the evaluation of the mediation board is rejected, the tribunal clerk shall place all mediation documents in a sealed manila envelope before forwarding them to the County Clerk for filing. The envelope may not be opened in a non-jury case until the trial judge has rendered judgment.

.8 Fees. On the submission of the stipulation to mediate or within 10 days of the notice or order requiring mediation, each injured party and each defendant shall send to the tribunal clerk $75 when the claimed settlement value of the case is $20,000 or less or $105 when the claimed settlement value is more than $20,000, payable to the attorneys on the board. Derivative claims (husband-wife, parent-child) must be treated as one injury. In the case of multiple injuries to members of a single family, the plaintiffs or defendants may elect to treat the cases as involving one injury, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no election is made, the fee must be paid for each injured party, and the board will then make separate awards for each injury, which may be accepted or rejected.

.9 Place of Hearing. The tribunal clerk shall designate the place of hearing.

.10 Time for Hearing. The tribunal clerk shall designate a hearing date.

.12 Hearings. Oral presentation of information is limited to 15 minutes per side, unless there are multiple parties or unusual circumstances warranting additional time. The board may request information on the status of settlement negotiations and applicable policy limits.

.13 Adjournment of Hearing.

(a) Adjournments of hearings are to be avoided whenever possible. If an attorney who is principally in charge of a case is in actual trial, he will be entitled to an adjournment of the hearing date as a matter of right if he gives opposing counsel and the board one day's advance notice. Otherwise mediation hearings must be given preference over other matters. Whenever possible, the attorney in principal charge of a case should delegate responsibility for attendance at the hearing to another person when he is in trial so as to minimize the number of adjournments.

(b) When cases are settled or otherwise disposed of before the hearing date, it is the duty of both counsel to notify the tribunal clerk of the disposition of the case as soon as possible so an attempt can be made to fill the time set aside for that hearing.

(c) When a copy of the final disposition order of a case is given to the tribunal clerk at least 15 days before the hearing date, the fee paid to the tribunal clerk for that hearing will be returned.

(d) Failure to comply with the rules for adjournment under this section subjects the offending counsel to the payment of $135 for a subsequent hearing and an additional $45 for each attorney necessary to attendance over and above the attorney mediators and one opposing counsel. $90 of the foregoing amounts will be divided among the attorney-mediators and the balance paid to opposing counsel of record.

.14 Evidence. The rules of evidence do not apply before the mediation board Factual information having a bearing on the question of damages must be supported by documentary evidence whenever possible.

.15 Effect of Mediation.

(a) If the board's evaluation is not rejected under rule 403.7(e), a judgment will be entered in that amount, which includes all fees, costs and interest to the date of judgment.

(b) If any party rejects the board's evaluation, the matter proceeds to trial in the normal fashion. When the evaluation is less than $10,000, a case will be automatically remanded for further proceedings to the appropriate lower court by the court clerk. The penalty provisions still apply.

(c) When the board's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the board's evaluation in order to avoid the payment of actual costs to the defendant.

(d) When the board's evaluation is unanimous, and the plaintiff accepts the board's evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the evaluation of the board or pay actual costs.

(e) When the board's evaluation is unanimous and both parties reject the board's evaluation and the amount of the verdict, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is within 10 percent above or below the board's evaluation, each party is responsible for his own costs from the mediation date. If the verdict is in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent above the board's evaluation, the defendant shall be taxed actual costs. If the verdict is in an amount which when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the board's evaluation, the plaintiff shall be taxed actual costs.

.16 Actual Costs. Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial in circuit court, determined by the trial judge in accordance with the fee prevailing locally.

History

403.3	Am. eff. November 2, 1979
403.5	Am. eff. November 2, 1979
403.7	Am. eff. November 2, 1979
403.8	Am. eff. November 2, 1979
403.13	Am. eff. November 2, 1979

Minnesota Statute

Ch. 634

73rd LEGISLATURE

JUDICIAL ARBITRATION

CHAPTER 634

S.F.No. 1007

AN ACT

relating to courts; permitting the establishment of compulsory nonbinding arbitration programs for use in civil proceedings; proposing new law coded in Minnesota Statutes, chapter 484.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [484.73] [JUDICIAL ARBITRATION.]

Subdivision 1. [AUTHORIZATION.] A majority of the judges of a judicial district may authorize the establishment of a system of mandatory, nonbinding arbitration within the district to assist the court in disposing of any controversy existing between two parties which is the subject of a civil action.

Subd. 2. [EXCLUSIONS.] Judicial arbitration may not be used to dispose of matters relating to guardianship, conservatorship, or civil commitment, matters within the juvenile court jurisdiction involving neglect, dependency, or delinquency, matters involving termination of parental rights under sections 260.221 to 260.245, or matters arising under sections 518B.01, 626.557, or 144.651 to 144.652.

Subd. 3. [RULES.] Rules governing pleadings, practice, procedure, jurisdiction, and forms for judicial arbitration shall be promulgated by a majority of the judges in the district, subject to the approval of the supreme court. The uniform arbitration act shall not be construed to apply to arbitration under this section except as otherwise provided in the rules of the judicial district.

Approved May 2, 1984.

Underscoring and ~~strikeouts~~ are as shown in enrolled act.

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Hennepin County Local Rule

RULE 4A. ARBITRATION

4A.01. Authority

Pursuant to Minn. Stat. §484.73, the Fourth Judicial District has authorized the establishment of a system of mandatory, nonbinding arbitration for civil cases.

4A.02. Actions Subject To Arbitration

(a) All Civil actions are subject to arbiration except:

1. Actions for money damages in excess of $50,000.00;

2. Actions for money damages within the jurisdictional limit of the Hennepin County Conciliation Court;

3. Actions that include a claim for equitable relief that is neither insubstantial nor frivolous;

4. Actions removed from the Hennepin County Conciliation Court for trial de novo;

5. Class actions;

6. Actions involving family law matters;

7. Unlawful detainer actions; or

8. Actions involving the title to real estate.

(b) The Chief Judge or his/her designee shall have authority to order that particular actions otherwise excluded above shall be submitted to arbitration.

(c) Any action otherwise excluded above may be submitted to arbitration by agreement of all parties.

4A.03. Qualifications of Arbitrator

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(a) Unless otherwise ordered by the Chief Judge or his/her designee or agreed to by all parties, an arbitrator must be admitted to practice in the State of Minnesota for a minimum of five years and must sign and file an Oath of Office with the Chief Judge of the District Court.

(b) No arbitrator shall sit in any cause if the arbitrator is interested in its determination or if the arbitrator might be excluded for bias from acting therein as a juror.

(c) Attorneys otherwise qualified may be eliminated from consideration as arbitrators by application to the Chief Judge of the District Court.

4A.04 Selection of Arbitrators

(a) Arbitrators shall be selected from members of the Bar who reside or practice in Hennepin County and who are qualified in accordance with Rule 4A.03.

(b) The Court Administrator shall randomly assign arbitrators from a list of qualified arbitrators maintained by the Court.

(c) Any party or his attorney may file with the Court Administrator within five days of the notice of appointment and serve on the opposing party a notice to remove. Upon receipt of a notice to remove, the Court Administrator shall immediately assign another arbitrator. After a party has once disqualified an arbitrator as a matter of right, a substitute arbitrator may be disqualified by that party only by making an affirmative showing of prejudice to the Chief Judge or his/her designee.

4A.05 Arbitrator's Fees

(a) The arbitrator's award or a notice of settlement signed by the parties or their counsel, must be timely filed with the Court Administrator before a fee may be paid to the arbitrator.

(b) On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee when the award was not timely filed.

(c) The arbitrator's fee statement shall be submitted to the Court Administrator promptly upon the completion of the arbitrator's duties, and shall set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

(d) The arbitrator's fee will be set by the court with a maximum of $150.00 per day.

4A.06. Communication With The Arbitrator

No disclosure of any offers of settlement by any party, other than contained in the court file, shall be made to the arbitrator prior to the filing of the award. There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

4A.07. Arbitration Hearing

(a) Within fifteen (15) days after filing of a Note of

Issue/Certificate of Readiness, or 105 days after the filing of a Certificate of Non-Readiness, the Court Administrator shall schedule an arbitration hearing within sixty (60) days. No further extensions for discovery or continuances of the arbitration hearing shall be allowed unless granted by the Chief Judge or his/her designee on motion.

(b) By agreement of all parties, an action may be submitted to arbitration before the filing of the Note of Issue/Certificate of Readiness.

4A.08. Continuances

(a) The parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. Notice of the continuance shall be sent to the Court Administrator.

(b) If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown, the Chief Judge or his/her designee may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance shall notify the arbitrator and the arbitrator shall reschedule the hearing, giving notice to all parties to the arbitration proceeding.

4A.09. Rules Of Evidence At Hearing

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The Rules of Evidence, construed liberally in favor of admission, apply to the conduct of the arbitration hearing, except:

1. Any party may offer, and the arbitrator shall receive in evidence written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills), documentary evidence of loss of income, property damage, repair bills or estimates, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all opposing parties at least 20 days prior to the hearing. Any other party may subpoena the author of a report, bill or estimate as a witness and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied by a statement indicting whether or not the property was repaired and if it was, whether the estimated repairs were made in full or in part, and by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion as to ultimate fault expressed in a police report.

2. The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if: (i)

they are made by affidavit or by declaration under penalty of perjury; (ii) copies have been delivered to all opposing parties at least 20 days prior to the hearing; and (iii) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

3. The deposition of any witness may be offered by any party and shall be received in evidence, subject to objections, notwithstanding that the deponent is not "unavailable as a witness" and no exceptional circumstances exist, if: (i) the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and (ii) not less than 20 days prior to the hearing the proponent of the deposition serves on all opposing parties notice of his intention to offer the deposition in evidence. The opposing party, upon receiving the notice, may subpoena the deponent and if he does so, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpoenaed him.

These limitations are not applicable to a deposition admissible under the terms of Minn.R.Civ.P.32.01.

(c) Subpoenas shall issue for the attendance of witnesses at arbitration hearings as provided in Minn.R.Civ.P.45. It shall be the duty of the party requesting the subpoena to modify the form of subpoena to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the court.

(d) Notwithstanding any other provisions in these rules, a party offering opinion testimony in the form of an affidavit or other statement, or a deposition, shall have the right to withdraw such testimony, whereupon the attendance of the witness at the hearing shall not be required.

4A.10. Conduct Of The Hearing

(a) The arbitrator shall have the following powers:

1. To administer oaths or affirmations to witnesses;

2. To take adjournments upon the request of a party or upon his own initiative when deemed necessary;

3. To permit testimony to be offered by deposition;

4. To permit evidence to be offered and introduced

as provided in these rules;

5. To rule upon the admissibility and relevancy of evidence offered;

6. To invite the parties, on reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;

7. To decide the law and facts of the case and make an award accordingly;

8. To award costs, not to exceed the statutory costs of the action; and

9. To view any site or object relevant to the case.

10. Any other powers agreed upon by the parties.

(b) The arbitrator may, but is not required to, make a record of the proceedings. Any records of the proceedings made by or at the direction of the arbitrator shall be deemed the arabitrator's personal notes and are not subject to discovery, and the arbitrator shall not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury. No other record shall be made, and the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this rule.

4A.11. The Award

(a) The award shall be in writing and signed by the arbi-

trator. It shall determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate. The arbitrator is not required to make findings of fact or conclusions of law.

(b) Within ten (10) days after the conclusion of the arbitration hearing, the arbitrator shall file his award with the Court Administrator, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award. Within the time for filing the award, the arbitrator may file and serve an amended award.

(c) The Court Administrator shall enter the award as a judgment forthwith upon the expiration of twenty (20) days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules. Promptly upon entry of the award as a judgment, the Court Administrator shall mail notice of entry of judgment to all parties who have appeared in the case and shall execute a certificate of mailing and place it in the court's file in the case. The judgment so entered shall have the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in subdivision d. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(d) A party against whom a judgment is entered pursuant

to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in the Uniform Arbitration Act, Chapter 572, Minnesota Statutes, and upon no other grounds. The motion shall be heard by the court upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

4A.12. Trial After Arbitration

(a) Within 20 days after the arbitration award is filed with the Court Administrator, any party may request a trial by filing with the Court Administrator a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 20-day period within which to request trial may not be extended.

(b) The case shall be restored to the civil calendar in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of

the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

NEVADA

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Nevada Revised Statute

MOTOR VEHICLE DAMAGE ACTIONS

38.215 Arbitration required in damage actions arising out of ownership, maintenance or use of motor vehicles where amount in issue does not exceed $3,000.

1. Except as provided in subsection 2, all civil actions for damages for personal injury, death or property damage arising out of the ownership, maintenance or use of a motor vehicle, where the cause of action arises in the State of Nevada and the amount in issue does not exceed $3,000, shall be submitted to arbitration, in accordance with the provisions of NRS 38.015 to 38.205, inclusive.

2. Any such action over which a justice's court has jurisdiction shall be submitted to such arbitration only upon the mutual consent of the parties.

(Added to NRS by 1971, 1170)

38.225 Arbitration prerequisite to trial. No cause of action specified in NRS 38.215 shall be tried until there has been compliance with all the provisions of NRS 38.215 to 38.245, inclusive.

(Added to NRS by 1971, 1170)

38.235 Trial after arbitration; conditions. After an award has been made pursuant to NRS 38.105, either party to the action may request a trial on any or all issues arising out of the action, subject to all of the following conditions:

1. The party requesting the trial, or his attorney, shall make an oath or affirmation that it is not for the purpose of delay that the trial is requested, but for the purpose of alleviating an injustice that was done by the arbitrators in making the award.

2. Such party shall pay all costs that may have accrued up to the time the request is made.

3. Such a request for a trial shall be made, and all costs which have accrued shall be paid within 20 days after the decision and award of the arbitrators has been filed with the court.

(Added to NRS by 1971, 1170)

38.245 Effective date. NRS 38.215 to 38.245, inclusive, shall apply only to those causes of action arising on or after July 1, 1971.

(Added to NRS by 1971, 1170)

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NEW HAMPSHIRE

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

ORDER

Effective July 10, 1979, the temporary rules on compulsory arbitration in the superior court in Merrimack County, which the supreme court adopted on September 13, 1978, and amended on April 4, 1979, are amended further as follows, and are made applicable and enforceable in Rockingham County also, as amended:

1. Amend Rule L by substituting the words "fifteen days" for the words and numeral "thirty (30) days" in the first sentence, so that the sentence as amended shall read as follows:

   "Within fifteen days after the hearing, the arbitrator shall file a report and award with the Clerk which shall not be required to include findings and rulings."

2. Amend Rule N by substituting the words "fifteen days" for the words "thirty days" in the first sentence, so that the sentence as amended shall read as follows:

   "Any party may appeal from the action of the arbitrator to the Superior Court within fifteen days after entry of the award."

3. Amend Rule O by striking out the text and inserting in place thereof the following:

   "If an appeal is filed from an arbitration award, the case shall to the extent possible be tried de novo within thirty days at the term entered."

July 10, 1979

ATTEST: George S. Pappagianis, Clerk
Supreme Court of New Hampshire

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TEMPORARY RULES ON COMPULSORY ARBITRATION IN THE SUPERIOR COURT IN MERRIMACK COUNTY AND ROCKINGHAM COUNTY AS AMENDED

(July 1979)

INTRODUCTION:

The purpose of this experimental arbitration program is to encourage the timely disposition of as many cases as possible through the mechanism of an arbitration process which seeks an equitable solution to the disputes between the parties. Counsel shall be responsible for fully instructing their clients of the consequences of a failure to timely appeal an arbitration award.

A. Cases for Arbitration

1. Any judge of the Superior Court in Merrimack County and Rockingham County may order any case to be heard and decided by arbitration, provided the following conditions are satisfied:

   a. The action must have been entered on the docket at least three months prior to the date scheduled for arbitration unless otherwise agreed to by all parties. Unemployment compensation appeals will be arbitrated regardless of age of the file.

   b. The amount actually in controversy (exclusive of interest and cost) as determined by the assigned arbitrator does not exceed $50,000.00 per case. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration. Malpractice cases will not be scheduled for arbitration under this rule.

2. The attorneys may agree, prior to assignment, to

   a. Their own panel of one or three arbitrators, with the cost to be shared equally by the parties.

   b. Otherwise, except for good cause show, the Clerk will assign the case to be heard before one of the arbitrators selected in accordance with Rule C.

B. Exception to Order of Arbitrator

1. Exceptions to an order placing a case on the arbitration list shall be raised by a motion filed within ten (10) days of the mailing of notice of such order and shall be heard by one of the arbitrators selected in accordance with Rule C. In cases where other than a retired or sitting justice, in accordance with Rule C, is serving as arbitrator, the exception shall be heard by the presiding justice.

2. Exceptions to an arbitrator shall be raised by motion filed within ten (10) days of the mailing of notice of assignment and shall be heard by the presiding judge.

C. Selection of Arbitrators

Except as provided in A-2, in all cases subject to arbitration, the arbitrators shall be appointed initially by the Presiding Justice from among those retired or sitting justices of the Superior or Supreme Court willing to serve.

D. Hearings: When and Where Held: Notice

1. Hearings shall be held at a place designated by the arbitrator. He shall notify the parties or their counsel in writing, at least twenty (20) days before the hearing, of the time and place of the hearing. No hearings shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrator.

2. Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, once a hearing date is set, the hearing shall proceed forthwith at the scheduled time. There shall be no communications by counsel or the parties with the arbitrator(s) concerning the merits of the controversy prior to the date scheduled for the hearing unless all parties are present.

E. Inability of Party to Proceed

In the event that counsel for any party for good cause shown is unable to proceed, the arbitrator may reschedule the case.

F. Default of a Party

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain a continuance. An award shall not be made solely on the default of a party; the arbitrator shall require the other party to submit such evidence as he may require for the making of an award.

G. Conduct of Hearing: General Powers

1. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered, and reasonable conformity to the rules of evidence will be necessary, except as hereinafter provided. All evidence shall be taken in the presence of the arbitrator and of all the parties except where any of the parties is absent, in default, or any of the parties has waived his right to be present.

2. Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

H. Conduct of Hearing: Specific Powers

1. The arbitrator shall have the general powers of a court including, but not limited to, the following powers:

a. Subpoenas. To cause the issuance of subpoenas to witnesses to appear and to request the issuance of an attachment according to the practice of the court for failure to comply therewith.

b. Production of Documents. To compel the production of all books, papers and documents which he shall deem material to the case.

c. Administering Oaths; Admissibility of Evidence. To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to him.

d. Motions. To hear and rule upon all motions in the case assigned for arbitration except those motions file pursuant to Rule B. Retired or sitting justices appointed pursuant to Rule C may hear and rule upon any motion in the case as arbitrator, master, or judge including those filed under Rule B.1.

e. Any party desiring to introduce the following documentary evidence shall present said evidence to the opposing counsel or party no later than ten (10) days prior to the arbitration hearing; otherwise, such evidence shall not be offered.

1. Hospital Bills and Medical Records. To accept as evidence hospital bills and records only on the official letterhead or billhead of the hospital when dated and itemized.

2. Bills and Reports of Licensed Health Providers. To accept as evidence bills and reports of licensed health providers certifying to the correctness and reasonableness of the charges, and that the service rendered was, in his opinion, necessary and causably connected with the incident involved.

3. Bills for Medicine, etc. To accept as evidence bills for medicine, eye glasses, prosthetic devices, medical belts, or similar items.

4. Property Repair Bills or Estimates. To accept as evidence property repair bills or estimates, setting forth the charges for labor and material used in the repair of the property, and accompanied by a statement of the repairman or contractor stating that the repairs were necessary, and that the charges for labor and material were fair and reasonable and those customarily charged.

In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with the copy of the estimate, a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or part, attaching a copy of the receipted bill showing the items of repair made and the amount paid.

5. Wage Statements or Affidavits of Lost Earnings. Wage statements or affidavits of lost earnings shall be accepted as evidence.

6. Accident and Police Reports. Accident and police reports shall be accepted as evidence.

I. Other Documentary Evidence

Any other affidavits, expert reports or documentary evidence sought to admitted (and not included under Rule H. e. 1.-6.) should be submitted to opposing counsel or the opposing party at least fifteeen (15) days in advance of hearing to which objection must be made within ten (10) days of the receipt of such affidavits, expert reports or documents. If no objection is made, then the affidavits, expert reports, or documents shall be admitted into evidence and given such weight as the arbitrator deems appropriate.

Superior Court Rules 46 and 47, as set forth below, shall also apply:

No motion for a continuance, grounded on the want of material testimony, will be granted, unless supported by an affidavit stating the name of the witness, if known, whose testimony is wanted, the particular facts he is expected to prove with the grounds of such expectation, and what has been done to procure his attendance or deposition, so that the arbitrator may determine whether due diligence has been used for that purpose. No action shall be continued on such motion, if the adverse party will agree that the affidavit shall be received and considered as evidence in like manner as if the witness were present and had testified to the facts therein stated; and such agreement shall be in writing at the foot of the affidavit and signed by the party or his attorney.

The same rule shall apply, with the necessary changes, when the motion is grounded on the want of any material document, paper or other evidence of like nature, or on the absence of a material witness whom the party deems it necessary to have upon the stand.

J. Witness Fees

Witness fees in any case referred to arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Superior Court. These costs may be ordered taxed in the case and the costs in any case shall be paid by the same party or parties by whom they would have been paid had the case been tried in Superior Court.

K. Transcript of Testimony

No transcript or recording of the proceedings shall be permitted.

L. Report and Award

Within fifteen (15) days after the hearing, the arbitrator shall file a report and award with the Clerk which shall not be required to include findings and rulings. The award shall be either for the plaintiff (with dollar amount stated) or for the defendant.

M. Legal Effect of Report and Award; Entry of Judgment

The report and award, unless appealed from as herein provided, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified therefor, the Court shall enter judgement in accordance therewith. After entry of such judgment, execution process may be issued as in the case of other judgments.

N. Right of Appeal

Any party may appeal from the action of the arbitrator to the Superior Court within fifteen days after entry of the award. A copy of such notice shall be served upon opposing parties or their counsel and the Clerk of Court.

O. Return to Active List

If an appeal is filed from an arbitration award, the case shall to the extent possible be tried de novo within thirty days at the term entered.

P. Testimony of Arbitrator on Appeal

In the event of an appeal from the award or decision the arbitrator shall not be called as a witness as to what took place before him in his official capacity as arbitrator and no mention of the fact that the case was arbitrated shall be made in any subsequent proceeding.

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NEW JERSEY

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Chapter 358 Laws of N.J. 1983
Approved 10-4-83

ASSEMBLY, No. 3822

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 6, 1983

By Assemblymen DEVERIN, ADUBATO, KOSCO and KARCHER

AN ACT providing for the arbitration of certain automobile accident claims in certain cases.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The purpose and intent of this act is to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious, and least costly manner, and to ease the burdens and congestion of the State's courts.

2. a. Any cause of action filed in the Superior Court after the operative date of this act, for the recovery of noneconomic loss, as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance or use of an automobile, as defined in that section 2, shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is $15,000.00 or less, exclusive of interest and costs; provided that if the action is for recovery for both noneconomic and economic loss, the controversy shall be submitted to arbitration if the court determines that the amount in controversy for noneconomic loss is $15,000.00 or less, exclusive of interest and costs.

b. Notwithstanding that the amount in controversy of an action for noneconomic loss is in excess of $15,000.00, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the con-

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troversy does not involve novel legal or unduly complex factual issues.

No cause of action determined by the court to be, upon proper motion of any party to the controversy, frivolous, insubstantial or without actionable cause shall be submitted to arbitration.

The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action.

The provisions of this section shall apply to any cause of action, subject to this section, filed prior to the operative date of this act, if a pretrial conference has not been concluded thereon.

3. Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with section 7 of this act.

4. a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with the rules of court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years negligence experience and recommended by the county or State bar association.

5. Compensation for arbitrators shall be set by the rules of the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the rules of the court for the purpose of determining a reasonable fee in the light of all the circumstances.

The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made but refused by the other party to the controversy.

6. The arbitrators may, at their initiative or at the request of any party to the arbitration, issue subpenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpenas shall be served and shall be enforceable in the manner provided by law.

7. Notwithstanding that a controversy was submitted pursuant to subsection a. of section 2 of this act, the arbitration award for noneconomic loss may exceed $15,000.00. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

8. Unless one of the parties to the arbitration petitions the court, within 30 days of the filing of the arbitration decision with the court, a. for a trial de novo, or b. for the modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings, the court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action.

9. Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court the fees of the arbitrators.

10. No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to section 11 of this act.

11. The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees, investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.

12. The Supreme Court of New Jersey shall adopt rules of court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on automobile insurance settlement practices and costs, and on court calendars and workload.

13. This act shall take effect immediately but sections 1 through 11 shall remain inoperative until January 1, 1984 or until the adoption of appropriate rules by the Supreme Court of New Jersey, whichever shall be later.

STATEMENT

This bill establishes a system of judicial arbitration for tort action claims, for noneconomic or economic loss, filed in the Superior Court of this State, if the amount in controversy is $15,000.00 or less or, in the case of a greater amount, the parties agree to submit the controversy to arbitration. If the action is for both economic and noneconomic loss, the $15,000.00 shall apply to the amount in controversy for noneconomic damages.

The parties to the arbitration may agree to the number and persons to be designated as arbitrators; otherwise the arbitrators shall be selected from a list of retired judges and practicing attorneys compiled by the assignment judge, in a manner to be prescribed by the State Supreme Court. Controversies on which arbitration decisions have been rendered prior to the filing of the action are exempted from the bill's provisions.

Any party to the arbitration may request a trial de novo of the controversy, during which no reference shall be made to the arbitration proceedings or decision. The party asking for a trial de novo shall pay the arbitrators' fees. That party shall also be assessed court costs and the reasonable costs of the trial to the other parties, including reasonable attorneys' fees, not to exceed the amount of damages awarded that party, if that party is the one to which the award is made: the court may reduce or eliminate the assessment to the extent that the court decision is more favorable to the filing party. The payment of court costs may be waived by the court, upon a finding that the payments would create a substantial economic hardship or are not in the interests of justice.

BURLINGTON ARBITRATION PROGRAM

RULE 1 - Cases Subject to Arbitration

A. All civil actions filed in or transferred to the Superior Court of New Jersey, Burlington County, which involve only soft tissue injuries, as herein defined, together with economic losses arising from the operation, ownership, maintenance or use of an automobile, are subject to the Burlington Arbitration Program (BAP), a non-binding arbitration pilot project conducted pursuant to order of the New Jersey Supreme Court.

B. Civil actions involving injuries arising from the operation, ownership, maintenance or use of an automobile, not otherwise subject to BAP may be made so subject by the consent of all parties.

RULE 2 - Case Selection/Notice

A. Arbitration hearings shall be scheduled not sooner than 210 days after the first answer is filed. Not less than 60 days notice of the date, time and place of arbitration and of the names of the arbitrators shall be provided.

B. Time for discovery will not be enlarged unless a motion for that purpose has been made, pursuant to R.4:24-1, prior to receipt of the notice of the arbitration hearing.

RULE 3 - Removal of Actions from Arbitration

Actions may be removed from arbitration by motion returnable before the Assignment Judge supported by detailed proof of factors suggesting a recovery in excess of $15,000. Such motions shall be filed within ten (10) days of receipt of notice of arbitration hearing and shall be returnable on the first available motion day permitted by R.1:6-3.

RULE 4 - Qualifications and Selection of Arbitrators

A. All actions subject to BAP will be submitted to a panel of two arbitrators composed of attorneys admitted to practice in this State. One arbitrator on each panel shall be selected from the "Plaintiffs' Bar" and one from the "Defendants' Bar" as designated on two lists of arbitrators to be recommended by the Burlington County Bar Association and approved by the Assignment Judge. All arbitrators so listed shall have been engaged in the active practice of negligence law for not less than seven years, unless attorneys with less experience are specially recommended by the Association and approved by the Assignment Judge. All arbitrators so approved shall file a written consent to serve upon a form approved by the court.

B. Every action subject to BAP shall be assigned to arbitrators designated by the Assignment Judge.

C. It shall be the duty of the selected arbitrators to determine whether any cause exists for disqualification. In such event, any arbitrator so subject shall promptly notify the court and a new arbitrator shall be selected.

RULE 5 - Settlement Prior to Hearing

Cases settled prior to a scheduled arbitration hearing date shall be reported to either arbitrator who shall, in writing, notify the court and the other arbitrator and the suit will be dismissed.

RULE 6 - Conduct of Arbitration Hearings

A. Arbitrators shall hear all evidence required to reach a fair decision. The Rules of Evidence shall not apply.

B. Arbitrators will have the general powers of a court. These shall include, but not be limited to, the power to

(1) Issue subpoenas to witnesses,
(2) Compel the production of writings and documents,
(3) Administer the oaths or affirmations,
(4) Determine admissability of evidence,
(5) Decide the law and determine the facts involved in any case submitted to them for arbitration.

C. Written statements of witnesses, excerpts from depositions and summaries of interrogatories and answers thereto shall be accepted, provided any witness making such statement, giving such deposition or answering such interrogatories, shall be made available at the hearing if requested by any of the parties.

D. At least ten (10) days prior to the scheduled date of the hearing, counsel for the party or parties will submit to the arbitrator on a form approved by the court, a concise statement of facts with a delineation of those issues and facts which are in dispute.

E. Parties may submit the following items to the arbitrators:

(1) The police accident report.
(2) Answers to interrogatories upon which any party relies.
(3) Selected portions of depositions upon which any party relies.
(4) Documents, photographs and other materials upon which any party relies.
(5) Sworn statements of any witnesses upon which any party relies, in lieu of the presentation of the live testimony of such witnesses. Copies of the statement shall be supplied to all counsel.

F. The following materials shall be submitted to the arbitrators with copies to all counsel (unless previously provided):

(1) All medical reports, medical bills and hospital records.
(2) A list of proposed witnesses whose live testimony is sought to be elicited together with a brief statement of the facts sought to be proved by such testimony.
(3) All other expert's reports.

G. Failure to submit the materials listed in the preceeding paragraph F. shall result in the imposition of sanctions which may include, without limitation, the following:

(1) Suppression of the evidence reflected by such material.
(2) Imposition of costs and counsel fees.

H. Witness fees shall be in the amount now and hereafter provided for witnesses in trials in the Superior Court of New Jersey.

I. Arbitration hearings shall not be recorded.

J. Appearances of attorneys and clients at all arbitration hearings are mandatory. Failure to appear on a scheduled hearing date will subject the offender to sanctions to be imposed by the Assignment Judge.

K. Arbitration hearings shall take priority over other court commitments in all New Jersey courts except appearances before the Appellate Division of the New Jersey Superior Court and the New Jersey Supreme Court. Attorneys and arbitrators scheduled for an arbitration hearing on a specific date shall be excused from such other court commitments on that date.

RULE 7 - Offer of Judgment

The provisions of Superior Court Rule 4:58 shall apply to the BAP except that the following references in Rule 4:58 shall be construed to have the meaning indicated:

"Scheduled Trial Date": Scheduled arbitration hearing date.

"Judgment": Arbitration award or decision.

"Verdict": Arbitration award or decision.

"Cost of Suit": Costs of arbitration.

RULE 8 - Arbitrators Award

A. The final decision of the arbitrators shall be reduced to writing, filed with the Assignment Judge and mailed to the parties or record within ten (10) days from the date the arbitration hearing is completed.

B. The arbitration award may exceed $15,000.

C. The decision shall be unanimous. In the event, however, that the arbitrators fail to agree upon a decision, their written report shall so indicate. In such case, any party may file a motion with the Assignment Judge, within ten (10) days from the date of receipt of the arbitrator's report, for the designation of two new arbitrators to conduct a second arbitration hearing, or for a trial in the Superior Court without further arbitration. In the event a Superior Court trial is allowed, without further arbitration, sanctions which may be imposed when an arbitration decision is rejected and a de novo trial requested, shall not be available.

D. Each arbitrator shall be paid a fee of $100. for each case concerning which a full or a partial arbitration hearing has been conducted. The allowance of fees shall be set forth in the order confirming the arbitration decision or in the order granting a motion for a trial de novo or in the order vacating the arbitration decision, whichever applies.

RULE 9 - Judgment/Trial De Novo

A. The award of the arbitrators shall have the same effect as a judgment in any other action if:

(1) None of the parties rejects the decision and moves the court for a trial de novo within thirty (30) days of the filing of the arbitration decision; or

(2) None of the parties moves for a modification or vacation of the arbitration decision; and

(3) One of the parties moves before the Assignment Judge to confirm the arbitration decision.

B. In the event a motion for a de novo trial is filed, it shall be granted automatically and the case shall be returned to the trial calendar in the same position it would have held had it not been referred to arbitration.

C. Any party moving for a trial de novo shall be subject to the sanctions set forth in Chapter 358 of the Laws of New Jersey 1983, approved October 4, 1983, §9 and 11, which provide:

(a) The party moving for a trial de novo shall pay the fees of the arbitrators (§9).
(b) The court may, on motion, award any party to the trial de novo (other than the party requesting the trial) court costs, other reasonable costs, attorneys fees, investigation expenses and witness fees.

RULE 10 - Definitions

A. Soft Tissue Injuries: Injuries to muscles, tendons, skin and surrounding tissues without damage to a nerve, joint, major artery or vital organ.

RULE 11 - Powers of Assignment Judge

The Assignment Judge of Burlington County shall have full power to supervise the BAP and to resolve all questions involving arbitration proceedings including the interpretation and application of these rules. In addition, the Assignment Judge may

(1) delegate his BAP powers to any Superior Court judge or judges assigned to Burlington County;
(2) designate an Arbitrator Administrator to provide non-judicial assistance in the operation of the BAP;
(3) modify these rules at any time in order to carry out the intent and purposes of the arbitration project and to promote the interest of justice;
(4) adopt and require the use of forms in these arbitration proceedings.

New York Court Rule

AMENDMENT TO RULES OF THE CHIEF JUDGE

Pursuant to Article VI, section 28(c) of the Constitution and Rule 3405 of the Civil Practice Law and Rules, the Chief Judge of the Court Appeals, upon consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals, amends the Rules of the Chief Judge, effective January 2, 1980, to REPEAL Part 28 of such Rules (22 NYCRR Part 28) and to enact new Part 28 of such Rules. The provisions of former Part 28 (22NYCRR Part 28), hereby REPEALED, shall nevertheless remain in full force and effect as to courts and locations in which arbitration panels are in operation on the effective date of this enactment, until such time or times as the Chief Administrator of the Courts, by order, shall determine that the provisions of new Part 28 shall apply to any or all of these courts or locations. The provisions of new Part 28 read as follows:

PART 28
RULES GOVERNING ALTERNATIVE DISPUTE RESOLUTION BY ARBITRATION

Section 28.1 The words "panel of arbitrators" or "panel" in this Part shall mean a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4, or a single attorney assigned by the arbitration commissioner, whichever composition the Chief Administrator of the Courts, hereinafter denominated "the Chief Administrator", shall designate from time to time in a particular county or court. The parties, by stipulation, may provide for arbitration before a single arbitrator in those cases where a panel of three arbitrators is otherwise required.

(b) The term "chairperson" shall mean the atorney so designated by the arbitration commissioner pursuant to section 28.4, or the single arbitrator assigned by the arbitration commissioner.

28.2 Mandatory submission of actions to arbitration.

(a) On or after January 2, 1980, the Chief Administrator by order, effective on such dates as he shall determine, may establish in any county or court the arbitration program authorized by these rules.

(b) In each county where the arbitration program is established, all civil actions for a sum of money only, except those commenced in small claims parts, that thereafter are noticed for trial or commenced in the Supreme Court, County Court, the Civil Court of the City of New York, a District Court or a City Court, where recovery sought for each cause of action is $6,000 or less, or such further sum as may be authorized by law, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. The Chief Administrator may also, at any time, upon the establishment of the program in any particular court or county or thereafter, provide for the submission to arbitration of actions, seeking recovery of such sums, that are pending for trial in those courts on the effective date of the program. In addition, upon stipulation filed with the clerk of the court where the action was commenced or, if the case was transferred, the clerk of the court to which it has been transferred, any civil action for a sum of money only, pending or thereafter commenced in such courts, including actions removed to a court of limited jurisdiction from the Supreme Court pursuant to CPLR section 325(d), regardless of the amount in controversy, shall be arbitrated, and in any such action the arbitration award shall not be limited to $6,000 exclusive of costs and interest, or to the monetary jurisdiction of the court. Any stipulation may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(c) In any action subject to arbitration under these rules, or by stipulation, any counterclaim or crossclaim that has been interposed, whether or not seeking recovery of more than $6,000, shall likewise be subject to arbitration under these rules.

(d) All actions subject to arbitration shall be placed on a separate calendar known as the arbitration calendar, in the order of filing of the note of issue, notice of trial or stipulation of submission.

28.3 Arbitration commissioner.

(a) The Chief Administrator shall designate, in each county where arbitration is established pursuant to this Part, an arbitration commissioner (sometimes referred to herein as "commissioner") who may be the incumbent arbitration commissioner where there is one, the Chief Clerk of the Supreme Court or another nonjudical employee, or a person recommended by the county or city bar association. The compensation, if any, payable to a commissioner other than a full time public official or employee who shall receive no compensation as such commissioner shall be determined by the Chief Administrator within the appropriation made available for that purpose.

(b) The commissioner shall maintain complete and current records of all cases subject to arbitration under this Part and a current list of attorneys consenting to act as arbitrators.

28.4 Selection of panels of arbitrators.

(a) The members of each panel of arbitrators shall be appointed by the commissioner from the list of attorneys at law admitted to practice in the State of New York. An attorney appointed to the list in any county, other than a county in the City of New York, must reside or have an office in the county for which the panel is selected, or in an adjoining county, or be a member of the bar association of either such county. In the City of New York the attorney must reside or have an office in any county thereof, or any adjoining county, or be a member of any bar association in the City of New York. No attorney may be appointed unless he shall have filed with the commissioner a consent to act and an oath or affirmation equitably and justly to try all actions coming before him.

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(b) Names of attorneys shall be drawn at random from the list. Where a three-arbitrator panel is utilized, the first name drawn for each three-arbitrator panel shall be the chairperson thereof. The chairperson of each panel shall have been admitted to practice in New York State as an attorney for at least five years; and the second and third members must be admitted to practice but not for any specified period of time, unless the Chief Administrator shall, by order, otherwise determine. Not more than one member of a partnership or firm shall be appointed to any panel.

(c) No attorney who has served as an arbitrator shall be eligible to serve again until all other attorneys on the current list have had an opportunity to serve.

(d) An arbitrator who is related by blood, marriage or professional ties to a party or his counsel shall be disqualified for cause. An arbitrator may disqualify himself upon his own application, or by application of a party. Should a party object to the arbitrator's refusal to disqualify himself for cause, the party may apply to the arbitration commissioner for a ruling. The commissioner's ruling shall be binding on all parties. If an arbitrator is disqualified, the commissioner shall select another arbitrator in the manner authorized by this section.

28.5 Assignment of actions to panel.

(a) The commissioner shall assign to each panel at least the first three, but no more than six, actions pending on the arbitration calendar. Unless otherwise ordered, no action shall be assigned until 20 days after it was placed on the arbitration calendar.

(b) An application to the panel for the disqualification of an arbitrator must be made within five days of receipt by the party of notice of the hearing as provided by section 28.6.

(c) If an action is settled or discontinued before the hearing, the chairperson shall immediately notify the commissioner who shall assign the next available action to the panel.

28.6 Scheduling of arbitration hearings.

(a) Hearing shall be held in a place provided by the court, by the commissioner, by the chairperson of the panel, or, at the request of the chairperson, by a member of the panel. Unless otherwise agreed by the panel, parties and counsel, such place shall be within the county.

(b) The chairperson shall fix a hearing date and time, not less than 15 nor more than 30 days after the case is assigned, and shall give written notice to the members of the panel and the parties or their counsel at least 10 days before the date set. The commissioner may, on good cause shown, extend for a reasonable period the time within which the hearing shall be commenced. Such date and time shall not be a Saturday, Sunday, legal holiday or during evening hours except by agreement of the panel, parties and counsel. An information form prescribed by the Chief Administrator shall be completed in every case submitted to arbitration and each such form shall be filed with the Office of Court Administration.

(c) If the chairperson is unable to schedule a hearing within 30 days after the case is assigned, or within such further period as the commissioner may set, he shall notify the commissioner in writing of the reasons for such inability. The commissioner shall mark the action "continued" and place it on the arbitration calendar, and shall assign another action to the panel.

(d) Any action which is continued twice, after assignment to two panels, shall be referred by the commissioner to the court where the action was commenced, or if the action was transferred, to the court to which it was transferred, for a hearing on the cause of the inability to hold an arbitration hearing. The court, upon such hearing, may order a dismissal or an inquest before another panel.

28.7 Defaults.

(a) Where a party fails to appear at the hearing, the panel shall nonetheless proceed with the hearing and shall make an award and decision, as may be just and proper under the facts and circumstances of the action, which may be entered as a judgment forthwith under section 28.11(b). The judgment, if any, the default and the award may be vacated and the action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, of the court to which it was transferred, upon good cause shown. Such order of restoration shall be upon condition that the moving party pay into the court an amount equal to the total fees payable by the Office of Court Administration to the panel.

(b) Should all parties fail to appear at the hearing, the panel must file a report and award dismissing the action. The action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, of the court to which it was transferred, upon good cause shown. Such order of restoration may provide for the payment by any party into court of panel fees as the court may determine as just and proper.

28.8 Conduct of hearings.

(a) The panel shall conduct the hearing with due regard to the law and established rules of evidence, which shall be liberally construed to promote justice. In personal injury cases, medical proof may be established by the submission into evidence of medical reports of attending or examining physicians upon stipulation of all parties.

(b) The panel shall have the general powers of a court, including but not limited to:

(1) subpoenaing witnesses to appear;

(2) subpoenaing books papers, documents and other items of evidence;

(3) administering oaths or affirmations;

(4) determining the admissibility of evidence and the form in which it is to be offered;

(5) deciding questions of law and facts in the actions submitted to them.

28.9 Costs of hearings; stenographic record.

(a) Witness fees shall be the same as in the court, and the costs shall be borne by the same parties as in court.

(b) The panel shall not be required to cause a stenographic record to be made, but if any party requests such record be kept and deposits $50 or such further sum as the panel may fix to secure payment therefor, the panel shall provide a stenographer. Any surplus deposited shall be returned to the party depositing it. The cost of the stenographer shall not be a taxable disbursement.

28.10 Compensation of arbitrators.

(a) The Chief Administrator shall provide for the compensation, including expenses, payable to each arbitrator, all within appropriations made available to the Office of Court Administration for this purpose. Claims for such compensation shall be made by the commissioner after entry of the award on forms prescribed by the Chief Administrator. The commissioner shall forward all claims approved by him to the Office of Court Administration. Any arbitrator may apply to the commissioner for reimbursement of extraordinary expenses necessarily incurred by him in the same manner as provided for application for ordinary compensation.

28.11 Award.

(a) The award shall be signed by the panel of arbitrators or at least a majority of them. The chairperson shall file a report and the award with the commissioner within 20 days after the hearing, and mail or deliver copies thereof to the parties or their counsel. The commissioner shall mark his files accordingly, file the original with the clerk of the court where the action was commenced, or if the action was transferred, of the court to which it was transferred and notify the parties of such filing.

(b) Unless a demand is made for trial de novo, or the award vacated, the award shall be final and judgment shall be entered thereon by the clerk of the court where the action was commenced or, if the action was transferred, the clerk of the court to which it was transferred, with costs and disbursements taxed in accordance with the Civil Practice Law and Rules, the Uniform City Court Act, the New York City Civil Court Act, or the Uniform District Court Act, as the case may be.

28.12 Trial de novo.

(a) Demands may be made by any party not in default for trial de novo in the court where the action was commenced or, if the action was transferred, the court to which it was transferred, with or without jury. Any party, within 30 days after the award is filed with the appropriate court clerk, may serve upon all adverse parties a demand for trial de novo.

(b) If the demandant either serves or files a timely demand for trial de novo but neglects through mistake or excusable neglect to do another required act within the time limited, the court where the action was commenced or, if the action was transferred, the court to which it was transferred, may grant an extension of time for curing the omission.

(c) The demandant shall also, concurrently with the filing of the demand, pay to the court clerk where the award was filed the amount of the fees payable to the panel by the Office of Court Administration pursuant to section 28.10. Such sum shall not be recoverable by the demandant upon trial de novo or in any other proceeding.

(d) The arbitrators shall not be called as witnesses nor shall the report or award of the arbitrators be admitted in evidence at the trial de novo.

(e) If the judgment upon the trial de novo is not more favorable than the arbitration award, in the amount of damages awarded or the type of relief granted to the demandant, the demandant shall not recover interest or costs from the time of the award, but shall pay costs to the other party or parties from that time.

28.13 Motion to vacate award.

(a) Any party within 30 days after the award is served upon him, may file with the appropriate court clerk a motion to vacate the award on only the grounds that the rights of the moving party were prejudiced because:

(a)) there was corruption, fraud or misconduct in procuring the award;

(b) the panel making the award exceeded its power or so imperfectly executed it that a final and definite award was not made; or

(c) there was a substantial failure to follow the procedures established by or pursuant to these rules,

unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

Copies of the motion papers shall be served upon the commissioner within two days after filing. If the motion to vacate is granted, the case shall be returned to the top of the arbitration calendar and submitted to a new panel.

28.14 General power of court. The court where the action was commenced or, if the action was transferred, the court to which it was transferred, shall hear and determine all collateral motions relating to arbitration proceedings.

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RULE 15. ARBITRATION

The judge or judges of general divisions of courts of common pleas shall consider, and may adopt, a plan for the mandatory arbitration of civil cases.

The plan shall specify the amount in controversy which will require submission of the case to arbitration and arbitration shall be required in cases wherein the amount in controversy does not exceed that specified sum. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration. The court shall determine at pre-trial whether a case is to be mandatorily arbitrated.

Every plan for the mandatory arbitration of civil cases adopted pursuant to this rule shall be filed with the Supreme Court and shall include the following basic principles:

(A) Actions Excluded. Actions involving title to real estate, equitable relief and appeals shall be excluded.

(B) Arbitrators. The court shall appoint a board of three arbitrators from a list of those lawyers who have consented to serve in such capacity and who have no interest in the determination of the case or relationship with the parties or their counsel which would interfere with an impartial consideration of the case. The parties may agree to the appointment by the court of a single arbitrator.

(C) Report and Award. Within thirty days after the hearing, the board or the single arbitrator must file a report and award with the clerk of the court and forward copies thereof to all parties or their counsel. Such report and award, unless appealed from, shall be final and have the legal effect of a verdict upon which judgment shall be entered by the court.

(D) Appeals. Any party may appeal the award to the court if, within thirty days after the filing of the award with the clerk of the court, he:

(1) Files a notice of appeal with the clerk of courts and serves a copy thereof on the adverse party or parties accompanied by an affidavit that the appeal is not being taken for delay; and

(2) Reimburses the county for all fees paid to the arbitrators in the case.

All appeals shall be *de novo* proceedings at which members of the deciding board or the single arbitrator are barred as witnesses.

Exceptions to the decision of the board or single arbitrator based on either misconduct or corruption of the board or single arbitrator may also be filed by any party within thirty days after the filing of the report, and, if sustained, the report shall be vacated.

[Renumbered August 13, 1979.]

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Rule 29

MANDATORY ARBITRATION

In order to facilitate and expedite the administration of justice in Cuyahoga County, Ohio, the following procedures, outlining the steps counsel are to follow, shall be in full force and effect until further order of the Court.

Part I. Cases for Submission

A case shall be placed upon the Arbitration List when so ordered by a judge at pre-trial upon his determining that all discovery has been completed and that the amount actually in controversy, exclusive of interest and costs, is Ten Thousand Dollars ($10,000.00) or less except those involving title to real estate or actions in equity, or appeal. However, where the determination of a sum of money is a matter at issue, and it will substantially dispose of an action, the Court

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may in its usual referral order refer such an issue for determination by a panel, reserving other issues for the Court. Arbitration shall be ordered in cases where the monetary amount in controversy exceeds the sum specified in the mandatory arbitration rule where all the parties to the action agree to arbitration.

Part II. Selection of Arbitrators

(A) In all cases subject to arbitration, the members of the Board of Arbitrators shall be appointed by the Arbitration Commissioner from the list of all members of the Bar of Cuyahoga County who are certified by the Supreme Court of Ohio as eligible to practice law in Ohio and who have been admitted to the practice of law for more than one year. Attorneys desiring to be eliminated from the list must so notify the Administrative Judge in writing prior to May 1st of each year commencing in 1977; otherwise, they shall be subject to assignment for arbitration service during the following twelve (12) months.

MANNER OF APPOINTMENT

(B) The list of Arbitrators shall be divided into three equal groups designated as Arbitration Group (a), (b), (c). Group (a) shall consist of lawyers, listed alphabetically, each of whom is a Notary Public, who are selected from the list of Arbitrators by the Administrative Judge or by a judge or judges assigned to do so by the Administrative Judge. The balance of lawyers on the list shall be divided alphabetically into groups (b) and (c). Appointments to each board shall be made in alphabetical order, one from each group.

COMPOSITION OF BOARD: DISQUALIFICATION FROM APPOINTMENT

(C) The lawyer named from group (a) shall be Chairman of the Board. Not more than one member of a law partnership or an association of attorneys shall be appointed to the same Board, nor shall an attorney be appointed to a Board who is related by blood or marriage to any party to the case or to any attorney of record in the case, or who is a law partner or an associate of any arbitrator of record in the case, or who has an interest in the determination of the case which would interfere with an impartial consideration of the case.

ASSIGNMENT OF CASES

(D) The Arbitration Commissioner shall assign three cases to each Board appointed by him at the time of their appointment. Said cases shall be taken in order from the Arbitration List. No case shall be assigned by the Arbitration Commissioner to a Board within thirty (30) days from the time such case is ordered onto the Arbitration List unless a judge directs that the case be assigned specially within the

thirty-day period or in the event that a companion case may be subject to assignment within the thirty-day period.

(E) No disclosure shall be made to the Arbitrators prior to the filing of the report and award referred to in Part IV, of any offers to settle made by either party. Prior to the delivery of the court file to the Chairman of the Board of Arbitrators, the Arbitration Commissioner shall remove from the file and retain all papers or any notations referring to demands or offers for settlements including demands or offers for settlement contained in the Pre-Trial Statement.

Part III. Hearings: When and Where Held; Notice

(A) Hearings shall be held at a place provided by the Chairman of the Board of Arbitration. This may be in a private office, the hearing room at the office of the Arbitration Commissioner, or a Bar Association office. Unless counsel for all parties and the entire Board agree, the place shall be one of central city location. Should the Chairman be unable to provide a place for the hearing, he shall request another member of the Board to make such provision. The Chairman shall fix a time for hearing not less than fifteen (15) days and not more than thirty (30) days after the Chairman of the Board of Arbitration receives the court file from the Arbitration Commissioner, and shall notify the arbitrators and the parties or their counsel in writing, at least ten (10) days before the hearing, of the time and place of the hearing. The thirty-day period may be extended by the Arbitration Commissioner. No hearing shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

(1) The Journal Entry referring a case to Arbitration shall read as follows:

> All interrogatories and answers thereto have been filed. All motions have been ruled upon. The issues are joined and the case is ready for trial. *No further pleadings, motions, discovery or delays permitted.* Case referred to Arbitration. Arbitration hearing will be held and concluded within ninety (90) days.
>
> Arbitration hearings scheduled prior to Court trials should be given priority and in case of a conflict the court hearing adjourned at time set for the arbitration.
>
> If a continuance of a hearing is agreed to by the Chairman of the Arbitration Panel upon request of an attorney for a party, the party so requesting the continuance shall have the responsibility for notifying all affected persons.
>
> *Counsel have been advised of the contents of this entry.*

(2) Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, once a hearing date is set the hearing shall proceed forthwith at the scheduled time. There

shall be no communications by counsel or the parties with the Arbitrators concerning the merits of the controversy prior to the commencement of the hearing.

INABILITY OF PARTY TO PROCEED

(B) (1) In the event that counsel for any party is unable to proceed within thirty (30) days after the Chairman receives the file from the Arbitration Commissioner, the Chairman may so notify the Arbitration Commissioner who may mark the case "continued", order the file returned, place it at the top of the arbitration list and assign another case to that Board.

(2) Any motion that inadvertently has not been ruled on prior to the reference of the action to arbitration or has been filed subsequently to the reference shall be disregarded by the panel and for the purposes of arbitration treated as a nullity.

CASE CONTINUED TWICE CERTIFIED TO COURT

(C) Whenever any arbitration hearing has been continued two (2) times after assignment to a panel, said case may be certified by the Arbitration Commissioner to the judge who shall summon the parties or their counsel. The judge shall have the power to make any appropriate order, including an order of dismissal for want of prosecution, or an order that the case be again assigned to a Board of Arbitration and be heard and an award made whether or not a party appears.

OATH OF ARBITRATORS

(D) When the arbitration panel has been assembled, they shall be sworn or affirmed in the presence of the litigants substantially as follows:

> I solemnly swear or affirm that I will faithfully and fairly hear and examine the matters in controversy and that I will make a just award to the best of my understanding.

The oath or affirmation may be administered by a counsel for a party who is a notary public, or in the absence of such person, by one of the panel.

DEFAULT OF A PARTY

(E) The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party; the Board of Arbitration shall require the other party to submit such evidence as they may require for the making of an award. The failure of a party to appear either in person or by counsel and participate in an arbitration proceeding shall be considered as a waiver of his right to file an appeal de novo (Part VI hereof) and a consent to the entry by the Court of judgment on the Report and Award of the panel. The Court

to whom a case is assigned may, upon motion filed with the Arbitration Commissioner acting for the Clerk of Courts within thirty (30) days of filing of the Report and Award and for good cause shown, grant leave to a party who has failed to appear and participate in a hearing, to file an appeal de novo as hereinafter provided in Part VI.

CONDUCT OF HEARING; GENERAL POWERS

(F) A majority of the members of the Board, unless the parties agree upon a lesser number, shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the Arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties has waived his right to be present. The Board may receive the evidence of witnesses by sworn testimony or by affidavit or written report including police reports, sheriff's reports, highway patrol reports and shall give it such weight as they deem it is entitled to after consideration of any objections made to its admission.

Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

SPECIFIC POWERS

(G) The Board of Arbitration, by a majority thereof, shall have the general powers of a court including, but not limited to, the following powers:

1. *Subpoenas.* Subpoenas are to be issued as provided in Civil Rule 45 through the Clerk's Office as in any other case filed in Common Pleas Court. The subpoena forms should be altered to show the correct place of hearing which is generally not in the Justice Center.
2. *Production of Documents.* To compel the production of all books, papers and documents which they shall deem material to the case.

   Should a party or witness fail to produce documents or to testify as to a matter after being ordered to do so by a panel, the panel may treat that particular matter as not controverted and proceed to make a final Award without the necessity of issuing a citation for contempt.
3. *Administering Oaths: Admissibility of Evidence.* To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.
4. *Medical Bills, Property Damage Bills or Estimates.* In actions involving personal injury and/or damage to property

the following bills or estimates may be offered and received in evidence without further proof, for the purpose of proving the value and reasonableness of the charges for services, labor and material, or items contained therein and, where applicable, the necessity for furnishing the same, on condition that one week's written notice has been given to the adverse party, accompanied by a copy of the bills to be offered in evidence:

a. Hospital Bills. Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.

b. Bills of Doctors and Dentists. Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.

c. Bills of Nurses, etc. Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor.

d. Bills for Medicines, etc. Bills for medicines, eye glasses, prosthetic devices, medical belts, or similar items.

e. Property Repair Bills or Estimates. Property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used in the repair of the property.

e.1 Procedure in Case of Estimate. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with the copy of the estimate, a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or part, attaching a copy of the receipted bill showing the items of repair made and the amount paid.

SUPERVISORY POWERS OF COURT

(H) The Administrative Judge or a judge designated by him shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

WITNESS FEES

(I) Witness fees in any case referred to said Board of Arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court of Cuyahoga County, Ohio, may be ordered taxed as costs in the case and the costs in any case shall be paid by the same party or parties by whom they would have been paid had the case been tried in the Common Pleas Court of Cuyahoga County, Ohio.

TRANSCRIPT OF TESTIMONY

(J) The Arbitrators shall not be required to make a transcript of the proceedings before them. If any party shall desire a transcript, he shall provide a reporter and cause a record to be made. The party requesting the same shall pay the cost thereof which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided with it by the reporter upon payment therefor, based upon the usual charges made for a copy of a deposition plus one-half of the cost of the reporter at the hearing.

Part IV. Report and Award—Not a Judgment

(A) Within thirty (30) days after the hearing, the Board of Arbitration shall file a report and award in the office of the Arbitration Commissioner acting for the Clerk of Courts, and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. An award may not exceed $10,000.00 exclusive of interest unless, in an action containing several party claimants, the Court, when referring the case to arbitration at pre-trial, orders that the $10,000.00 limitation apply separately to one or more of the claimants or as agreed to by the parties in accordance with Part I hereof. The report and award shall be signed by all of the members of the Board. In the event all three members do not agree on the finding and award, the dissenting member shall write the word "Dissents" before his signature. A minority report shall not be required unless the dissenting arbitrator elects to submit the same due to unusual circumstances. The Arbitration Commissioner shall make a note of the report and award on his docket and file the original report with the Clerk of Courts forthwith.

LEGAL EFFECT OF REPORT AND AWARD; ENTRY OF JUDGMENT

(B) The report and award, unless appealed from as herein provided, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified therefor, the Court shall enter judgment in accordance therewith. After entry of such judgment, execution process may be issued as in the case of other judgments.

Part V. Compensation of Arbitrators

(A) Each member of a Board of Arbitration who has signed an award or files a minority report shall receive as compensation, for his services in each case a fee of Forty Dollars ($40.00). When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as com-

pensation of the arbitrators is concerned. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the Administrative Judge, on motion of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entited to receive their fees until after filing the report and award with the Arbitration Commissioner. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

(B) The Chairman shall receive as compensation the sum of Ten Dollars ($10.00) for each case heard by the Board, in addition to the compensation fixed for members of the Board of Arbitration.

(C) All compensation for arbitrators shall be paid, upon proper warrant, from funds of Cuyahoga County, Ohio which have been allocatd for the operation of the Common Pleas Court of Cuyahoga County, Ohio.

(D) In the event that a case shall be settled or dismissed more than two (2) days prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case has been settled or dismissed within said two-day period, the Board members shall be entitled to receive said fee. Upon receiving notice that the case has been settled or dismissed more than two days before the date set for hearing, the Arbitration Commissioner shall assign another case to the same Board.

APPEALS

Part VI. Right of Appeal De Novo

(A) Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Cuyahoga County. No appeal can be withdrawn without consent of all parties. The filing of a single appeal shall be sufficient to require a de novo trial of the entire case on all issues and as to all parties without the necessity of each party filing a separate appeal de novo. The right of appeal shall be subject to the following conditions, all of which shall be complied with within thirty (30) days after the entry of the award of the Board.

NOTICE OF APPEAL AND COSTS

1. (a) A notice of appeal de novo, together with an affidavit that the appeal is not taken for delay but because he believes an injustice has been done, shall be filed by the appellant in the office of the Arbitration Commissioner acting for the Clerk of Courts and shall pay to the Cashier of the Clerk of Courts the sum mentioned in 1(b) below, after first securing the approval of the Arbitration Commissioner.

REPAYMENT OF ARBITRATION FEES

(b) The appellant shall repay to Cuyahoga County, Ohio by depositing with the Clerk of Courts, all fees received by the members of the Board of Arbitration in the case in which the appeal is taken. The sum so paid shall not be taxed as costs in the case and shall not be recoverable by the appellant in any proceeding.

POVERTY AFFIDAVIT AND NOTICE

(c) A party, desiring to appeal an award, may concurrently with the filing of a notice of appeal de novo, file a written motion with affidavit averring that by reason of poverty he is unable to make the payments required for an appeal and request the Court to allow an appeal de novo without payment of the amount specified in 1(b) hereof. If after due notice to the opposite parties, the judge is satisfied of the truth of the statements in such affidavit, he may order that the appeal of such party be allowed although the said amounts are not paid by the appellant.

RETURN TO ASSIGNED JUDGE

2. (a) The case shall thereupon be returned to the judge to whom the case was originally assigned for trial.

APPEAL DE NOVO

(B) All cases which have been duly appealed shall be tried de novo.

TESTIMONY OF ARBITRATORS ON APPEAL

(C) In the event of an appeal from the award or decision of the Board of Arbitration, the arbitrators shall not be called as witnesses as to what took place before them in their official capacity as arbitrators upon any hearing de novo.

EXCEPTIONS AND REASONS THEREFOR

(D) Any party may file exceptions with the Clerk of Courts, at the office of the Arbitration Commissioner, from the decision of the Board of Arbitration within thirty (30) days from the filing of the report and award for either or both of the following reasons and for no other:

1. That the Arbitrators misbehaved themselves in the conduct of the case.

2. That the action of one or more of the Arbitrators was procured by misconduct or corruption.

Copies of said exceptions shall be served upon each Arbitrator and the Arbitration Commissioner within 48 hours after filing and shall be forthwith assigned for hearing before the Administrative Judge or a judge assigned by him to conduct a hearing thereon.

If such exceptions shall be sustained the report of the Board shall be vacated by the Court and the case set for trial. The filing of exceptions shall toll the running of the thirty (30) days appeal period provided in (A) above until a determination of the exceptions by the Court.

Amended Feb. 25, 1977; Jan. 3, 1978.

Rule 24

COMPULSORY ARBITRATION

(A) CASES FOR ARBITRATION

(1) Any judge of the general division of the Court of Common Pleas may at any time by a general entry order any case to be heard and decided by a Board of Arbitration, consisting of not more than three members of the Bar of Hamilton County, Ohio, to be selected as hereinafter provided in Paragraph B, except those cases involving title to real estate, equitable relief and appeals, provided the following four conditions are satisfied:

(a) The action must be at least six months old unless earlier agreed to by all parties.

(b) A certificate or statement of readiness and a pretrial statement must have been filed by any one or more of the parties when required by the assigning judge.

(c) A pre-trial has been held or waived by the parties with consent of the court.

(d) The amount actually in controversy (exclusive of interest and cost) as determined by the assigned judge does not exceed $10,000.00 per case. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration.

(2) The attorneys may agree, prior to assignment, to

(a) One arbitrator instead of three to be selected by the Arbitration Commissioner, or

(b) Their own panel of one or three arbitrators.

(3) All times provided herein shall be computed from the date the entry is docketed in the office of the Clerk of Courts.

(B) EXCEPTION TO ORDER OF ARBITRATOR

(1) Exceptions to an order placing a case on the arbitration list shall be raised by a motion filed within ten (10) days of the mailing of notice of such order, and shall be heard by the assigned judge.

(2) Exceptions to an arbitrator shall be raised by motion filed within five (5) days of the mailing of notice of assignment and shall be heard by the assigned judge.

(C) SELECTION OF ARBITRATORS

In all cases subject to arbitration the members of the Board of Arbitration shall be appointed by the Arbitration Commissioner from the list of members of the Bar of Hamilton County except as provided in Para. A. The members of the Bar qualified to act shall include only those who have filed with the Arbitration Commissioner their consent so to act. Attorneys subsequently desiring to be added or deleted from the list may so notify the Arbitration Commissioner.

(D) MANNER OF APPOINTMENT

The list of arbitrators shall be divided into three equal groups designated as Arbitration Group (a), (b), (c). Group (a) shall consist of lawyers, listed alphabetically, who are selected from the list of arbitrators by the Presiding Judge or by a judge or judges assigned to do so by the Presiding Judge. The balance of lawyers on the list shall be divided at random and then listed alphabetically into groups (b) and (c). Appointments to each Board shall be made in alphabetical order, one from each group.

(E) COMPOSITION OF BOARD: DISQUALIFICATION FROM APPOINTMENT

The lawyer named from group (a) shall be Chairman of the Board. Not more than one member of a law partnership or an association of attorneys shall be appointed to the same Board, nor shall an attorney be appointed to a Board who is related by blood or marriage to any party to the case or to any attorney of record in the case, or who is a law partner or an associate of any arbitrator of record in the case.

(F) ASSIGNMENT OF CASES

(1) The Arbitration Commissioner shall assign two cases to each Board appointed by him at the time of their appointment. Said cases shall be taken in order from the arbitration list. No case shall be assigned by the Arbitration Commissioner to a Board within thirty (30) days from the time such case is ordered onto the arbitration list unless a judge directs that the case be assigned specially within the thirty-day period or in the event that a companion case may be subject to assignment within the thirty-day period.

(2) No disclosure shall be made to the arbitrators prior to the filing of the report and award referred to in Para. P, of any offers of settlement made by either party. Prior to the delivery of the court file to the Chairman of the Board of Arbitrators, the Arbitration Commissioner shall remove from the file and retain all papers or any notations referring to demands or offers for settlement including the Certificate of Readiness.

(G) HEARINGS: WHEN AND WHERE HELD: NOTICE

(1) Hearings shall be held at a place scheduled by the Arbitration Commissioner. Unless counsel for all parties and the entire Board agree, the place shall be one of central city location. A hearing shall be scheduled not more than forty-five (45) days after the appointment of the Board of Arbitration and the arbitrators and the parties or their counsel shall be notified in writing, at least ten (10) days before the hearing of the time and place of the hearing. The forty-five (45) period may be extended by the Arbitration Commissioner. No hearings shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

(2) Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, once a hearing date is set, the hearing shall proceed forthwith at the scheduled time. There shall be no communications by counsel or the parties with the arbitrators concerning the merits of the controversy prior to the commencement of the hearing.

(H) INABILITY OF PARTY TO PROCEED

(1) In the event that counsel for any party or the matter is unable to proceed the Arbitration Commissioner may mark the case "continued" and shall assign another case to that Board.

(2) Wherever any case has been continued twice after assignment to two (2) Boards of Arbitration, said case shall be certified by the Arbitration Commissioner to the Assigning Judge who shall summon the parties or their counsel. The judge shall have the power to make any appropriate order, including an order of dismissal for want of prosecution, or an order that the case be again assigned to a Board of Arbitration and be heard and an award made whether or not the defendant appears and defends.

(I) OATH OF ARBITRATORS

When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed justly and equitably to try all matters properly at issue submitted to them, which oath or affirmation may be administered to them by any person having authority to administer oaths.

(J) DEFAULT OF A PARTY

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party; the Board of Arbitration shall require the other party to submit such evidence as they may require for the making of an award.

(K) CONDUCT OF HEARING: GENERAL POWERS

(1) The three members of the Board, unless the parties agree upon a lesser number, shall be the judges of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties has waived his right to be present. The Board may receive evidence in whatever form it deems proper and shall give it such weight as they deem it is entitled to after consideration of any objections which may be made.

(2) Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

(L) SPECIFIC POWERS

(1) The Board of Arbitration shall have the general powers of a court including, but not limited to, the following powers:

(a) Subpoenas. To cause the issuance of subpoenas to witnesses to appear before the Board and to request the issuance of an attachment according to the practice of the courts for failure to comply therewith.

(b) Production of Documents. To compel the production of all books, papers and documents which they shall deem material to the case.

(c) Administering Oaths; Admissibility of Evidence. To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.

(2) Procedure in Case of Estimate. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party together with the copy of the estimate a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or part, attaching a copy of the receipted bill showing the items of repair made and the amount paid.

(M) SUPERVISORY POWERS OF COURT

Any judge of the general division of the Court of Common Pleas shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

(N) WITNESS FEES

Witness fees in any case referred to said Board of Arbitration shall be in the same amount as now or hereafter provided for witnesses in trials in the Common Pleas Court of Hamilton County, Ohio. These costs may be ordered taxed in the case and the costs in any case shall be paid by the same party or parties by whom they would have been paid had the case been tried in the Common Pleas Court of Hamilton County, Ohio.

(O) TRANSCRIPT OF TESTIMONY

The arbitrators shall not be required to make a transcript of the proceedings before them. If any party shall desire a transcript, he shall provide a reporter and cause a record to be made. The party requesting the same shall pay the costs thereof which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided with it by the reporter upon payment therefor, based upon the usual charges made for a copy of a deposition.

(P) REPORT AND AWARD

Within thirty (30) days after the hearing, the Chairman of the Board of Arbitration shall file a report and award with the Arbitration Commissioner and on the same day shall mail or otherwise for-

ward copies thereof to all parties or their counsel. An award may not exceed $10,000.00 per case exclusive of interest. The report and award shall be signed by all of the members of the Board. In the event all three members do not agree on the finding and award, the dissenting member shall write the word "Dissents" before his signature. A minority report shall not be required unless the arbitrator elects to submit the same due to unusual circumstances. The Arbitration Commission shall make a note of the report and award on his docket and file the original report with the Clerk of Courts forthwith.

(Q) LEGAL EFFECT OF REPORT AND AWARD; ENTRY OF JUDGMENT

The report and award, unless appealed from as herein provided, shall be final. If no appeal is taken within the time and in the manner specified therefor, the Court shall enter judgment on such award. Subsequent to the time for appeal, the prevailing party shall prepare a judgment entry, which shall be submitted to the assigning judge. If no entry has been submitted to and accepted by the Court within forty-five (45) days from the date of the report and award, the Court will enter its own entry.

(R) COMPENSATION OF ARBITRATORS

(1) Each member of a Board of Arbitration who has signed an award or files a minority report shall receive as compensation for his services in each case a fee of fifty dollars ($50.00). In cases requiring less than three hours to hear the fee shall be thirty dollars ($30.00). When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned. In cases requiring hearing of unusual duration or involving questions of unusual complexity, the assigning judge, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing the report and award with the Arbitration Commissioner. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

(2) The Chairman shall receive as compensation the sum of Ten Dollars ($10.00) for each case heard by the Board, in addition to the compensation fixed for members of the Board of Arbitration.

(3) All compensation for arbitrators shall be paid, upon proper warrant, from funds of Hamilton County, Ohio, which have been allocated for the operation of the Common Pleas Court of Hamilton County, Ohio.

(4) In the event that a case shall be settled or dismissed sooner than two (2) days prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case has been settled or dismissed within said two-day period, the Board members shall be entitled to receive said fee. Upon receiving notice that the case has been settled or dismissed more than two days before the date set for hearing, the Arbitration Commissioner shall assign another case to the same Board.

(S) RIGHT OF APPEAL

Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Hamilton County. The right of appeal shall be subject to the following conditions, all of which shall be complied with within thirty (30) days after the entry of the award of the Board on the docket in the office of the Clerk of Courts.

(T) NOTICE OF APPEAL AND COST

(1) The appellant shall pay an Appeal Fee of Thirty-five Dollars ($35.00) to the Clerk of Courts and shall file with the Clerk and the Arbitration Commissioner a notice of appeal. A copy of such instruments shall be served upon opposing parties or their counsel.

(2) In addition to (1), the appellant shall first repay to Hamilton County, Ohio, by depositing with the Clerk of Courts all fees received by the members of the Board of Arbitration in the case in which the appeal is taken. The sum paid shall not be taxed as costs in the case and shall be recoverable by the appellant if:

(a) on trial he reverses the arbitrators; or

(b) secures a judgment more favorable than the arbitrators' award.

(U) POVERTY AFFIDAVIT

A party desiring to appeal an award may apply by a written motion and affidavit to the Court averring that by reason of poverty he is unable to make payments required for an appeal. If after due notice to the opposite parties, the judge is satisfied of the truth of the statements in such affidavit, he may order that the appeal of such party be allowed although the said amounts are not paid by the appellant.

(V) RETURN TO ACTIVE LIST

If an appeal is filed from an arbitration order, the case will be set for trial and forthwith returned to the judge who previously placed the case on the arbitration list.

(W) APPEAL DE NOVO

All cases which have been duly appealed shall be tried de novo by the assigned judge.

(X) TESTIMONY OF ARBITRATORS ON APPEAL

In the event of an appeal from the award or decision of the Board of Arbitration, the arbitrators shall not be called as witnesses as to what took place before them in their official capacity as arbitrators.

(Y) EXCEPTIONS AND REASONS THEREFOR

(1) Any party may file exceptions with the Clerk of Courts from the decision of the Board of Arbitration within thirty (30) days from the filing of the report and award for either or both of the following reasons and for no other:

(a) That the arbitrators misbehaved themselves in the conduct of the case.

(b) That the action of the Board was procured by corruption or other undue means.

(2) Copies of such exceptions shall be served upon each arbitrator and the Arbitration Commissioner within forty-eight (48) hours after filing and shall be forthwith assigned before the assigning judge to conduct a hearing thereon.

(3) If such exceptions shall be sustained, the report of the Board shall be vacated by the Court, and the case forthwith returned to the active list of the judge who previously placed it on the arbitration list and in this event the vacating judge may withhold arbitration compensation from any one or more of the arbitrators.

Amended June 18, 1976.

Rule 16

ARBITRATION

16.01 COMPULSORY ARBITRATION

To facilitate and expedite the administration of justice in the general division of the Stark County Common Pleas Court, the following procedure for compulsory arbitration shall be followed in all civil cases on and after January 1, 1974.

16.02 CASES FOR SUBMISSION

(A) Every civil case, except those involving title to real estate, equitable relief, or appeal, at least six (6) months old in which the amount actually in controversy (exclusive of interest and cost) has been determined at pre-trial by the assigned judge to be Five Thousand Dollars ($5,000.00) or less shall be submitted to compulsory arbitration pursuant to this Rule.

(B) Without limitation as to amount, counsel in any civil action which is at issue may stipulate in writing, before or after pre-trial, that it may be submitted for compulsory arbitration in accordance with this Rule. Upon the filing of such stipulation, together with the pre-trial statements of the parties, the action shall be submitted to compulsory arbitration.

(C) Counsel in any civil action which is at issue and is at least six (6) months old may file a motion, before or after pre-trial, accompanied by a pre-trial statement, requesting that the case be submitted to compulsory arbitration in accordance with this Rule. The assigned judge may, after a hearing, grant such motion and order the case submitted to compulsory arbitration.

(D) Exceptions to an order submitting a case to compulsory arbitration shall be made by a motion filed within ten (10) days of such order.

16.03 SELECTION OF ARBITRATORS

In all cases subject to compulsory arbitration the members of the Board of Arbitration shall be appointed by the Arbitration Commissioner from the list of members of the Bar of Stark County. The members of the Bar qualified to act shall include only those who have filed with the Arbitration Commission their consent so to act. Attorneys subsequently desiring to be eliminated from the list may so notify the Arbitration Commissioner by letter.

16.04 MANNER OF APPOINTMENT

(A) The list of arbitrators shall be divided by the Arbitration Commissioner into three equal groups designated as arbitration group A, B, and C. Group A shall consist of lawyers, listed alphabetically, each of whom is a notary, who are selected from the list of arbitrators by the administrative judge or his designate. The balance of lawyers on the list shall be divided alphabetically into groups B and C.

Appointments to each board shall be made in alphabetical order, one from each group.

(B) Counsel may agree, prior to appointment, to one arbitrator instead of three to be selected by the Arbitration Commissioner, or to their own panel of one or three arbitrators.

(C) All the arbitrators shall be assembled after their selection to serve and they shall be sworn or affirmed justly and equitably to try all matters properly at issue submitted to them pursuant to this rule. The oath shall be administered by the presiding judge of the common pleas court of Stark County, Ohio.

16.05 COMPOSITION OF BOARD: DISQUALIFICATION

The lawyer named from group A shall be chairman of the Board. Not more than one member of a law partnership or an association of attorneys shall be appointed to the same Board, nor shall an attorney be appointed to a board who is related by blood or marriage to any party to the case or to any attorney of record in the case, or who is a law partner or an associate of any attorney of record in the case.

16.06 ASSIGNMENT OF CASES

(A) The Arbitration Commissioner shall assign two cases to each Board appointed by him at the time of their appointment. Said cases shall be taken in order from the arbitration list. No

case shall be assigned to a Board within thirty (30) days from the time such case is ordered onto the arbitration list unless the assigned judge directs that the case be assigned specifically within the thirty-day period or unless a companion case is subject to assignment within the thirty-day period.

(B) No disclosure shall be made to the arbitrators prior to filing of the report and award of any offers of settlement made by either party, except by agreement of the parties. An arbitrator who has knowledge of settlement demands or offers shall be disqualified. Prior to the delivery of the court file to the chairman of the Board of Arbitrators, the Arbitration Commissioner shall place all papers or other notations containing settlement demands or offers in a sealed envelope which shall remain with the file but which shall not be opened by the arbitrators.

16.07 HEARINGS; WHEN AND WHERE HELD; NOTICE

(A) Hearings shall be held at the place designated by the court; preferably in the courthouse or other county buildings. The Chairman of the Board shall fix a time and date of hearing and shall notify the arbitrators and all parties to the suit. No hearings shall be fixed for Saturdays, legal holidays or evenings, except upon agreement by counsel for all parties and the arbitrators.

(B) Since sufficient time is available to the parties prior to the hearing date to settle or compromise their disputes, once a hearing date is set the hearing shall proceed forthwith at the scheduled time. There shall be no unilateral communications by counsel or the parties with the arbitrators concerning the merits of the controversy at any time prior to the filing of the report and award of the Board.

16.08 INABILITY OF PARTY TO PROCEED: CONTINUANCES

(A) In the event that counsel for any party is unable to proceed within thirty (30) days from the appointment of the Board of Arbitration, the chairman shall notify the Arbitration Commissioner who may mark the case "continued" and may place it at the bottom of the arbitration list and shall assign another case to that Board.

(B) Wherever any case has been continued two times after assignment to two Boards of Arbitration, said case shall be certified by the Arbitration Commissioner to the administrative judge who shall summon the parties or their counsel. The Judge shall have the power to make any appropriate order, including an order of dismissal for want of prosecution or an order that the case be again assigned to a Board of Arbitration and be heard and an award made whether or not the defendant appears and defends.

16.09 DEFAULT OF A PARTY

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party, the Board of Arbitration shall require the other party to submit such evidence as they may require for the making of an award.

16.10 CONDUCT OF HEARING; POWERS

(A) The three members of the Board, unless the parties agree upon a lesser number, shall be the judges of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties has waived his right to be present. The Board may receive the evidence of witnesses by affidavit or written report and shall give it such weight as they deem it is entitled to after consideration of any objections made to its admission.

(B) Counsel shall upon request, whenever possible, produce a party or witnesses at the hearing without the necessity of a subpoena.

(C) The Board of Arbitration shall have the general powers of a court including, but not limited to, the following powers:

1. *Subpoenas*
   To cause the issuance of subpoenas to witness to appear before the Board and to request the issuance of an attachment according to the practice of the courts for failure to comply therewith.
2. *Production of Documents*
   To Compel the production of all books, papers and documents which they shall deem material to the case.
3. *Administering Oaths; Admissibility of Evidence*
   To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.
4. *Medical Bills; Property Damage Bills or Estimates*
   In actions involving personal injury and/or damage to property the following bills or estimates may be offered and received in evidence without further proof, for the purpose of proving the value and reasonableness of the charges for services, labor and material, or items contained therein and, where applicable, the necessity for furnishing the same, on

condition that one week's written notice has been given to the adverse party, accompanied by a copy of the bills to be offered in evidence.

a. *Hospital Bills*
   Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.
b. *Bills of Doctors and Dentists*
   Bills of doctors and dentists, each bill for each doctor or dentist not to exceed $500.00, when dated and containing a statement showing the date of each visit and the charge therefor.
c. *Bills of Nurses, etc.*
   Bills of registered nurses, licensed practical nurses, or physical therapists, aggregating not more than $250.00 in amount for each, when dated and containing an itemized statement of the days and hours of service and the charges therefor.
d. *Bills for Medicines, etc.*
   Bills for medicines, eye glasses, prosthetic devices, appliances, or similar items, each bill not to exceed $100.00 in amount but not limited to any one category here named.
e. *Property Repair Bills or Estimates*
   Property repair bills or estimates not exceeding $500.00 in amount, when identified and itemized setting forth the charges for labor and material used in the repair of the property.
f. *Procedure in Case of Estimate*
   In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party together with the copy of the estimate a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part by attaching a copy of the receipted bill showing the items of repair made and the amount paid.

16.11 SUPERVISORY POWERS OF COURT

The administrative judge shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in the application of these rules.

16.12 WITNESS FEES

Witness fees in any case referred to said Board of Arbitration shall be in the same amount as now or hereafter provided for

witnesses in trials in the Common Pleas Court of Stark County, Ohio, and may be ordered taxed as costs in the case and the costs in any case shall be paid by the same party or parties by whom they would have been paid had the case been tried in the Common Pleas Court of Stark County, Ohio.

16.13 TRANSCRIPT OF TESTIMONY

The arbitrators shall not be required to make a transcript of the proceedings before them. If any party shall desire a transcript, he shall provide a reporter and cause a record to be made. The party requesting the same shall pay the cost thereof which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided with it by the reporter upon payment therefor, based upon the usual charges made for a copy of a deposition.

16.14 REPORT AND AWARD

Within twenty (20) days after the hearing the Board of Arbitration shall file a report and award with the Arbitration Commissioner and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. An award may not exceed $5,000.00 exclusive of interest, unless the parties otherwise stipulate. The report and award shall be signed by all of the members of the Board. In the event all three members do not agree on the finding and award, the dissenting member shall write the word "Dissents" before his signature. A minority report shall not be required unless the arbitrator elects to submit the same due to unusual circumstances. The Arbitration Commissioner shall make a note of the report and award on his docket and file the original report with the Clerk of Courts forthwith.

16.15 LEGAL EFFECT OF REPORT AND AWARD; ENTRY OF JUDGMENT

The report and award, unless appealed from as herein provided, shall be final and shall have the attributes and legal effect of a verdict. If no appeal is taken within the time and in the manner specified therefor, the Court shall enter judgment in accordance therewith. After entry of such judgment, execution process may be issued as in the case of other judgments.

16.16 COMPENSATION OF ARBITRATORS

(A) Each member of a Board of Arbitration who has signed an award or files a minority report shall receive as compensation for his services in each case a fee of Fifty Dollars ($50.00). When more than one case arising out of the same transaction is

heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned. In cases requiring hearing of unusual duration or involving questions of unusual complexity the administrative judge, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing the report and award with the Arbitration Commissioner. Fees paid to arbitrators shall not be taxed as costs nor follow the award as other costs.

(B) The Chairman shall receive as additional compensation the sum of Ten Dollars ($10.00) for each case heard by the Board. Should a member of the Board also provide the place for hearing, Ten Dollars ($10.00) additional compensation shall be paid to said member.

(C) All compensation for arbitrators shall be paid, upon proper warrant, from funds of Stark County, Ohio, which have been allocated for the operation of the Common Pleas Court of Stark County, Ohio.

(D) In the event that a case shall be settled or dismissed sooner than two days prior to the date scheduled for the hearing, the Board members shall not be entitled to the aforesaid fee. In the event that a case has been settled or dismissed within said two-day period, the Board members shall be entitled to receive said fee. Upon receiving notice that the case has been settled or dismissed more than two days before the date set for hearing, the Arbitration Commissioner shall assign another case to the same Board.

16.17 RIGHT OF APPEAL

Any party may appeal from the action of the Board of Arbitration to the Common Pleas Court of Stark County. The right of appeal shall be subject to the conditions set forth in rule 16.18, all of which shall be completed within thirty (30) days after the entry of the award of the Board on the docket in the office of the Clerk of Courts.

16.18 NOTICE OF APPEAL AND COST

(A) The appellant shall pay an Appeal Fee of Twenty Dollars ($20.00) to the Clerk of Courts and shall file with the Clerk and the Arbitration Commissioner a notice of appeal together with an affidavit that the appeal is not taken for delay but because he believes an injustice has been done. A copy of such documents shall be served upon opposing parties or their counsel.

(B) In addition to the payment of the Appeal Fee at the time of the filing of the notice of appeal, the appellant shall repay all

fees received by the members of the Board of Arbitration in the case in which the appeal is taken by depositing the same with the Clerk of Courts.

(C) If the appeal results in a judgment different from that determined by the arbitrators, the court shall assess costs, including the reimbursement of the amounts required to be paid by the appellant to effect the appeal, against either or both of the parties as it may determine to be just.

16.19 POVERTY AFFIDAVIT ON APPEAL

A party without funds desiring to appeal an award may apply, by a written motion and affidavit, to the Court averring that by reason of poverty he is unable to make the payments required for an appeal. If after due notice to the opposite parties, the assigned judge is satisfied of the truth of the statements in such affidavit, he may order that the appeal of such party be allowed although the said amounts are not paid by the appellant.

16.20 RETURN TO ACTIVE TRIAL LIST; TRIAL DE NOVO

(A) Upon the filing of the notice of appeal and the payment or waiver of the costs as hereinbefore provided, the Arbitration Commissioner shall cause the case to be returned to the assigned judge for trial.

(B) All cases which have been appealed shall be tried *de novo* by the assigned judge.

16.21 TESTIMONY OF ARBITRATORS ON APPEAL PROHIBITED

In the event of an appeal from the award or decision of the Board of Arbitration, the arbitrators shall not be called as witnesses as to what took place before them in their official capacity as arbitrators upon any hearing *de novo*.

16.22 EXCEPTIONS AND REASONS THEREFOR

(A) Any party may file exceptions to the decision of the Board of Arbitration within thirty (30) days after the filing of the report and the award for either misconduct or corruption of the Board or a single arbitrator.

(B) Copies of said exceptions shall be mailed to each arbitrator and the Arbitration Commissioner within 48 hours after filing and said exceptions shall be forthwith assigned for hearing before the assigned judge.

(C) If such exceptions are sustained the report and award of the Board shall be vacated and the case either assigned to a New Board of Arbitrators or returned to the active civil list.

Amended Jan. 12, 1976; June 1, 1976; Dec. 2, 1977.

OREGON

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62nd OREGON LEGISLATIVE ASSEMBLY--1983 Regular Session

Enrolled

House Bill 2361

Sponsored by COMMITTEE ON JUDICIARY (at the request of Commission on the Judicial Branch)

CHAPTER 670

AN ACT

Relating to civil actions.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) An arbitration program under this Act for civil actions may be established for:

(a) The circuit court in a judicial district by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(b) The district court for a county or counties by an affirmative vote of a majority of the judges of the court, subject to the approval of the Chief Justice of the Supreme Court, or by an order of the Chief Justice.

(2) Rules consistent with this Act to govern the operation and procedure of an arbitration program established under subsection (1) of this section for a court may be made in the same manner as other rules applicable to the court pursuant to ORS 1.002 (1), 3.065 (3), 3.220, 46.280 or 46.665 (3). Rules to govern the operation and procedure of a program made pursuant to ORS 3.065 (3), 3.220, 46.280 or 46.665 (3) are subject to the approval of the Chief Justice of the Supreme Court.

(3) This Act does not apply to appeals from a county, justice's or municipal court or actions in the small claims department of a district court.

SECTION 2. (1) In a civil action in a circuit or district court having an arbitration program established under section 1 of this Act, where all parties have appeared, the court shall refer the action to arbitration under this Act if:

(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding $15,000 in the circuit court, or in an amount exceeding $3,000 in the district court, exclusive of attorney fees, costs and disbursements and interest on judgment.

(b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

(2) The presiding judge of the court may exempt from arbitration under this Act a civil action that otherwise would be referred to arbitration under subsection (1) of this section, or may remove from further arbitration proceedings a civil action that has been referred to arbitration under subsection (1) of this section, when, in the opinion of the judge, good cause exists for that exemption or removal.

SECTION 3. (1) In a civil action in a circuit or district court having an arbitration program established under section 1 of this Act, where all parties have appeared and agreed to arbitration by stipulation, the court shall refer the action to arbitration under this Act if:

(a) The relief claimed is more than or other than recovery of money or damages.

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(b) The action is in the circuit court, the only relief claimed is recovery of money or damages and a party asserts a claim for money or general and special damages in an amount exceeding $15,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

(2) If a civil action is referred to arbitration under subsection (1) of this section, the arbitrator may grant any relief that could have been granted if the action were determined by a judge of the court.

SECTION 4. In a civil action in a circuit court having an arbitration program established under section 1 of this Act, where all parties have appeared, where the only relief claimed is recovery of money or damages, where a party asserts a claim for money or general and special damages in an amount exceeding $15,000, exclusive of attorney fees, costs and disbursements and interest on judgment, and where all parties asserting those claims waive the amounts of those claims that exceed $15,000, the court shall refer the action to arbitration under this Act. A waiver of an amount of a claim under this section shall be for the purpose of arbitration under this Act only and shall not restrict assertion of a larger claim in a trial de novo under section 5 of this Act.

SECTION 5. (1) At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the court of the time and place of the hearing. The clerk shall post a notice of the time and place of the hearing in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action was commenced.

(2) The arbitration proceeding and the records thereof shall be open to the public to the same extent as would a trial of the action in the court and the records thereof.

(3) The compensation of the arbitrator and other expenses of the arbitration proceeding shall be the obligation of the parties or any of them as provided by rules made under subsection (2) of section 1 of this Act. However, if those rules require the parties or any of them to pay any of those expenses in advance, in the form of fees or otherwise, as a condition of arbitration, the rules shall also provide for the waiver in whole or in part, deferral in whole or in part, or both, of that payment by a party whom the court finds is then unable to pay all or any part of those advance expenses. Expenses so waived shall be paid by the state from funds available for the purpose. Expenses so deferred shall be paid, if necessary, by the state from funds available for the purpose, and the state shall be reimbursed according to the terms of the deferral.

SECTION 6. (1) At the conclusion of arbitration under this Act of a civil action, the arbitrator shall file the decision and award with the clerk of the court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party.

(2)(a) Within 20 days after the filing of a decision and award with the clerk of the court under subsection (1) of this section, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk a written notice of appeal and request for a trial de novo of the action in the court on all issues of law and fact. After the filing of the written notice a trial de novo of the action shall be held. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

(b) If a party files a written notice under paragraph (a) of this subsection, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.270 or 46.221.

(c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the clerk of the court the sum of $150. If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party. If the court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

(d) Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure, a party filing a written notice under paragraph (a) of this subsection whose position under the arbitration decision and award is not improved as a result of a judgment in the action on the trial de novo shall not be entitled to attorney fees or costs and disbursements, and shall be taxed the costs and disbursements of the other parties to the action on the trial de novo.

(3) If a written notice is not filed under paragraph (a) of subsection (2) of this section within the 20 days prescribed, the clerk of the court shall enter the arbitration decision and award as a final judgment of the court, which shall have the same force and effect as a final judgment of the court in the civil action and may not be appealed.

SECTION 7. This Act is repealed January 1, 1986.

Approved by the Governor August 2, 1983.
Filed in the office of Secretary of State August 2, 1983.

PORTLAND

REVISED ARBITRATION RULES

September, 1984

CHAPTER XIV INDEX

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CHAPTER XIV

RULE 14.01 THE ARBITRATION COMMISSION

A. Function. To supervise the Arbitration Program.

B. At the request of a Judge to render advisory opinions relating to arbitration.

C. Membership Composition. Three Judges and three attorneys. As an ex officio member, the Court Administrator.

D. Quorum. Three members of the Commission constitutes a quorum, but at least one attorney and one Judge must be present.

E. The Presiding Judge will appoint the members of the Commission who serve at his pleasure.

COMMENT

A responsive, expedient governing body is necessary to supervise the program. This Arbitration Commission will not only act as policymakers, but bring to the program constant input from the Bench and Bar. The three lawyers should represent the major disciplines of the law involved, such as a plaintiff's attorney, a defense attorney and a business attorney.

RULE 14.02 APPLICATION OF RULES

A. These rules do not apply to arbitration by private agreement or to arbitration under any statute.

B. The purpose of arbitration of civil actions is to provide a simplified and economical procedure for obtaining the prompt and equitable resolution of disputes.

C. The arbitration rules are not designed to address every question which may arise during the arbitration process, and these rules give considerable discretion to the arbitrator. The arbitrator should not hesitate to exercise that discretion. Arbitration hearings should be informal and expeditious, consistent with the purpose and these rules.

CONTINUED

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D. These rules do not apply to appeals from a County, Justice or Municipal Court or actions in the Small Claims Department of a District Court. (OR Laws 1983, ch 670, § 1(3)).

RULE 14.03 MATTERS SUBJECT TO ARBITRATION

A. Voluntary Arbitration. (OR Laws 1983, ch 670, § 3).

1. In a civil action where all parties have appeared and agreed to arbitration by stipulation, the Court shall refer the action to arbitration under this Act if:

a. The relief claimed is more than or other than recovery of money or damages.

b. The action is in the Circuit Court, the only relief claimed is recovery of money or damages and a party asserts a claim for money or general and special damages in an amount exceeding $15,000 exclusive of attorney fees, costs and disbursements and interest on judgment.

2. If a civil action is referred to arbitration under subsection (a)(1) of this rule, the arbitrator may grant any relief that could have been granted if the action were determined by a Judge of the Court.

B. Mandatory Arbitration. (OR Laws 1983, ch 670, §§ 2, 4)

1. In a civil action where all parties have appeared, the Court shall refer the action to arbitration under this Act if:

a. The only relief claimed is recovery of money or damages, and no party asserts a cliam for money or general and special damages in an amount exceeding $15,000 in the Circuit Court, or in an amount exceeding $3,000 in the District Court, exclusive of attorney fees, costs and disbursements and interest on judgment.

b. The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

2. The Presiding Judge of the Court may exempt from arbitration a civil action that otherwise would be referred to arbitration under subsection (b)(1) of this rule, or may remove from further arbitration proceedings a civil action that has been referred to arbitration under subsection (b)(1) of this rule when, in the opinion of the Judge, good cause exists for that exemption or removal.

3. In a civil action in a Circuit Court where all parties have appeared, where the only relief claimed is recovery of money or damages, where a party asserts a claim for money or general and special damages in an amount exceeding $15,000, exclusive of attorney fees, costs and disbursements and interest on judgment, and where all parties asserting those claims waive the amounts of those claims that exceed $15,000, the Court shall refer the action to arbitration. A waiver of an amount of a claim under this section shall be for the purpose of arbitration only and shall not restrict assertion of a larger claim in a trial de novo.

C. Exclusions from Arbitration. (OR Laws 1983, ch 670, § 1(3)). Appeals from a County, Justice, or Municipal Court or action in the Small Claims Department of a District Court are not matters subject to arbitration under these rules.

COMMENT

Although not specifically stated in the statute, punitive damages are "disregarded in calculating qualifications for arbitration" according to the legislative history. See 1982 Report of the Oregon Commission on the Judicial Branch 13 (1983).

RULE 14.04 RELATIONSHIP TO COURT JURISDICTION AND APPLICABLE RULES

A. A case filed in the Circuit or District Court remains under the jurisdiction of that Court in all phases of the proceedings, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the Court with jurisdiction.

B. Applicable Rules. Until a case is assigned to the arbitrator, Rules of Civil Procedure apply. After a case is assigned to an arbitrator, these arbitration rules apply except where an arbitration rule states that a Rule of Civil Procedure applies.

COMMENT

The Court, after transfer of a case to arbitration, will not ordinarily entertain procedural motions, receive papers for filing or the like. The case is, for all practical purposes, in the hands of the arbitrator until entry of the award.

Upon Request or Order Transferring to arbitration, parties are responsible for removing all pending motions with the Court. The Court will automatically remove all future trial dates set on its docket.

The Court will intervene in the arbitration process only under the most exceptional circumstances. In most instances, a trial de novo will provide an adequate safeguard against an unjust result from arbitration.

COMMENT

This rule contemplates that the Court will screen the cases and inform the parties of arbitrability by appropriate notice. If the Court prefers, the Court may follow a procedure whereby the parties request arbitration.

RULE 14.07 COURT SHALL DETERMINE ARBITRABILITY

A. Initially, the Court shall determine whether a case is actually subject to arbitration under these rules and may accordingly order a case transferred to or from arbitration. Only in extraordinary circumstances will the Court order a case returned from arbitration to the Court docket after a case has been assigned to an arbitrator.

B. In the event that amended pleadings are allowed, (i.e., amended complaint, third party complaint, etc.) in which parties will be added to the case, the party filing such an amended pleading must notify the Administrator, so that the case can be returned to the active trial docket for tracking. Such cases, when again appropriate, may be reinstated into arbitration.

COMMENT

It is not anticipated that this rule will be used frequently to controvert pleadings. However, for example, if frivolous, inequitable claims or exaggerated damages are asserted for the sole purpose of avoiding arbitration, the Court might order the case transferred to arbitration as long as the case is otherwise eligible for arbitration.

RULE 14.08 ASSIGNMENT TO ARBITRATOR

A. Generally. The parties may select an arbitrator by stipulation and are encouraged to do so.

B. A list of five proposed arbitrators will be furnished to the parties at the time the Court gives notice that the case is being transferred to arbitration. If the parties do not stipulate to an arbitrator, the arbitrator will be chosen from among the five proposed in the following manner: Each party may, within ten days after receipt of the list of proposed arbitrators is furnished, nominate one or two arbitrators and strike no more than two arbitrators from the list. If both parties respond, an arbitrator nominated by both parties will be appointed. If no arbitrator has been nominated by both parties the clerk will appoint an arbitrator from among those not stricken by either party.

C. If only one party responds within ten days, the clerk will appoint an arbitrator nominated by that party.

D. If neither party responds within ten days, the clerk will appoint one of the five proposed arbitrators.

E. Additional arbitrators for additional parties. If there are more than two adverse parties, at least two additional proposed arbitrators shall be added to the list with the above principles of selection to be applied. The number of adverse parties shall be determined by the clerk.

F. In order for the arbitrator to consider the parties' schedule in setting the arbitration hearing date, the parties must return the Attorney's Calendar Response Form at the same time as required in 8(B) above.

COMMENT

It is assumed that in the majority of cases the parties by stipulation select their own arbitrator. Selection from the panel is available in those cases where agreement cannot be reached.

RULE 14.09 ARBITRATORS

A. Unless otherwise ordered or stipulated, an arbitrator must be a member of the Oregon State Bar, who has been admitted to any Bar for a minimum of five years, or a retired or senior Judge. The parties may stipulate to a non-lawyer arbitrator.

B. To qualify as an arbitrator, a person must sign and file an application as arbitrator.

C. Arbitration Panel. There shall be a panel of arbitrators in such number as the Arbitration Commission may from time to time determine. A person desiring to serve as an arbitrator shall submit in writing their desire to be placed on the arbitration panel, with the date they were admitted to the Bar, their name, address and phone number, and if they have any preference against certain types of cases (i.e., no dom rel). A list showing the names of arbitrators available to hear cases will be available for public inspection in the clerk's office.

D. Refusal; Disqualification. The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the clerk immediately if refusing to serve, or if any cause exists for the arbitrator's disqualification from the case upon any of the grounds of interest, relationship, bias or prejudice governing the disqualification of Judges. No arbitrator shall have pending at any given time more than three arbitration cases, subject to the discretion of the Presiding Judge.

If such disqualification or refusal occurs, the arbitrator must notify all parties and immediately return all appointment materials in the case to the Administrator.

E. The arbitrator shall be bound in the arbitration proceedings by the same ethical considerations as that of a Judge. Arbitrators will conduct themselves in the manner prescribed by the Code of Judicial Conduct.

COMMENT

The Rule requires arbitrators to be lawyers unless otherwise ordered or stipulated. Membership in the Oregon State Bar is required and assures the ability to discipline an arbitrator who acts improperly. Both active and inactive members will qualify under this rule.

RULE 14.10 AUTHORITY OF ARBITRATORS

A. An Arbitrator Has The Authority to: Decide procedural issues arising before or during the arbitration hearing, except issues relating to the qualifications of an arbitrator.

B. Invite, with reasonable notice, the parties to submit trial briefs.

C. After notice to the parties, examine any site or object relevant to the case.

D. Issue a subpoena.

E. Administer oaths or affirmations to witnesses.

F. Rule on the admissibility of evidence in accordance with these rules.

G. Determine the facts, apply the law and make an award; perform other acts as authorized by these rules.

H. Determine the place, time and procedure to present a motion before the arbitrator, including motions for Summary Award (known as Summary Judgment under ORCP).

I. Require a party, an attorney advising each party, or both to pay the reasonable expenses, including attorney fees, caused by the failure of such party or attorney or both, to obey an order of the arbitrator.

J. Award attorney fees as authorized by these rules, by contract or by law.

K. Rule on objection to cost bill.

COMMENT

An arbitrator may exercise the authority conferred in these rules only after the case is assigned to a specific arbitrator and any disputes over the assignment have been settled. The Court, for example, might entertain a challenge to the qualifications of an arbitrator on the grounds which could not reasonably be discovered prior to the assignment of the arbitrator to the case. The arbitrator is not authorized to award witness fees or other costs. Costs are not awarded until entry of the judgment on the award and then the Cost Bill is submitted by the prevailing party in the customary manner. However, objections to a cost bill will be referred to the arbitrator for recommendation prior to Court consideration.

Summary "Award" is used rather than Summary Judgment, because an arbitrator may only make an award and not grant a judgment.

RULE 14.11 ARBITRATOR'S OATH

Arbitrators will be required to execute the following oath writing on a form provided by the clerk at the time of assignment.

I solemnly swear or affirm that I will faithfully and fairly hear and examine the matters in controversy and that I will make a just award to the best of my understanding.

RULE 14.12 COMPENSATION OF ARBITRATOR

A. Arbitrators shall be compensated in a like amount as Judges Pro Tempore of the Circuit Court. Hearing time and reasonable preparation time are compensable. A maximum fee per case number is $150, except under extraordinary conditions where the procedural complexity of the matter justifies a different fee. Complexity, for the purposes of this rule, refers to multiplicity of parties and their respective claims. If the arbitrator suggests that such extraordinary conditions justify a different fee, and the parties concur, the fee may be adjusted accordingly. If the parties, or any of them, do not concur, the arbitrator shall direct an inquiry to the Court for determination of the appropriate fee.

B. Each party shall tender to the arbitrator, prior to the commencement of the hearing, their pro rata share of the maximum arbitrator's fee. Any deposit in excess of the arbitrator's actual fee (utilizing the rate of $23 per hour) will be refunded to the parties. Regardless of whether the arbitration hearing is conducted, the parties shall be responsible for paying the arbitrator a proportionate share of the arbitrator's fee as referred to in the rule. The arbitrator shall submit to each party an Itemization of Time Utilized statement.

C. If the Court finds a party is unable to pay all or any part of advance expenses, the Court shall waive and/or defer such payment. Expenses so waived shall be paid by the state from funds available for the purpose. Expenses so deferred shall be paid, if necessary, by the state from funds available for the purpose, and the state shall be reimbursed according to the terms of the deferral. (OR Laws 1983, ch 670, § 5(3)).

If a party is unable to pay a proportionate share of the arbitrator's fee such party must provide to the arbitrator, prior to the arbitration hearing, a certified copy of the Court order waiving or deferring the arbitrator's fee. Such order should be obtained prior to the appointment of the arbitrator.

D. Any dispute as to the amount of the arbitrator's fee shall be submitted to the Court.

E. The arbitrator's fee may be considered as a recoverable item of cost on the statutory cost bill of the prevailing party.

COMMENT

The purpose of the extraordinary fee provision of Rule 14.12(A) is to provide an exception to the standard fee where a single case number covers claims which constitute separate actions in all but form. Under a number of circumstances, the statement of all claims under a single caption, rather than the consolidation of separate actions after filing, is a matter of choice by plaintiffs. The arbitration rules are not intended to give this option significant economic consequences in the arbitration program. Third party practice may have a similar result. The burden on the arbitrator is comparable to the responsibility for more than one adjudication. The extraordinary maximum fee should be chosen to reflect no more than the usual maximum fee multiplied by the number of separable cases practically encompassed under the single case number. Of Course, to the degree the multiplicity of parties and claims does not increase the arbitrator's task (because of common issues presented) less, or no, fee increase is appropriate.

If, for any reason, the hearing should proceed without prepayment of the arbitrator's fee, it shall be the responsibility of any attorney who has not paid to assure prompt payment of the fee to the arbitrator upon conclusion of the hearing.

RULE 14.13 RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES AND ATTORNEYS

No disclosure of any offers or settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator, regarding the merits of the case, except in the presence of, or on reasonable notice to, all other parties.

COMMENT

The relationship between an arbitrator and the attorneys involved in that case is intended to be identical with that of a Judge and trial counsel. All canons of professional conduct concerning Bench and Bar are intended to apply. Arbitrators are admonished to avoid situations where offers or demands might be discussed.

RULE 14.14 DISCOVERY

Authorized discovery shall be conducted in accordance with Rules of Civil Procedure, except that motions requesting discovery shall be determined by the arbitrator. The arbitrator shall balance the benefits of discovery against the burdens and expenses. The arbitrator shall consider the nature and complexity of the case, the amount in controversy and the possibility of unfair surprise which may result if discovery is restricted.

COMMENT

Procedurally, discovery authorized by the Rules of Civil Procedure will not be significantly altered, except that when a judicial determination is necessary, that decision will be made by the arbitrator.

RULE 14.15 SUBPOENA

In accordance with Rules of Civil Procedure a lawyer of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing.

COMMENT

No procedural difference is intended from the present practice of issuance of subpoenas for a Court or jury trial.

RULE 14.16 HEARING - SCHEDULING

The arbitrator shall set the time, date and place of hearing and shall give reasonable notice of the hearing date to the parties. At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the Court of the time and place of the hearing. The clerk shall post a notice of the time and place of the hearing in a conspicuous place for trial notices at the principal location for the sitting of the Court in the county in which the action was commenced. (OR Laws 1983, ch 670 § 5(1)). Except for good cause shown, the hearing shall be scheduled to take place not sooner than 14 days, nor later than 49 days, from the date of assignment of the case to the arbitrator. The parties may stipulate to a postponement or continuance only with the permission of the arbitrator. Such postponement or continuances must also be within the 49-day period. Any continuances or postponements beyond such period requires the arbitrator to obtain approval of the Presiding Judge. The arbitrator shall give notice of the hearing date and any continuance to the clerk.

RULE 14.17 PREHEARING STATEMENT OF PROOF

A. At least 14 days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a statement containing a list of witnesses whom the party intends to call at the arbitration hearing, and a list of exhibits and documentary evidence. The statement shall contain a brief description of the matters about which each witness will be called to testify. Each party, upon request, shall make the exhibits and other documentary evidence available for inspection and copying by other parties.

B. A party failing to comply with this rule, or failing to comply with a discovery order may not present at the hearing a witness, exhibit or documentary evidence required to be disclosed or made available, except with the permission of the arbitrator.

C. Each party shall also furnish to the arbitrator at lease 14 days prior to the arbitration hearing, with copies of pleadings and other documents contained in the Court file which that party deems relevant.

RULE 14.18 CONDUCT OF HEARING

A. The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the facts.

2. Avoid needless consumption of time.

3. Protect witnesses from harassment or undue embarrassment.

B. A witness shall be placed under oath or affirmation by the arbitrator prior to presenting testimony, a violation of which oath shall be deemed a contempt of Court, in addition to any other

penalties that may be provided by law. The arbitrator may question the witness. The extent to which the evidence rules will be applied shall be determined in the exercise and discretion of the arbitrator.

C. Recording. The hearing may be recorded electronically or otherwise by any party or the arbitrator. The cost of such recording is not a recoverable item of cost.

D. Stipulation to Evidence. The parties should stipulate as to the admission of evidence when there is no genuine issue as to its relevancy or authenticity.

E. The arbitration proceeding and the records thereof shall be open to the public to the same extent as would a trial of the action in the Court and the records thereof. (OR Laws 1983, ch. 670 § 5(2)).

RULE 14.19 CERTAIN DOCUMENTS PRESUMED ADMISSIBLE

A. The documents listed herein, if relevant, are presumed admissible at an arbitration hearing, but only if:

1. The party offering the document has included in the prehearing statement of proof, a description of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing; and

2. The party offering the document similarly has made available, after request, to all other parties all other related documents from the same author or maker.

B. This rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties.

The Documents Presumed Admissible Under This Rule Are:

1. A bill, report, chart or record of a hospital, doctor dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead.

2. A bill for drugs, medical appliances or other related expenses on a letterhead or billhead.

3. A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid.

4. A police, weather, wage loss, or traffic signal report or standard life expectancy table to the extent it is admissible under the rules of evidence, but without the need for formal proof of authentication or identification.

5. A photograph, x-ray, drawing, map, blueprint or similar documentary evidence, to the extent it is admissible under the rules of evidence, but without the need for formal proof of authentication or identification.

6. The written statement of any other witnesses, including the written report of an expert witness which may include a statement of the expert's qualifications, and including a statement of opinion which the witness would be allowed to express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury.

7. A document not specifically covered by any of the foregoing provisions, but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the policies, purposes and interests of justice.

C. Right to Subpoena Author or Maker of Any Document as Witness.

Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination.

RULE 14.20 ABSENCE OF PARTY AT HEARING

A. The arbitration hearing may proceed, an award may be made, in the absence of any party who after due notice fails to participate or to obtain a continuance.

B. If a defendant is absent, the arbitrator shall require the plaintiff to submit the evidence required for the making of an award.

C. In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award, damages against the defendant or defendants who are absent.

D. The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award.

RULE 14.21 FORM AND CONTENT OF AWARD

A. The award shall be in writing and prepared on a form prescribed by the Court and signed by the arbitrator.

B. The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages, and attorney fees, if appropriate. Attorney fee determinations shall be based upon evidence submitted at the arbitration hearing, or upon affidavits

submitted without hearing, within the time permitted in Rule 14.22, for the filing of the award.

C. Findings of Fact and Conclusions of Law are not required.

D. When award is filed, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

COMMENT

Costs are not awarded until entry of judgment on the award, as in other civil cases. Written opinions are not required.

RULE 14.22 FILING OF AN AWARD

A. Within seven days after the conclusion of the arbitration hearing, the arbitrator shall file the decision and award with the clerk of the Court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party. (OR Laws 1983, ch. 670 § 6(1)).

A request by an arbitrator for extension of time for filing of award may be presented to the clerk ex parte. The clerk may grant or deny the request, subject to review of the Presiding Judge. The arbitrator shall give the parties notice of any extension granted.

B. The arbitrator may file with the clerk and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the Court to amend.

C. The rule does not authorize the use of an amended award to change the arbitrator's decision on the merits. An amended award may only modify an award in order to correct an inadvertent miscalculation or description, to adjust the award in a matter of form rather than substance. Any modification of substance can only be made with the Court's permission.

RULE 14.23 JUDGMENT OF AWARD

If, within 20 days after the decision and award is filed, no party has filed a written Notice of Appeal, the clerk of the Court shall enter the arbitration decision and award as a final judgment of the Court, which shall have the same force and effect as a final judgment of the Court in the civil action and may not be appealed. (OR Laws 1983, ch. 670 § 6(3)). The prevailing party, if appropriate, may submit a cost bill including the prevailing fee and share of the arbitrator's fee.

COMMENT

The judgment on award is not subject to appellate review. The remedy to correct an error or impropriety in the arbitration proceeding is a trial de novo.

RULE 14.24 REQUEST FOR TRIAL DE NOVO

A. Service and Filing. Within 20 days after the filing of a decision and award with the clerk of the Court under Rule 14.21, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk and serve on the parties a written notice of appeal and request for a trial de novo of the action in the Court on all issues of law and fact. When cases are consolidated for arbitration, and a party has filed an appeal from the arbitration award in one or more of the consolidated cases, any other party who otherwise qualifies under this rule may serve and file with the clerk of the Court a request for trial de novo, with proof of service on all other parties, within 20 days from the filing of the arbitration award or within two judicial days after the service of the initial written Request for

Trial de novo, notwithstanding the lapse of 20 days from the filing of the arbitration award. After the filing and service of the written notice a trial de novo of the action shall be set for trial by the calendar clerk. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

B. If a party files a written notice under paragraph (A) of this Rule, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.170 or 46.221.

C. A party filing written notice under paragraph (A) of this Rule shall deposit with the clerk of the Court the sum of $150. If the Trial de novo request is withdrawn, or abandoned, such appealing party must obtain permission of the Court or there must be a stipulation of all parties to the abandonment of the appeal and the terms thereof. The deposit will not be refunded. If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party.

D. If the Court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the Court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

E. Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure, a party filing a written notice under paragraph (A) of this Rule whose position under the arbitration decision and award is not improved as a result of a judgment in the action on the trial de novo shall not be entitled to attorney fees or costs and disbursements, and shall be taxed the costs and disbursements of the other parties to the action on the trial de novo. (OR Laws 1983, ch. 670 § 6(2)).

COMMENT

Unless waived, the deposit fee is required to perfect the notice of appeal. The deposit fee will not be refunded when the appeal is abandoned to discourage a party from requesting a trial de novo solely for the purpose of delaying enforcement of the award.

Re: Paragraph (A): The provision of an opportunity for cross-appeal protects parties to consolidated cases, where appeal is taken on the last day from one of two or more interrelated cases. Cross-appeal is not necessary to preserve issues raised in a counterclaim, because the trial de novo encompassed all claims raised by any party in the particular case appealed.

Litigants are reminded that ORCP Rule 10 governs computation of time allowed "by the local rules of any Court" and provides that where a party is served by mail, three days are added to the period within which response to such a notice or paper is required.

RULE 14.25

A. The trial de novo shall be conducted as though no arbitration proceeding had occurred. If tried to a jury, no reference may be made during the trial to the arbitration award, to the fact that there had been an arbitration proceeding, or to any other aspect of the arbitration proceeding.

B. The clerk shall seal any award if a trial de novo is requested. Neither Judge or jury will be informed of the arbitration or the result and the sealed arbitration award will not be opened until after the verdict is received and filed in a jury trial, or until after the Judge has rendered a decision in a Court trial.

COMMENT

The fact that the case was arbitrated will not be known to the fact finders in the trial de novo. The award of the arbitrator will remain sealed until the jury or Judge in the trial de novo has made a determination.

RULE 14.26 COSTS OF TRIAL DE NOVO

A. In addition to the costs imposed Rule 14.23, the Court shall assess statutory costs against a party who appeals the award and fails to improve the party's position on the trial de novo.

B. Court may assess statutory costs against a party who withdraws a request for a trial de novo.

COMMENT

By statutory cost is meant those costs which are recoverable under the Rules of Civil Procedure and customarily taxed as costs.

RULE 14.27 TRIAL DE NOVO

Every case transferred to arbitration shall maintain its approximate position on the civil trial docket as if the case had not been transferred to arbitration, unless at the discretion of the Court the docket position should be modified.

RULE 14.28 STIPULATIONS

No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings, the purport of which is

disputed, will be regarded by the arbitrator unless the agreement or consent is made at the arbitration hearing, or is in writing and signed by the lawyers or parties.

RULE 14.29 EFFECTIVE DATE

These rules become effective August 1, 1984, and apply to all cases filed before or after that date.

RULE 14.30 PRETRIAL SETTLEMENT CONFERENCES AND ARBITRATION

Arbitration rules prohibit informing the arbitrator about negotiations, settlements or offers. However, transfer to arbitration or the pendency of an arbitration hearing does not exclude such a case from participating in a Court Pretrial Settlement Conference.

PRETRIAL OR ARBITRATION SETTLEMENT CONFERENCE RULES

Request for conference may be made in person at the Office of the Court Administrator by any party at anytime after a case has received a trial setting, or at anytime after the case has been transferred to arbitration.

Once the request has been made by any party, attendance at the conference is mandatory on all parties. The parties, the trial attorney and if insurance is involved, and insurance representative must attend the hearing. If the actual trial lawyer is unavailable a surrogate attorney must be fully authorized to negotiate, to adjust trial dates and to respond to any other matters which may arise in the course of the conference.

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Note 10

uninsured motorist claim and ordering arbitration to proceed at common law the court did not, in so many words, enter a "final judgment" or "final decree," where existed the requisite formality for res judicata purposes as there was no indication that further judicial action was to be expected and the decree was entitled to res judicata effect in subsequent proceeding before a different judge seeking mandatory injunction that arbitration proceed under the Arbitration Act of 1927 [5 P.S. § 161 et seq. (repealed)]. General Acc. Fire & Life Assur. Corp., Ltd. v. Flamini, 445 A.2d 770, Super.1982.

In arbitration agreements under common law, arbitrator is final judge of both law and fact, and there is no authority which sanctions vacatur of his decision for mistake of either. Parking Unlimited Inc. v. Monsour Medical Foundation, 445 A.2d 758, Super.1982.

In arbitration agreements under common law, unless agreement provides otherwise, arbitrator is final judge of both fact and law; his decision will not be set aside unless it is alleged and proven by clear, precise and convincing evidence that parties were denied hearing or that there was fraud, misconduct, corruption or some other irregularity on part of arbitrator which caused him to render unjust, inequitable, or unconscionable finding. International Broth. of Firemen and Oilers, AFL-CIO Local 1201 v. School Dist. of Philadelphia, 350 A.2d 804, 465 Pa. 356, 1976.

At common law, arbitrators are final judges of both law and fact, unless arbitration agreement provides otherwise, and their award will not be reviewed or set aside by court for mistake in either law or fact. McDevitt v. McDevitt, 78 A.2d 394, 365 Pa. 18, 1950.

Common law arbitration award, if conclusive as to amount fixed therein, is subject to rules governing such awards, and will not be disturbed. Isaac v. Donegal & Conoy Mut. Fire Ins. Co., 152 A. 95, 301 Pa. 351, 1930.

At common law, contracting parties generally are bound by provisions making an arbitration award final and not subject to review. J. L. Turner Co. v. General State Authority, 41 D. & C.2d 118, 86 Dauph. 72, 1966.

The award of arbitrators in a common law arbitration is conclusive and binding as to both law and fact and the award will not be set aside, unless it is alleged and proven by clear, precise and convincing evidence that the parties were denied a hearing or there was fraud, misconduct, corruption or some other irregularity of this nature on the part of the arbitrators which caused an unjust, inequitable or unconscionable finding. Community College of Delaware County Authority v. Hobbs & Co., 63 Del. 372, 1976.

Where the agreement clearly states that the arbitrators' award shall be final and there is no allegation of any agreement otherwise, then common law arbitration rules apply. Id.

A common law award of an arbitrator is conclusive, while an award under the Arbitration Act of 1927 [5 P.S. §§ 161 to 179 (repealed)] was on the same footing as the award of a jury. Central Automatic Sprinkler, Co. v. Greater Hazleton CANDO, 53 Luz.L.Reg. 260, 1964.

11. Review

Where arbitration clause provided for common-law arbitration, order denying petition to confirm arbitration award was not appealable. Hiller v. Allstate Ins. Co., 446 A.2d 273, Super.1982.

Even if action commenced by insurer to enjoin arbitration of uninsured motorist claim, with the court ordering arbitration to proceed at common law, was considered a pending, rather than a concluded one, dismissal of insurer's subsequent action before another judge seeking mandatory injunction that arbitration proceed under Arbitration Act of 1927 [5 P.S. § 161 et seq. (repealed)] was proper or dismissed rather than ordered consolidated with the prior action even assuming that the judge in the prior proceeding heard no argument as to what kind of arbitration should take place and proper procedure to challenge determination that there be some kind of arbitration was by appeal. General Acc. Fire & Life Assur. Corp., Ltd. v. Flamini, 445 A.2d 770, Super.1982.

Although common-law arbitration award is not reviewable on basis of error of law or fact by arbitrators, lower court's scope of review under the Arbitration Act [5 P.S. § 161 et seq. (repealed)] was the same as that upon a petition for judgment notwithstanding the verdict of a jury, and thus the court was empowered to correct the award for a mistake of law. Young v. U. S. Fidelity & Guar. Co., 445 A.2d 542, Super. 1982.

Order dismissing insurer's petition to vacate order, which appointed arbitrator in accordance with insurance agreement, and granting insured's preliminary objections to petition was interlocutory and not a final order from which appeal could be taken as matter of right where arbitration agreement was under common law and not under Arbitration Act [5 P.S. §§ 161 to 179 (repealed)]. Wilson v. Keystone Ins. Co., [illegible] A.2d 1071, 289 Pa.Super. 101, 1981.

SUBCHAPTER C

JUDICIAL ARBITRATION

Sec.

7361. Compulsory arbitration.
7362. Voluntary arbitration of pending judicial matters.

§ 7361. Compulsory arbitration

(a) General rule.—Except as provided in subsection (b), when prescribed by general rule or rule of court such civil matters or issues therein as shall be specified by rule shall first be submitted to and heard by a board of three members of the bar of the court.

(b) Limitations.—No matter shall be referred under subsection (a):

(1) which involves title to real property; or

(2) where the amount in controversy, exclusive of interest and costs, exceeds:

(i) $20,000 in judicial districts embracing first, second, second class A or third class counties or home rule counties which but for the adoption of a home rule charter would be a county of one of these classes; or

(ii) $10,000 in any other judicial district.

(c) Procedure.—The arbitrators appointed pursuant to this section shall have such powers and shall proceed in such manner as shall be prescribed by general rules.

(d) Appeal for trial de novo.—Any party to a matter shall have the right to appeal for trial de novo in the court. The party who takes the appeal shall pay such amount or proportion of fees and costs and shall comply with such other procedures as shall be prescribed by general rules. In the absence of appeal the judgment entered on the award of the arbitrators shall be enforced as any other judgment of the court. For the purposes of this section and

section 5571 (relating to appeals generally) an award of arbitrators constitutes an order of a tribunal.

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978. As amended 1980, April 6, P.L. 100, No. 38, § 1, effective in 60 days.

Historical Note

The 1980 amendment, in subpar. (b)(2)(i) substituted "$20,000" for "$10,000" and added "or home rule counties • • • one of these classes"; in subpar. (ii) substituted "$10,000" for "$5,000"; and substantially rewrote subsec. (d), which prior thereto read:

"(d) Appeal.—Any party to a matter shall have a right to appeal to and to a trial de novo in the court upon payment of such amount or proportion of fees and costs within such time as shall be prescribed by general rule and upon compliance with such other procedures as shall be prescribed by general rules. In the absence of appeal the judgment entered on the award of the arbitrators shall be enforced as any other judgment of the court."

Retroactive Effect of 1980 Amendment

Section 2 of Act 1980, April 6, P.L. 100, No. 38, provides that said act shall take effect in 60 days and shall apply to actions filed on and after that date except that the amendment to subsec. (d) of this section shall be effective immediately and shall be retroactive to June 27, 1978.

Official Source Note:

Derived from act of June 16, 1836 (P. L. 715), §§ 8.1 and 27 (5 P.S. §§ 30 and 71).

Prior Laws:

1975, Oct. 18, P.L. 409, No. 113, § 1.
1972, June 30, P.L. 500, No. 159, § 1.
1971, July 9, P.L. 220, No. 42, § 1.
1970, July 29, P.L. 639, No. 214, § 1.
1968, Dec. 2, P.L. 1141, No. 356, § 1.
1968, July 31, P.L. 888, No. 286, § 1.
1959, June 24, P.L. 477, § 1.
1957, June 20, P.L. 336, §§ 1, 2.
1957, June 13, P.L. 302, No. 167, § 1.
1957, May 17, P.L. 147, § 1.
1955, March 15, P.L. (1955) 1279, § 1.
1955, July 22, P.L. 270, §§ 1, 2.
1953, Jan. 14, P.L. (1951) 2087, §§ 1 to 6.
1952, Jan. 14, P.L. (1951) 2022, § 1.
1877, March 23, P.L. 28, § 1 (5 P.S. § 36).
1876, May 5, P.L. 110, §§ 1, 2 (5 P.S. §§ 59, 60).
1874, May 14, P.L. 159, § 1.
1872, March 5, P.L. 203, No. 200.
1868, April 11, P.L. 851, No. 791.
1868, April 9, P.L. 780, No. 723.
1868, Feb. 6, P.L. 124, No. 80.
1857, April 10, P.L. 1010, No. 938.
1862, April 9, P.L. 347, No. 360.
1858, April 22, P.L. 459, No. 462.
1858, April 15, P.L. 266, No. 308.
1852, May 3, P.L. 541, § 1 (5 P.S. § 79).
1852, April 21, P.L. 386, No. 249, § 1.
1851, April 14, P.L. 622, No. 336, § 14.
1847, Feb. 24, P.L. 153, § 1 (5 P.S. § 128).
1847, Feb. 11, P.L. 85, No. 45.
1846, April 13, P.L. 303, § 2 (5 P.S. § 80).
1840, April 21, P.L. 449, §§ 1, 2 (5 P.S. §§ 55, 56).
1838, April 14, P.L. 457, No. 75.
1836, June 16, P.L. 715, §§ 1 to 7 (5 P. S. §§ 1 to 7).
1836, June 16, P.L. 715, §§ 8 to 10 (5 P.S. §§ 21 to 23).
1836, June 16, P.L. 715, §§ 11, 12, 26 (5 P.S. §§ 25 to 27).
1836, June 16, P.L. 715, §§ 8.1, 13 to 15, 25, 16 (5 P.S. §§ 30 to 35).
1836, June 16, P.L. 715, §§ 17, 18, 27 (5 P.S. §§ 41 to 43).
1836, June 16, P.L. 715, §§ 48, 22 (5 P. S. §§ 45, 46).
1836, June 16, P.L. 715, §§ 20, 21, 23, 24, 26, 34, 34.1 (5 P.S. §§ 51 to 53, 54, 57, 58, 58.1).
1836, June 16, P.L. 715, §§ 27, 28, 25, 29 to 32 (5 P.S. §§ 71 to 77).
1836, June 16, P.L. 715, § 33 (5 P.S. § 81).
1836, June 16, P.L. 715, § 39 (5 P.S. § 111).
1836, June 16, P.L. 715, §§ 40 to 46 (5 P.S. §§ 121 to 127).
1836, June 16, P.L. 715, § 47 (5 P.S. § 142).
1836, June 14, P.L. 628, §§ 13, 14 (39 P.S. §§ 213, 218).

1825, April 11, 8 Sm.L. 442, P.L. 172, ch. 100.
1824, Feb. 24, 8 Sm.L. 195, P.L. 27, ch. 27.
1820, March 28, 7 Sm.L. 323, P.L. 172, ch. 116.
1814, March 26, P.L. 236, 6 Sm.L. 206, §§ 1, 2 (42 P.S. §§ 643, 644).
1814, March 22, P.L. 190, 6 Sm.L. 182, § 2 (42 P.S. § 663).
1813, Feb. 25, 6 Sm.L. 28, P.L. 87, ch. 65.
1810, March 20, P.L. 145.
1809, March 23, P.L. 125.
1808, March 26, P.L. 168, ch. 115.
1806, March 1, P.L. 558.
1705, 1 Sm.L. 50.

Cross References

Compulsory arbitration, see Pa.R.C.P. No. 1301 et seq., 42 Pa.C.S.A.

Law Review Commentaries

Compulsory arbitration—de novo appeals. (1977–78) 16 Duquesne L.Rev. 443.

Compulsory arbitration in Pennsylvania: Effect of an appeal by one of several parties. J. Westley Oler, Jr. (1977) 48 Pa.B.A.Q. 557.

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1. Construction and application

Validity of appeal from denial of motion to quash appeal from award of board of arbitrators was to be determined by law in effect at time appeal was docketed. Turner v. May Corp., 427 A.2d 203, 285 Pa.Super. 241, 1981.

Although appeal from denial of motion to quash appeal from award of board of arbitrators was not specifically taken pursuant to 12 P.S. § 672 (repealed) providing for immediate appeal of jurisdictional rulings, Superior Court was not precluded from looking to such statute as predicate for hearing case. Id.

When the duty to arbitrate arises from a statute, a party is entitled to a court determination of his duty to arbitrate. It is the duty of the courts and not arbitrators to interpret the meaning of what the legislature has enacted. Port Authority of Allegheny County v. Amalgamated Transit Union Division 85, 116 P.L.J. 323, 1968, vacated on other grounds 243 A.2d 433, 430 Pa. 514.

2. Purpose

Purpose of this section, governing appeal from order of board of arbitrators, and of § 5571 of this title, governing appeals generally, is the same, i.e., preservation of one's "right to appeal." Turner v. May Corp., 427 A.2d 203, 285 Pa.Super. 241, 1981.

3. Amount in controversy

For purpose of arbitration, court will ordinarily accept a plaintiff's averments of amount claimed as bona fide, rather than make a preliminary assessment of amount actually in controversy as revealed by pretrial evidence. Rulli v. Nore, 27 Montg. 210, 1962.

For purpose of arbitration, court under Pa.R.C.P. No. 1044, 42 Pa.C.S.A., may determine amount in controversy, but it is not required to do so. Id.

Court, in administration of its own rules, has inherent power to determine by hearing or by directed pre-trial conference the amount in controversy. Pacine v. Washington Nat. Ins. Co., 60 Sch.L.R. 56, 1964.

Court set a hearing on question of damages to determine amount actually in controversy and to enable it to determine whether case should be referred to a board of arbitration. Pacine v. Washington Nat. Ins. Co., 59 Sch.L.R. 197, 1964.

4. Real property

An action to quiet title, wherein plaintiff seeks to have a mortgage held by defendant decreed to be satisfied and discharged by reason of its payment, involves title to real estate, since the mortgagee holds a security title and is not within the jurisdiction of a board of arbitrators under this act. Lane v. Union Nat. Bank of New Brighton, 40 D. & C.2d 411, 27 Beaver 191, 1966.

5. Appeals in general

An appeal was perfected and motion to quash denied when honest effort to satisfy requirements of Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] was accompanied by substantial compliance. Daws v. DeLuca, 428 A.2d 663, 286 Pa. Super. 243, 1981.

When an appellant files an appeal from award of arbitrators, his appeal is filed in all his capacities unless a contra intent is evidenced. Berkey v. Pullaftco, 401 A.2d 356, 485 Pa. 187, 1979.

On plaintiffs' appeal from decision in arbitration proceeding finding defendant negligent in connection with two-car collision, jury was not limited to considering damages but could also consider liability. Piernikowski v. Cardillo, 397 A.2d 817, 263 Pa.Super. 202, 1979.

Evidence showing, inter alia, that arbitrator made only one award against both defendants, that appealing party took its appeal from award of arbitrators, that party appealing from arbitration filed affidavit stating that it intended its appeal to be effective for both parties and that both parties were represented by same attorneys who, in taking appeal, intended to act in interest of both parties established that appealing party intended its appeal to include appeal of nonappealing party so that appeal was effective as to both parties. Mitchell v. City of Pittsburgh, 335 A.2d 403, 233 Pa.Super. 119, 1975.

Judicial construction of clear and unambiguous Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] was not necessary to constitute fair notice to appellants of the requirements of appealing. Harry C. Erb, Inc. v. Shell Const. Co., 213 A.2d 383, 206 Pa.Super. 388, 1965.

Where defendant did not appeal from arbitration award or from order discharging attempt made by him after expiration of the time for appeal to join in timely appeal taken by codefendant and no execution had issued on judgment entered on award, order discharging rule to show cause why execution on the judgment should not be stayed was not an appealable order. Merola v. Luongo, 159 A.2d 41, 191 Pa.Super. 509, 1962.

Where plaintiff brought an action to recover a deposit which defendant alleged constituted part of a commission due it from plaintiff and defendant counterclaimed for the alleged balance of commissions due in excess of the deposit, and the matter proceeded to arbitration in which the arbitrators entered an award for defendant on plaintiff's claim, and for plaintiff on the counterclaim, plaintiff's appeal from the arbitrator's award served to strike also the judgment on the counterclaim. Tom Mistick & Sons, Inc. v. Grasha Real Estate, Inc., 13 D. & C.3d 451, 1979.

Where plaintiff brought an action to recover a deposit which defendant alleged constituted part of a commission due it from plaintiff and defendant counterclaimed for the alleged balance of commissions due in excess of the deposit, and the matter proceeded to arbitration in which the aritrators entered an award for defendant on plaintiff's claim, and for plaintiff on the counterclaim, plaintiff's appeal from the arbitrator's award served to strike also the judgment on the counterclaim. Id.

6. Right to appeal in general

In view of statutory provision for de novo appeals from compulsory arbitration [5 P.S. § 71 (repealed)] alleged fact that no defense evidence on question of liability was presented at arbitration hearing in personal injury suit did not limit appellant's right to appeal and to jury trial to the issue of damages. Dickerson v. Hudson, 302 A.2d 444, 223 Pa.Super. 415, 1973.

Right of appeal from decision of arbitrators is a substantial right but is not absolute and can be subjected to reasonable conditions. Meta v. Yellow Cab Co. of Philadelphia, 294 A.2d 898, 222 Pa.Super. 469, 1972.

The right of appeal is not inherent in arbitration since purpose of arbitration is to end litigation. Kleppinger v. Stuber, 26 Leh.L.J. 297, 1956.

7. Final orders

Order quashing appeal from arbitration is final order, which may be appealed. Hamilton v. Harida, 421 A.2d 396, 280 Pa.Super. 45, 1980.

Order denying petition seeking allowance to appeal from adverse award of arbitrators without payment of costs and posting of bond was not appealable final order. Gommer v. Kotch, 389 A.2d 155, 256 Pa.Super. 20, 1978.

8. Interlocutory orders

Order denying motion to quash appeal from arbitrator's award neither terminated litigation nor disposed of entire case and thus appeal was not properly before Superior Court. Daws v. DeLuca, 428 A.2d 663, 286 Pa.Super. 243, 1981.

Denial of motion to quash appeal from award of board of arbitrators was "interlocutory" rather than "final" order for purpose of appeal from such denial. Turner v. May Corp., 427 A.2d 203, 285 Pa.Super. 241, 1981.

Lower court's ruling on timeliness of appeal from award of board of arbitrators constituted a ruling on subject-matter jurisdiction and, as such, was subject to immediate appeal, although interlocutory. Id.

A litigant who has had denied a motion to quash an appeal from the award of a board of arbitrators is not "out of court;" he may still proceed on the merits in the court below. Id.

Appeal does not lie from an order refusing to strike off an appeal from arbitrators, as such an order is merely interlocutory. Polascik v. Baldwin, 369 A.2d 263, 245 Pa.Super. 1, 1976.

Order allowing defendant to appeal nunc pro tunc from an arbitration award was not a conclusive adjudication of the proceeding and was not appealable at that time. Stoth v. Henderson, 188 A.2d 823, 200 Pa.Super. 268, 1963.

9. In forma pauperis

Fact that petition, in which petitioner sought leave to file appeal from award of board of arbitrators in forma pauperis and which alleged in effect that he did not have the required $295 for perfecting an appeal, did not contain a specific allegation "of poverty" was not a fatal defect; petitioner was entitled to evidentiary hearing at which time he was to have affirmative burden of proving his poverty as well as his then present inability to pay the appeal costs. Oppen v. Callahan, 422 A.2d 1117, 282 Pa.Super. 282, 1980.

Technical defect, consisting of failure to allege poverty in petition for leave to file appeal from award of board of arbitrators in forma pauperis, could have been cured by affidavit or petition nunc pro tunc. Id.

In handling petitions to appeal in forma pauperis there must be considerable discretion vested in lower courts so that persons who are not in poverty may not enjoy the privilege of appealing an arbitration decision without payment of costs; this is especially true when lower court conducts a hearing on the petition. Davila v. Soto, 378 A.2d 443, 250 Pa.Super. 42, 1977.

Appellant-tenants were "unable to pay the costs" of appeal in a landlord-tenant dispute, and thus would be allowed to appeal in forma pauperis, though they "regularly" made installment payments on a station wagon, a truck and a television set. Gorlitzki v. Feldser, 307 A.2d 307, 226 Pa.Super. 142, 1973.

Question as to whether appellants are entitled to appeal in forma pauperis is not whether they are unable to pay the costs but whether they are in poverty, and for such purposes "poverty" does

Note 9

not refer solely to an appellant's net worth but to whether he is able to obtain the necessities of life. Id.

Where appellants, seeking to appeal in forma pauperis, alleged that they had no income except public assistance benefits and that their net worth was minimal, it appeared prima facie that they were in "poverty." Id.

Plaintiff, who filed a complaint in equity seeking an accounting of commissions due him from defendant, and who, after the action was transferred to the law side and heard by an arbitration panel which entered an award which he believed to be inadequate, sought to appeal to the common pleas court, was entitled to appeal in forma pauperis, regardless of the fact that the appeal was from an alleged inadequate award rather than from an award against him. Mitek v. Ste-Mel Signs, Inc., 294 A.2d 813, 222 Pa.Super. 395, 1972.

10. Failure to appeal

Award of board of arbitrators, if not appealed in accordance with the Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] had the effect of a final judicial verdict upon which a judgment may be entered. Hampden Tp., Cumberland County v. Tenny, 379 A.2d 635, 32 Pa. Cmwlth. 301, 1977.

An award which is unappealed from is final and estops party against whom it is made from proceeding further with same cause of action. Romanovich v. Hilferty, 245 A.2d 701, 212 Pa.Super. 570, 1968.

Where an appeal is not taken from a decision by a board of arbitrators, the determination of the board is res adjudicata. Wiley v. Zielinski, 80 Montg. 68, 1964.

11. Failure of counsel to appear

In proceeding in which plaintiff sought to recover balance due on contract for goods and services and in which appeal from arbitration had been dismissed after defendants and their counsel failed to appear, entering order for plaintiff, without requiring it to present its case ex parte to the court, was error; the error was prejudicial in light of fact that, though certain allegations within complaint were deemed admitted pursuant to discovery sanctions, such sanctions did not apply to other allegations which had been denied by defendants. Associated Sprinkler Co., Inc. of Pa. v. Giansante, 428 A.2d 211, 286 Pa.Super. 8, 1981.

On appeal after appeal from arbitration had been dismissed when appellants and their counsel failed to appear, appellants were not entitled to relief on basis of assertion that their counsel had been attached on cases of higher priority where such counsel, who had notice of the hearing, failed to enter a busy slip. Id.

In proceeding in which appeal from arbitration had been dismissed after appellants and their counsel failed to appear, appellants' contention that their counsel had no notice of the appeal hearing was refuted by the record. Id.

Trial court erred in dismissing appeal from award of arbitration on failure of defendant's counsel to appear at conciliation hearing; instead, court should have proceeded with trial in defendant's absence. Lee v. Cel-Pek Industries, Inc., 380 A.2d 1243, 251 Pa.Super. 568, 1977.

12. Local court rules

Local court rule which limited use, on appeals from arbitration awards, of witnesses which had not been used at arbitration hearing contravened express mandate of Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] that all appeals should be de novo and exceeded rule-making authority of common pleas court. Weber v. Lynch, 375 A.2d 1278, 473 Pa. 599, 1977.

Although the Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] authorizes the several courts of common pleas to establish by rules of court compulsory arbitration in certain cases, such rules must be consistent with provisions of the Act and legislative intent found therein that system of compulsory arbitration there permitted be relatively uniform throughout the Commonwealth. Id.

Local court rule which limited use, on appeals from arbitration awards, of witnesses which had not been used at arbitration hearing contravened express mandate of Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] that all appeals should be de novo and exceeded rule-making authority of common pleas court; overruling to extent of inconsistency, Hayes v. Wella Corp., 226 Pa.Super. 728, 309 A.2d 817. Weber v. Lynch, 348 A.2d 863, 237 Pa.Super. 48, 1975, affirmed 375 A.2d 1278, 473 Pa. 599.

Note 13

County court of Philadelphia is not empowered to establish its own procedures for compulsory arbitration by rules of court and is governed by uniform system throughout Commonwealth as to compulsory arbitration by attorneys. Klugman v. Gimbel Bros., Inc., 182 A.2d 223, 198 Pa.Super. 268, 1962.

A local rule of court adding an additional requirement to the procedure set forth in 5 P.S. § 71 (repealed) appealing from arbitrators to wit, that a copy of notice of appeal be served upon the adverse party or his counsel, was invalid. Werner v. Werner Donaldson Transfer & Storage Co., 66 D. & C.2d 381, 120 P. L.J. 121, 1972.

Where, after plaintiff appealed from an arbitrator's finding for defendant, latter obtained a rule to show cause why his answer should not be withdrawn and an amended answer filed containing a counterclaim which was within the jurisdictional limits of arbitration, defendant's rule was made absolute, notwithstanding a local rule of court requiring submission of the claim to arbitration, since Pa.R.C.P. No. 126, 42 Pa.C.S.A., requires the court to be liberal in construction of its rules. Bacon American Corp. v. Henise Tire Service, Inc., 41 D. & C.2d 562, 1967.

13. Appeal by one of several joint parties

Where board of arbitrators finds two or more defendants jointly liable, an appeal from the arbitrators' award taken by only one defendant will not be considered an appeal by all defendants unless it appears that this was the intention of the appealing party. Werner v. Springfield Dodge, Inc., 384 A.2d 952, 253 Pa.Super. 14, 1978; Flouders v. Foster, 243 A.2d 146, 212 Pa.Super. 418, 1968; Washik v. Chase, 332 A.2d 481, 231 Pa. Super. 378, 1974.

Where plaintiff, who was joined as additional defendant, had not "acquiesced" in arbitrators' adverse determination by satisfying judgment against him as additional defendant, and did not indicate any limitation of capacities on his notice of appeal, his appeal was taken in his capacity as both a plaintiff and an additional defendant, and thus it was improper to order judgment to be entered against him as additional defendant. Berkey v. Pullafico, 401 A.2d 356, 485 Pa. 187, 1979.

When only one of multiple parties to an arbitration appeals, such appeal includes those whom the appellant intends to include or whose participation is required to resolve the issues raised by the appeal, absent some clear indication by appellant to the contrary, Ottaviano v. Southeastern Pennsylvania Transp. Authority, 361 A.2d 810, 239 Pa.Super. 363, 1976.

Where attorney for automobile driver, who along with passenger sued bus company for injuries sustained in collision and who was joined by bus company as additional defendant, with case being assigned to arbitration, filed appeal from decision of the arbitrators but stated that appeal was on behalf of plaintiff driver only, no other appeals were filed and driver satisfied that portion of arbitration award against him and in favor of passenger, the driver was before the court only in his capacity as plaintiff; hence, unappealed determination of arbitrators against driver as additional defendant conclusively decided issue of his negligence. Id.

When a timely appeal has been filed by one of joint defendants and it appears that it was his intention that appeal carry with it other defendant who did not file timely appeal, court, on motion, should strike judgment entered on arbitration award against nonappealing defendant and allow that defendant to participate in the trial de novo. Mitchell v. City of Pittsburgh, 335 A.2d 403, 233 Pa.Super. 119, 1975.

Where city which appealed from award of arbitrators against both it and its employee intended appeal to include appeal of city employee and where appeal was taken before entry of judgment against city employee, entry of judgment against city employee was improper. Id.

In order to maintain appealing party's right to jury trial on all issues involved in case, his appeal from arbitration may in certain cases carry with it other parties to arbitration who have not technically filed appeals. Id.

Where automobile driver brought proceeding against truck owner, truck driver, truck manufacturer and manufacturer of truck's brakes to recover for injuries sustained when truck struck rear of automobile, arbitration resulted in an award in favor of automobile driver against truck owner and driver and in favor of truck manufacturer and

Note 13

brake manufacturer against automobile driver, appeal by truck driver and owner acted with respect to arbitrators' entire award, including truck manufacturer's victory over automobile driver, so as to render whole matter de novo, notwithstanding automobile driver's failure to appeal against truck manufacturer and brake manufacturer. Washik v. Chase, 332 A.2d 481, 231 Pa.Super. 378, 1974.

Appeal of just the additional defendant from decision of arbitrators, who entered an award in favor of plaintiff against defendant and in favor of defendant over against the additional defendant, did not reopen all issues necessarily resolved by the arbitrators so that it might be said that the liability of defendant was at issue on the appeal and that judgment could not be entered against defendant, particularly where defendant showed no indication, in any way, of an intention by the additional defendant to appeal on defendant's behalf, nor was there any indication that defendant intended the appeal to be brought for its benefit. Delmarmol v. Fidelity & Deposit Co. of Maryland, 310 A.2d 363, 225 Pa.Super. 90, 1973.

Mere appeal of one defendant in compulsory arbitration is of no avail to another defendant so that a judgment entered after lapse of appeal time will not be opened or stricken. Fante v. Philadelphia Transp. Co., 294 A.2d 776, 222 Pa.Super. 276, 1972.

Where original defendant driver of other automobile, appealed from award against him in favor of minor plaintiff expressly limiting scope of appeal to his behalf only, the liability of additional defendant, the minor's father and driver of automobile in which minor was riding, was not affected by the appeal and original defendant did not risk his right to contribution established by award of arbitrators by making his expressly-limited appeal. Romanovich v. Hilferty, 245 A.2d 701, 212 Pa.Super. 570, 1968.

Where owner sued for damages to his automobile when it was in possession of defendant for repairs, defendant joined transit authority as additional defendant on ground that authority had caused damages, arbitrators made award against defendant and additional defendant jointly and severally, defendant took timely appeal from arbitrators' report and award, and after expiration of time for appeal plaintiff entered judgment against additional defendant, appeal was effective as to additional defendant. Hammerman v. Lee, 217 A.2d 853, 207 Pa.Super. 370, 1966.

Even if manufacturer had appealable interest as to customer's award against retailer, which had obtained award against manufacturer, that did not make retailer party appellant as to manufacturer's appeal and no order could be entered on that appeal affecting rights of customer and retailer inter se. Klugman v. Gimbel Bros., Inc., 182 A.2d 223, 198 Pa.Super. 268, 1962.

Where arbitrators made an award for plaintiff against individual defendants and in favor of a corporate defendant from which individual defendants alone filed an appeal, and where corporate defendant then filed of record its disclaimer and disavowal of participation in appeal, a motion by individual defendants to strike off the disavowal was overruled, even though the appeal in its effect upon the corporate defendant was a nullity in any event without such disavowal, since it could not without its consent be made a party to an appeal taken by individual defendants in their names only. Andrew J. Nicholas & Co., Inc., v. Powell, 22 D. & C.2d 160, 1960.

14. Notice of appeal

Allegheny County Court of Common Pleas had power to promulgate rule conditioning rights of appeal from arbitration award upon service of copy of notice of appeal on either adverse party or its counsel and the rule was a valid exercise of court's power over procedural matters. Mikita v. Bailey Homes, Inc., 401 A.2d 1367, 265 Pa.Super. 399, 1979.

Where a local rule of court provided that notice of appeal from a board of arbitrators must be filed with the prothonotary within 20 days and that a copy of the notice shall be served by the prothonotary upon the adverse party, it was not necessary that the copy of the notice be served within the 20-day period, Rose v. Keeney, 64 D. & C.2d 168, 1972.

Although a local rule of court provided that a copy of notice of appeal from the board of arbitrators was to be served by the prothonotary, service could be effected by appellant's attorney, Id.

A rule by defendants to quash an appeal by plaintiff from an award of arbitrators on ground that defendants received no notice of appeal, was made absolute, where plaintiff's attorney filed an answer averring that notice of the appeal was forwarded by mail to one defendant through a "mere technical oversight on the part of himself" and where alleged letter of notice, dated September 24th, date when appeal was taken, was sent by plaintiff's counsel directly to defendant, not to its counsel, and it was received on October 30th in an envelope postmarked October 29th, the same day that plaintiff's counsel received in mail a copy of motion to quash appeal. Meade v. Equitable Credit & Discount Co., 18 D. & C.2d 646, 1959.

Note 16

15. Time of appeal

Time for an appeal from an arbitration award begins when it is entered on the docket. Gallardy v. Ashcraft, 430 A.2d 1201, Super.1981.

Possible exception to filing requirement for "non-negligent" failure to file a timely appeal was not retroactively applicable to allow an appeal when the appeal time had run out before the date of the decision in which the exception had been announced, despite fact that plaintiff's failure to file a timely appeal from an arbitration award was a non-negligent failure, which was corrected in a very short time. Id.

Reference in this section regarding compulsory arbitration, to an "appeal" should be read in conjunction with time prescribed for taking of an "appeal" in § 5571 of this title, governing appeals generally, and relating in particular to appeals from "other courts." Turner v. May Corp., 427 A.2d 203, 285 Pa.Super. 241, 1981.

Arbitrators appointed by prothonotary from list of qualified attorneys in compulsory arbitration are "appointive judicial officers" as defined by Judicial Code and thus award by board of arbitrators in compulsory arbitration is subject to 30-day appeal period specified in Code. Lewis v. Erie Ins. Exchange, 421 A.2d 1214, 281 Pa.Super. 193, 1980.

Period for filing appeal from award of arbitrators begins to run from date of entry of award of arbitrators on docket, not from date when award is filed with prothonotary. Gould v. Lampley, 310 A.2d 420, 225 Pa.Super. 107, 1973.

In determining when time for taking appeal from award of arbitrators begins to run, provisions of arbitration statute control over local rules of court. Id.

Where record did not indicate date upon which award of arbitrators was entered on docket and appeal of party from award, although out of time if entry was made on one date, would have been seasonable if entry was made on one of two other possible dates, order denying appeal would be reversed and party given 20 days within which to perfect appeal. Id.

Late appeals from arbitration awards should be permitted where a party has been prevented from appealing by fraud, or by the wrongful or negligent act of a court official. Bokser v. Feraco, 64 D. & C.2d 383, 1973.

Where the copy sent to the appellant of a decision of arbitrators was incomplete in that it did not state the date of filing of the award, and upon inquiry of the chairman of the arbitrators, appellant's counsel was furnished a filing date which was later than the correct date, an appeal taken within the allowable time from the incorrect date was allowed. Id.

In the absence of any evidence of fraud or the equivalent, the failure of appellant's counsel to receive a notice of the award of arbitrators, which notice was, in fact, mailed, afforded no ground for extending the time for appeal. Dion v. Ford Motor Co., 64 D. & C.2d 245, 1973.

Where a party has been prevented from appealing by fraud, or by wrongful or negligent act of a court official, court has power to extend time for taking an appeal. Repp v. Kremer, 31 Leh.L.J. 410, 1966.

Mere hardship is not sufficient justification for court to extend time permitted for appeal, Id.

16. Nunc pro tunc appeals

Court of common pleas was without authority to grant plaintiffs' petition for allowance to file an appeal nunc pro tunc from a report and award of arbitrators in favor of defendant, where there was no showing of fraud or its equivalent, of a breakdown in the court's system, or of a wrongful or negligent act of a court official, and where, instead, all that was offered by counsel for plaintiffs as a basis for allowance of the appeal nunc pro tunc was inadvertence and the fact that his secretary, to

Note 16

whom he had delegated the responsibility, was sick on the final days of the appeal. MacKanick v. Rubin, 368 A.2d 815, 244 Pa.Super. 467, 1976.

Allowance of appeal nunc pro tunc from award of arbitrator is not absolutely prohibited but is ordinarily permitted only in cases where fraud or its equivalent is shown. Klugman v. Gimbel Bros., Inc., 182 A.2d 223, 198 Pa.Super. 268, 1962.

If, without fault of his, a party, desiring to appeal from a judgment of any court or from award of arbitrators, or to perfect an appeal actually filed in time, is prevented from perfecting the same by his relying on the advice of an officer of the court, the prothonotary, coupled with the universal experience of other lawyers, based on the general practice in taking appeals from awards of arbitrators, and coupled further with the possible misleading language of local rules of court relating to appeals in arbitration proceedings, an appeal may be allowed nunc pro tunc if asked for in a reasonable length of time. Moratis v. Sokac, 20 Beaver 163, 1959.

17. Discretion of court

It was an abuse of discretion to quash appeal from an award of a panel of arbitrators on ground that appellant had not complied with a county rule of court requiring that appeal be accompanied by complaint where neither prejudice nor substantial rights were involved in that appellee had already been served with original complaint prior to arbitration. Briga v. Ken-Tuck Signs, Inc., 421 A.2d 329, 279 Pa.Super. 537, 1980.

The court to which an appeal lies from arbitrators has broad discretion when interpreting its own rule to determine whether they are to be rigidly enforced or even to suspend them. Bokser v. Feraco, 64 D. & C.2d 383, 1973.

18. Procedure in general

Appeal from arbitration is to be tried de novo. Associated Sprinkler Co., Inc. of Pa. v. Giansante, 428 A.2d 211, 286 Pa.Super. 8, 1981.

Substantial compliance with rules for appeal from arbitration is all that is required as long as there is no demonstrable prejudice to other party. Briga v. Ken-Tuck Signs, Inc., 421 A.2d 329, 279 Pa.Super. 537, 1980.

Technical nonprejudicial errors will not bar an appeal from arbitration. Id.

Subdividers' appeal from dismissal of their petition to set aside adverse arbitrators' award did not act as supersedeas with respect to subdividers' de novo appeal from such award; trial court properly entertained jury trial on de novo appeal, since order dismissing subdividers' petition to set aside award was interlocutory, subdividers failed to perfect interlocutory appeal by permission, and there was no stay of lower court's proceedings. Hampden Tp., Cumberland County v. Tenny, 379 A.2d 635, 32 Pa.Cmwlth. 301, 1977.

On appeal arbitrators' award becomes undetermined cause which must then be tried de novo and prosecuted to judgment, discontinuance or non pros. Lanigan v. Lewis, 232 A.2d 50, 210 Pa.Super. 273, 1967.

An appeal from a compulsory arbitration award by any aggrieved party puts the case in the common pleas court and requires a trial de novo as to all parties to the action; so that an appeal by an unsuccessful defendant operates also as an appeal in the case of a successful defendant. Ricci v. Goodyear, 9 D. & C.3d 699, 1978.

Where the rules, regulations, and restrictions governing the taking of an appeal from an award of arbitrators are not complied with, and the failure to comply is inexcusable, a motion to strike off the appeal will be granted. Pleasc v. Plesh, 44 Luz.L.Reg. 125, 1954.

Appeals from arbitration proceedings are tried de novo. Arbitrators cannot bind a jury by their findings. Korba v. Bowers, 40 Wash. 130, 1962.

19. Presumptions and burden of proof

As party's statutory right of de novo appeal from compulsory arbitration award includes right to adduce competent and relevant testimony in his behalf, he should not have to bear burden of convincing court that he had good cause for not calling a proffered witness at the arbitration hearing. Weber v. Lynch, 375 A.2d 1278, 473 Pa. 599, 1977.

20. Evidence

Legislature in providing for compulsory arbitration in the Arbitration Act [5 P.S. §§ 161 to 179 (repealed)] did not intend to limit evidence presented at de novo jury trial to that which had been presented to arbitrators. Weber v. Lynch, 375 A.2d 1278, 473 Pa. 599, 1977.

On appeal from arbitration award, trial is de novo before court and jury and parties are free to present such evidence as they may have whether it was presented before the arbitrator or not. Cellutron Products Corp. v. Stewart, 300 A.2d 900, 223 Pa.Super. 391, 1972.

Appeal from compulsory arbitration is tried de novo before a court and jury and plaintiffs are free to present such evidence as they may have whether it was presented before arbitrators or not. Bell v. Shetrom, 257 A.2d 323, 214 Pa.Super. 309, 1969.

21. Amendment of record on appeal

Where amendment of counterclaim on appeal from arbitrator's award in plaintiff's favor would result in no detriment or disadvantage to plaintiff other than that which would normally flow from allowance of amendment changing the basis of counterclaim, there was no prejudice which would be sufficient to prevent the amendment and disallowance of amendment was abuse of discretion. Cellutron Products Corp. v. Stewart, 300 A.2d 900, 223 Pa.Super. 391, 1972.

In defendant's appeal from compulsory arbitration awarding certain damages to plaintiffs, plaintiffs should have been allowed to amend their complaint in regard to damages by showing before and after value of land on which damaged trees were located and increasing ad damnum clause to $1,500, where no prejudice to defendant was evident, and plaintiff could have abandoned action and started new action. Bell v. Shetrom, 257 A.2d 323, 214 Pa.Super. 309, 1969.

§ 7362. Voluntary arbitration of pending judicial matters

(a) General rule.—A civil matter or issue therein may be referred by consent of the parties to one or more appointive judicial officers or other persons for hearing or hearing and disposition.

(b) Government units.—Any government unit of this Commonwealth, with the consent of the solicitor or other official counsel of the unit, may agree to the reference of a civil matter pursuant to this section.

(c) Procedure.—The appointive judicial officers or other persons appointed or designated pursuant to this section shall have such powers and shall proceed in such manner as shall be prescribed by general rules.

(d) Appeal.—Any party to a matter referred under this section shall have such rights of appeal, if any, as shall be prescribed by general rules. Where no right to appeal is prescribed by general rule, all parties shall be deemed to have waived any right to appeal which they might otherwise enjoy under the Constitution of Pennsylvania or otherwise in mutual consideration of an expeditious final disposition of the matter, but no such waiver shall apply if it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978.

Rule 1288. Ancillary Attachment

A fraudulent debtor's attachment may be issued in a pending action if at the time of issue a fraudulent debtor's attachment could have been used to commence the action. The plaintiff shall file with his praecipe the bond prescribed by Rule 1287 and unless a complaint has already been filed in which the ground for attachment sufficiently appears, a complaint or an amended complaint.

Adopted April 12, 1954, effective Oct. 1, 1954.

Rule 1289. Action as to Defendant

(a) The sheriff shall serve the defendant with the writ and complaint in the same manner as in a civil action, but inability to serve the defendant shall not affect the validity of any attachment made in accordance with these rules.

(b) If the defendant is served, appears, files a bond or security, the action continues as if commenced by personal service of a summons or complaint.

Note: The attachment is not dissolved by service on or appearance of the defendant. See Rule 1272(a).

Adopted April 12, 1954, effective Oct. 1, 1954. Amended Dec. 16, 1983, effective July 1, 1984.

Rule 1290. Bond on Reissuance of Writ

A plaintiff, on reissuing a writ, need not file an additional bond or security.

Adopted April 12, 1954, effective Oct. 1, 1954.

Rule 1291. Dissolution. Bond

(a) Within such time as not to delay the trial, the defendant may raise the defense of the absence of ground for attachment by a petition to dissolve the attachment. Such petition shall not of itself subject the defendant to the jurisdiction of the court.

(b) An attachment is dissolved when any person or party

(1) files with the prothonotary a bond, with security approved by the prothonotary, in the same amount as the bond theretofore filed by the plaintiff under Rule 1287(b) naming the Commonwealth of Pennsylvania as obligee, conditioned to pay the plaintiff if final judgment is entered in his favor, the amount to which the plaintiff is entitled, or the value of the property attached, whichever is less, or

(2) deposits with the prothonotary, or with the sheriff for the prothonotary, to be held by him upon the same condition as the bond, security in the form of legal tender of the United States in an amount equal to one-half of the amount of the bond theretofore filed by the plaintiff under Rule 1287(b).

Adopted April 12, 1954, effective Oct. 1, 1954.

Rule 1292. Examination of Defendant

If the defendant has been served or has appeared, the court, upon the petition of the plaintiff at any time during the pendency of the action, may order the defendant to appear and be examined orally under oath respecting debts owed the defendant and property of the defendant and may impose such limitations upon the examination, including provision for payment of expenses and counsel fees as the court shall deem proper. The court may order the defendant to deliver property to the sheriff if it has been removed, concealed or transferred with intent to defraud the plaintiff. The court may enforce its order by attachment for contempt.

Adopted April 12, 1954, effective Oct. 1, 1954.

COMPULSORY ARBITRATION

Adopted March 16, 1981
Effective in 60 days

Explanatory Note—1981

Rules of Civil Procedure governing Compulsory Arbitration are made necessary by the Judiciary Act Repealer Act of 1978 (JARA), which repealed the Arbitration Act of June 16, 1836, P.L. 715, and all of its amendments, 5 P.S. § 1 et seq., effective June 27, 1980. Until the rules become effective, the procedure under the Act of 1836, as amended and as modified by Rule of Civil Procedure 247.1, will remain in effect, as provided by Section 3(b) of JARA, 42 Pa.C.S. § 20003(b).

The Act of 1836 had provided an elaborate system of reference to arbitration, including provisions for compulsory arbitration. The system proved unwieldly in practice and fell into disuse until, in 1952, in the search for tools to combat congestion and delay in the trial calendar of a growing number of judicial districts throughout the Commonwealth, amendments were made which reorganized compulsory arbitration on a wholly new basis.

The 1952 amendments did away with the complicated rule of reference procedure and authorized the common pleas courts to provide by local rule of court for compulsory arbitration by a board of arbitrators of all civil matters where the amount in controversy was $1,000 or less, excepting, however, actions involving title to real estate. The boards were to consist of three lawyers from the

judicial district selected alphabetically in the absence of local rules providing other methods of selection.

The 1952 and subsequent amendments left untouched the substantive provisions of the Act of 1836. Appeal was a matter of right upon payment of record costs and repayment of arbitrators' fees, and the trial on appeal was de novo. Individual counties could by local rule, within the monetary limits authorized by the legislature, fix the maximum jurisdictional monetary amount for compulsory referral. These limits were by successive legislative amendments increased, as of June 6, 1980, to $20,000 in judicial districts embracing counties of the first, second, second class A and third class, and in home rule counties of those former classes, and to $10,000 in all other judicial districts.

Compulsory arbitration has now been adopted in almost all of the state's judicial districts and has proven eminently successful in expediting the trial and disposition of civil cases.

In contrast to the elaborate and detailed procedural provisions in the former Act of 1836 and its amendments, the only reference to practice and procedure in compulsory arbitration in the Judicial Code is Section 7361, 42 Pa.C.S. § 7361. This section is only an enabling provision. The Supreme Court or, in the absence of a Supreme Court rule, a local rule of court will determine if compulsory arbitration shall be available, subject to the basic monetary and subject matter jurisdictional limitations of Section 7361. The time for appeal is fixed at thirty days by Pa.R.C.P. 247.1 and by Section 7361(d) of the Judicial Code as amended.

All the rest of practice and procedure is specifically omitted from the Judicial Code. Section 7361(c) provides:

"The arbitrators appointed pursuant to this section shall have such powers and shall proceed in such manner as shall be prescribed by general rules."

This subsection omits any reference to local rules.

This obligated the Supreme Court to regulate the entire field of procedure in compulsory arbitration, although the Supreme Court's rules could validly leave many details of procedure to local common pleas court rules.

These rules prescribe, on a uniform statewide basis, the basic areas of practice and procedure. This promotes the concept of the unified judicial system envisaged by the Judiciary Article of the Constitution of 1968 and the need to avoid the proliferation of local rules making statewide practice burdensome. The decision to inaugurate compulsory arbitration, the jurisdictional amount and subject matter jurisdiction are for the time being expressly left to local rule. Except for those subjects, local practice must be consistent with these rules and should concern only what might be loosely termed administrative implementation which will not interfere with or burden the concept of uniform statewide practice.

Before proceeding to a detailed analysis of the rules, a brief outline of their major provisions and changes may be helpful.

1. The introduction or retention of compulsory arbitration and the subject matter and monetary jurisdictional limitations, within statutory limits, remain subject to local option.

2. The establishment of lists of available active members of the bar of the judicial district from which the boards of arbitrators are to be selected is left to local rule, subject to the limitation that the list must consist of a sufficient number of members of the bar engaged in active practice in the judicial district so as to be fairly representative thereof.

3. The method of selection from the list of boards of arbitrators is left to local rule, but not more than one member of a firm or association shall be appointed to the same board. While alphabetical or random selection is not required, the method used should afford equal opportunity for those qualified and willing to serve to do so.

4. The method of selection of the chairman of the board of arbitrators is left to local rule, subject to the minimum qualification that every arbitrator must be a member of the bar of the local judicial district and that the chairman must have been in active practice for at least three years. The Act of 1836 provided that the member first selected shall be the chairman. This will now be left to local rules. Existing local rules vary on these points. Changes may be required in some judicial districts.

5. The qualifications of the other two members are left to local rule, subject to the qualification that they must be actively engaged in the practice of law primarily within the judicial district in which the action is pending. Existing local rules vary on this subject.

6. Members of the board are to be held to the standards of judicial conduct provided by the Code of Judicial Conduct. They should disqualify themselves as arbitrators where a judge under like circumstances would do so. Most existing local rules are silent on this subject.

7. The compensation of the arbitrators, which is primarily a burden of the local county commissioners, is to be established by local rule, as under present practice.

8. The place of hearing, the responsibility for giving notice of the hearing and the form of notice are all to be prescribed by local rule, subject to a minimum thirty-day notice of the hearing to parties or their attorneys. The time of notice may be shortened or extended by the court in a particular case under Pa.R.C.P. 248.

9. When a case is called for hearing, if the plaintiff appears but the defendant does not, the arbitrators shall hear the case and proceed to an award, unless the court orders a continuance. Conversely, if the defendant appears but the plaintiff does not, the arbitrators shall enter an award in favor of the defendant. If plaintiff appears but fails to prove a claim, the arbitrators, without hearing the defendant, shall likewise enter an award for defendant.

10. A plaintiff may, however, take a voluntary nonsuit as provided by Pa.R.C.P. 230, governing voluntary nonsuit in trial before a court of common pleas. In this event, the arbitrators will not proceed to an award in favor of the defendant but will note the nonsuit in their report of disposition of the matter. The nonsuit will not affect a counterclaim, as provided by Pa.R.C.P. 232.

11. No record of the hearing at the expense of the county is required. A party may have a recording or transcript made of the arbitration proceedings at his own expense but must offer copies to all other parties upon payment of a proportionate share of the total cost. The Act of 1836 permitted a record of the arbitration proceedings to be made upon request to the arbitrators. It did not provide for recordings. Existing local rules vary or are silent on this subject.

12. Rulings on evidence at a hearing shall be made by a majority of the board. Existing local rules vary or are silent on this subject.

13. The rules of evidence are liberalized to permit introduction without calling witnesses, if at least twenty days' written notice has been given accompanied by a copy, of bills for medical, hospital and nursing care, physical therapy, medication, medical and prosthetic appliances, repair bills or estimates, weather and traffic reports and United States standard life expectancy tables. Any other party may subpoena the person whose testimony is waived by the rule. An increasing number of existing local rules already have somewhat similar provisions. The rules will make the practice uniform.

14. If damages for delay under Pa.R.C.P. 238 are involved, the arbitrators are required to state them separately and add them to the award as part of the total award. Many judicial districts are not considering local rules implementing the procedure for handling damages for delay without informing the arbitrators in advance of the amount of any offers. The rules do not deal with this problem but for the time being leave the practice to local option, subject to later review.

15. The inclusion in the award of specific findings and the computation of the degrees of comparative negligence where required in arriving at a final award are not regulated by the rules. Comparative negligence is a substantive matter to be considered by the arbitrators under Pa.R.C.P. 238 in determining liability and damages.

16. The award must be made promptly upon termination of the hearing, but no fixed number of days is designated. Existing local rules vary considerably as to the time for filing.

17. The award when entered by the prothonotary on the docket has the effect of a verdict as a lien on real estate. The lien continues pending appeal. This continues the practice under the Act of 1836.

18. If no appeal is taken within thirty days, judgment on the award is entered by the prothonotary on praecipe. This continues the practice under the Act of 1836 and many local rules.

19. A simplified notice of appeal, similar to that provided by Rule of Appellate Procedure 904, is provided. Verification is no longer required.

20. Payment of accrued record costs and the filing of a bond for future costs, now required by the Act of 1836, is abolished as a prerequisite to the appeal. Costs will abide the event as in other actions. However, arbitrators' fees must be repaid at the time of appeal and are not taxable or recoverable as costs.

21. An appeal by any one party is deemed an appeal by all parties and as to all issues. This clarifies the confusion in present practice as to when an appeal by one party is to be considered an appeal by other parties who do not separately appeal.

22. An appeal may not be discontinued without leave of all parties or of the court. This follows present practice under the Act of 1836.

23. Provision is made in Rule 1307(d), upon application, for molding the award for errors in mathematics or language, but this may be done only by the court and not by the arbitrators. The time for appeal is stayed pending disposition of the application. Other than molding, no provision is made for review, amendment, attack upon or motion to set aside an award for any reason, at the arbitrators' level. Any attack on the award must be by appeal and a trial de novo. Fraud, corruption or professional misconduct by the arbitrators will, of course, remain subject to appropriate available sanctions at the hands of the court or the Disciplinary Board.

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[See Explanatory Notes under specific rules]

The Committee has endeavored to simplify and clarify compulsory arbitration and to regulate the areas where uniform statewide practice is desirable. The promulgation of these Rules will require a reexamination by common pleas courts of their local rules of practice governing arbitration so as to avoid inconsistency with these statewide Rules.

By the Civil Procedural Rules Committee
John A. Metz, Jr.,
Vice Chairman

Rule 1301. Scope

These rules apply to actions which are submitted to compulsory arbitration pursuant to local rule under Section 7361 of the Judicial Code, 42 Pa.C.S. § 7361.

Note: This continues the existing practice under which in the absence of a rule of the Supreme Court each common pleas court may determine whether there shall be arbitration in its judicial district, the kind of cases to be arbitrated and the jurisdictional amount within the limits fixed by Section 7361(b) of the Judicial Code.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

The Rule and the Committee Note make clear that the retention or introduction of compulsory arbitration in a judicial district remains a matter of local option. The monetary and subject matter jurisdictional limitations of Section 7361 of the Judicial Code, however, cannot be changed by local rule.

The jurisdictional maximum monetary limits of Section 7361(b)(2) of the Judicial Code, as amended, 42 Pa.C.S. § 7361(b)(2), are increased to $20,000 in judicial districts embracing first, second, second class A and third class counties and in home rule counties of those former classes, and to $10,000 in any other judicial district, exclusive of interest and costs. The fixing of the maximum, not exceeding the $20,000 and $10,000 limits, exclusive of interest and costs, is still a matter of discretion.

As to the issues which may be referred, both the Act of 1836 and Section 7361(b)(1) of the Judicial Code exclude any matter "which involves title to real property." Section 13 VIII of the Act of 1836, as amended, 5 P.S. § 31, specifically provided that assessment of damages could be disposed of by arbitration where no appearance has been

entered in a trespass action. Local rules may continue to so provide.

In determining which actions to include or exclude, the nature of the action and the relief requested should govern. Obviously, actions which require equitable or declaratory relief are not to be referred. The grant of such relief is beyond the power of arbitrators. Similarly, actions to quiet title, mandamus, quo warranto and mortgage foreclosure, which require other than monetary relief, are not appropriate.

However, reference to compulsory arbitration of "issues" as well as "actions" is authorized by Section 7361(a) of the Judicial Code. Thus, there would seem to be no reason why replevin actions involving the right to possession of personal property could not be referred to arbitration. Replevin Rule 1085 provides for determination by the fact finder not only of the right to possession but the money value of the property or the amount of special damages sustained. Once the arbitrators make these two findings, no further action by the arbitrators is necessary to enforce a judgment for possession. The successful party may proceed to enforce his judgment under Rules 3176 to 3173 by issuance of a writ of possession or, in the alternative, by writ of execution obtain the value of the property and, in any case, recover his special damages and costs by execution or recovery on the bond.

Rule 1302. List of Arbitrators. Appointment to Board. Oath

(a) A list of available arbitrators shall be prepared in the manner prescribed by local rule. The list shall consist of a sufficient number of members of the bar actively engaged in the practice of law primarily in the judicial district in which the court is situated so as to be fairly representative thereof.

(b) The board of arbitrators shall consist of three members of the bar appointed from the list of available arbitrators as prescribed by local rule.

(c) The board shall be chaired by a member of the bar admitted to the practice of law for at least three years.

(d) Not more than one member or associate of a firm or association of attorneys shall be appointed to the same board.

(e) A member of a board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as an arbitrator.

(f) Each arbitrator shall take an oath of office in conformity with Section 3151 of the Judicial Code.

Note: Arbitrators shall be compensated pursuant to Section 3544(a)(1) of the Judicial Code.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

The Act of 1836, as amended, 5 P.S. §§ 30, 31 VII, provided for a board of three members from within the judicial district and a list of attorneys from which the prothonotary would make the appointment, in the manner prescribed by local rule or, in the absence of such rule, in alphabetical order. Attorneys were to be excused only for incapacity or illness. The first member selected was to be chairman, and not more than one member of a firm or association of attorneys could serve on the same panel.

Section 7361(a) of the Judicial Code provides only for a board of three members. All other details are left to the rule-making power. Existing local rules vary widely as to the manner of establishing the list of available arbitrators, the manner of selection from the list, the qualifications of the chairman and members, compensation and other details.

Whether there should be complete local autonomy as to these matters or whether Supreme Court Rules should regulate some or all aspects of these details was given careful consideration. Rule 1302 strikes a middle ground. It resolves this issue by requiring that the list of available arbitrators must include a sufficient number of members of the bar actively engaged in practice in the judicial district so as to be fairly representative.

Subdivisions (a), (c), (d) and (e) of Rule 1302 establish minimum qualifications for the arbitrators. First, they must be actively engaged in practice within the judicial district. Second, the chairman must be engaged in active practice for at least three years. Third, not more than one lawyer from the same office should sit on a board. Fourth, disqualification of an arbitrator parallels the disqualification of a judge under the Code of Judicial Conduct.

Existing local rules now provide a wide variation of experience required of a panel member. Some are silent; in some others, admission to the practice of law is the only criterion. No attempt is made in Rule 1302 to define the criteria by which the broad term "actively engaged" is to be measured. In preparing its lists of available arbitrators, each judicial district will establish its own criteria as to what constitutes active practice. For example, local rules may determine the circumstances under which law school teachers, house counsel, government attorneys, patent lawyers, trust officers of banks or retired lawyers now of counsel or with offices at home will be considered "actively engaged" for purposes of service on arbitration boards.

Subdivision (f) provides for a statutory oath of office. The form is included in Rule 1312.

The Rule does not consider what should happen if the arbitrators fail in their duty, for example, in not calling a meeting, in mishandling the hearing, or in not filing the award promptly. The Committee was of the opinion that members of the bar will obey their own rules and will not prejudice their compensation, and that there was no need for the Supreme Court to provide specific regulations in this area.

Where the arbitrators fail to call a meeting or mishandle the hearing, the court has inherent power to remove them and direct that a new panel be appointed. If the arbitrators fail to file their award, the court can order them to do so.

Since there is complete disciplinary power over members of the bar, the Committee doubts that such questions will ever arise. They need not be mentioned in these Rules.

Rule 1303. Hearing. Notice

(a) The procedure for fixing the date, time and place of hearing before a board of arbitrators shall be prescribed by local rule, provided that not less than thirty days' notice in writing shall be given to the parties or their attorneys of record.

Note: See Rule 248 as to shortening or extending the time for the giving of notice.

(b) When the board is convened for hearing, if one party is ready and the other is not the case shall proceed and the arbitrators shall make an award unless the court orders a continuance.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

Subdivision (a). Existing local rules now provide a wide variety of procedures as to notice, place, and time of hearing. In some counties the prothonotaries or the trial list administrators give notice of the hearing. In other counties the chairman of the arbitration board gives notice of both the hearing and the filing of the report and award. In many counties the arbitrators sit in the courthouse. In others, because of the shortage of courtrooms, the arbitrators meet in the chairman's office or that of a member of the board or at the Bar association law library where conference rooms are made available.

Local practice will continue under Rule 1303(a), except for the requirement that not less than thirty days' notice in writing be given of the date of hearing. In exigent circumstances the court, under Rule 248, can extend or shorten the time of notice.

Subdivision (b). A problem frequently encountered in present practice is the failure of a party to appear at the hearing. Present practice does not permit a nonsuit of a non-appearing plaintiff. Indeed a nonsuit would be impractical, since there is no machinery by which a nonsuit could be removed by the arbitrators. Rule 1303(b) provides that if a plaintiff does not appear, the arbitrators shall, unless the court has ordered a continuance, proceed to enter an award. Similarly, if a defendant does not appear, and the court has not ordered a continuance, the arbitrators proceed to hear the matter and enter an award. The remedy for dissatisfaction with the award is to appeal.

As a matter of professional courtesy, one party appearing when the other party does not might not wish to proceed without a further opportunity for opposing counsel to explain his absence. This poses a delicate question. The arbitrators are given no power to grant continuances. Only the court may do so, under Rule 1303(b). Although under Rule 1304(b) the arbitrators may "adjourn an uncompleted hearing from day to day," adjournment of a hearing that has never begun is in effect a continuance. Nor is a request of counsel for a continuance as a courtesy to his opponent sufficient to permit the arbitrators to continue the matter. Perhaps one solution would be for counsel to ask the arbitrators to pass the case temporarily to give him time to move the court for a continuance.

Local rules may regulate this problem, but must do so with great care so as to provide that it is the court, and not the arbitrators, that controls the progress of the case.

Rule 1304. Conduct of Hearing. Generally

(a) Except as otherwise prescribed by these rules, the board of arbitrators shall conduct the hearing in conformity with Rule 1038(a). A voluntary nonsuit may be taken by a plaintiff as permitted by Rule 230. If the plaintiff fails to appear or if, at the conclusion of the plaintiff's case, the board deems the evidence insufficient to support an award in favor of the plaintiff, it shall enter an award in favor of the defendant. If the board does not do so, the defendant may proceed to offer evidence.

(b) The board shall have the power to administer oaths or affirmations to witnesses and to adjourn an uncompleted hearing from day to day.

(c) A stenographic record or a recording of the hearing shall not be made unless a party does so at his own expense. If a party has a stenographic record or a recording made, he shall upon request furnish a copy to any other party upon payment of a proportionate share of the total cost of making the record or recording.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

Subdivision (a) codifies the present practice that compulsory nonsuits are not permitted. Instead, if the plaintiff does not appear, the arbitrators should enter an award for defendant. If the plaintiff appears but at the conclusion of his evidence fails to prove a case, the arbitrators without hearing the defendant shall likewise enter an award for the defendant. Subdivision (a) permits an appearing plaintiff to prevent this by taking a voluntary nonsuit under the circumstances permitted by Rule 230. Section 25 of the Act of 1836, as amended, 5 P.S. § 73, permitted a plaintiff upon appeal to suffer a nonsuit if the special circumstances of the case permitted. It did not permit a nonsuit before the arbitrators. In most situations a voluntary nonsuit before arbitrators would have no practical value and would be fatal if the statute of limitations has run. An appeal and trial de novo would give plaintiff all the relief he needed.

The reference to the procedure in non-jury cases under Rule 1038(a), except as otherwise provided by the Rules, should be sufficient as a standard for the conduct of the hearing. The only special provisions for the hearing are those in Rule 1305, discussed *infra*.

The Act of 1836, as amended, 5 P.S. § 121 VI, gave the arbitrators power to issue subpoenas and attachments against nonappearing witnesses. This power is not included in Rule 1304. Subpoenas and attachments may be issued only by the court. The Act of 1836 and the Act of February 24, 1847, P.L. 153, 5 P.S. § 128, authorized the arbitrators to require either party to produce books, papers and documents they deem material to the case. This is essentially a subpoena *duces tecum*, which should be issued by the court. This power will not be continued under these Rules.

Subdivision (c) states a general rule that the hearing is to be held without a transcript and neither party may require the arbitrators to order one. On the other hand,

any party, on his own, may make a recording or a transcript of the proceedings but must give a copy to his opponent upon payment of a proportionate share of the total cost. This follows substantially present practice under Section 40 of the Act of 1836, as amended, 5 P.S. § 121 VI, and many existing local rules. Some local rules have forbidden such transcripts where a party appears, intending to present no witnesses but only to use the proceedings for discovery purposes. Such local rules will no longer be permissible. Whether they ever were is debatable. The Rule sets the matter at rest.

Rule 1305. Conduct of Hearing. Evidence.

(a) Except as prescribed by this rule, the rules of evidence shall be followed in all hearings before arbitrators. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by a majority of the board.

(b) If at least twenty days' written notice of the intention to offer the following documents in evidence was given to every other party accompanied by a copy of the document, a party may offer in evidence, without further proof,

(1) bills, records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers,

(2) bills for drugs, medical appliances and prostheses,

(3) bills for or written estimates of value, damage to, cost of repair of or loss of property, and

(4) a report of rate of earnings and time lost from work or lost compensation prepared by an employer.

Any other party may subpoena the person whose testimony is waived by this rule to appear at the hearing and any adverse party may cross-examine him as to the document as if he were a witness for the party offering the document.

(c) A written estimate of value, damage to, cost of repair of or loss of property shall be accompanied by a statement of the party offering it whether the property was repaired and, if it was, whether the repairs were made in full or in part and by whom, together with the bill therefor.

(d) A party may offer in evidence, without the certification required by Sections 5328 and 6103 of the Judicial Code, an official weather or traffic signal report or a standard United States Government life expectancy table. A party may also offer any other official record kept within the Commonwealth without such certification if the provisions of subdivision (b) are followed.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

Subdivision (a) requires, with certain exceptions set forth in subdivisions (b) and (c), that the rules of evidence shall be followed at the hearing. It also settles the problem of whether the chairman of the board or the members of the board as a whole rule on objections. Existing local practice is not uniform. Subdivision (a) provides that rulings shall be made by a majority of the board. Experience suggests that this Rule may lead to easier acceptance of the fairness of rulings.

Subdivision (b) relaxes the rules of evidence as to the introduction of certain types of written evidence. It is not necessary to produce a witness to identify or authenticate a bill, record or report of a hospital, a doctor, a nurse, a therapist or some other licensed health provider. The document will speak for itself as to its authenticity, subject of course to objection to its relevance or any other objection to its admissibility other than authenticity. The same rule applies to a bill for drugs, medical appliances and prostheses, a written estimate of the value, damage, cost of repair or loss of property, or a report of lost compensation prepared by an employer. To take advantage of this relaxation of proof, the proponent must give the opponent at least twenty days' advance notice prior to the date of hearing, accompanied by copies of the bills, records, reports or estimates to be introduced. This is an expansion of the procedure of Rule 1047(b), which as been in effect since 1958.

If the party receiving such copies wishes to cross-examine the person who prepared the document, he must subpoena that person to appear at the hearing. It should be noted that none of the various documents specified in subdivision (b) need contain a certification that they are correct and that the charges are fair and reasonable. Such a certification seems of minor importance in the case of health care providers, medical expenses and employers' reports of lost compensation.

Subdivision (c), however, requires that a written estimate of value, damage to, cost of repair or loss of property must be accompanied by a statement of the party offering it whether the repairs were made and, if so, whether made in full or in part. This information becomes important in property damage cases, especially where the issue concerns the problem of total loss or salvage value and whether the cost of repairs might exceed market value at the time of loss.

The foregoing provisions of subdivisions (b) and (c) apply, of course, only to documents which are prepared by a person who is within the subpoena power of the court in which the action is pending. The special relaxation of the rules of evidence is conditioned on the power of the opponent to subpoena the person whose testimony is waived; if that is not possible, for territorial or other reasons, the foundation for the special rule disappears, and the proponent must follow the normal rules of evidence.

Subdivision (d) provides a different special rule, relating to a limited group of official documents. All official documents, whether domestic or foreign, are subject to special rules of proof. Sections 5328, 6103 and 6104 of the Judicial Code provide the general techniques evidencing the content of an official domestic or foreign record, or the lack of any record. Those sections apply to arbitration proceedings as well as to trials with or without jury.

Subdivision (d) effects a minor modification of these sections in arbitration hearings. The certification otherwise required by the Judicial Code will be waived in the case of an official weather report, an official traffic signal report and a standard United States Government life expectancy table. If the document is on an official form or in an official publication, it may be offered without certification and without any territorial limitation. The weather report may be from Arizona or Switzerland; the traffic signal report may be from California or Paris. The subpoena provision of subdivision (b) will not apply to this narrow group of documents.

In addition to these particular documents, subdivision (d) permits the offer of any official document kept within the Commonwealth without the certification of the Judicial Code, provided the proponent gives the notice provided in subdivision (b) and provided the opponent has the privilege of issuing a subpoena to the person who prepared the document. This will have practical value to the proponent in reducing the burden and expense of certification, and the official nature of the document should minimize the risk of misuse or forgery. This special privilege is, of course, inapplicable if the document is located outside the Commonwealth. In that case the formal certification will always be required under Sections 5328 and 6103 of the Judicial Code.

Rule 1306. Award

The board shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief and shall be substantially in the form set forth in Rule 1312. If damages for delay are awarded under Rule 238, the amount shall be separately stated. The award shall be signed by the arbitrators or a majority of them. A dissenting vote without further comment may be noted thereon. The award shall be filed with the prothonotary immediately after it is signed.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

This Rule governs the form of an award and its signing and filing. It makes no change in present practice except as to the time for filing. Section 20 of the Act of 1836, 5 P.S. § 51, had provided for transmittal to the prothonotary within seven days after the arbitrators agreed upon their award. The Rule requires an award to be made "promptly" and does not fix a specific number of days. In practice, most arbitrators arrive at their award almost immediately after the conclusion of the testimony and summing up or argument, if any, of the parties. Where, however, the arbitrators feel that research may be needed on legal points submitted, they should have this opportunity, but should not use this as an excuse for delaying their decision.

No specific time period is provided for filing. In the light of experience with the seven-day provision of Rule 1038(c), fixing deadlines for judges is not a practical exercise. This applies equally to arbitrators. The court can correct or control dilatory conduct.

The form of the award is specified in Rule 1312. Normally, it will be nothing more than a general finding for the successful party and a statement of the damages, if any.

Rule 1306 recognizes the requirement of Rule 238 that arbitrators shall separately add damages for delay where applicable. This creates a problem of fairness to the parties. The existence of such damages will depend on whether a written offer of settlement was made by the defendant and how that offer compares mathematically with the amount of the award. Clearly, the arbitrators should arrive at their basic award without knowledge of any pretrial offer. Knowledge of the offer may be presumptively prejudicial to the defendant. A number of solutions have been proposed. There could be a split hearing, with the second phase to follow the basic award if the plaintiff claims damages for delay. An alternative, to avoid a second hearing, is to submit a "sealed envelope" setting forth the offer and its date, not to be opened by the arbitrators until they have reached their basic award. For the time being at least, the procedure is left to local rule.

Rule 1307. Award. Docketing. Notice. Lien. Judgment. Molding the Award

(a) The prothonotary shall

(1) enter the award of record upon the proper docket and in the judgment index;

(2) immediately send by ordinary mail a copy of the award, with notice of the date and time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal, to each party's attorney of record, or to the party if he has no attorney of record; and

(3) note in the docket the date of mailing the notice.

(b) The award when entered shall be a lien upon the party's real estate, which shall continue during the pendency of an appeal or until extinguished according to law.

Note: Subdivision (b) continues the practice under the Act of June 16, 1836, P.L. 715, 5 P.S. § 54, repealed by the Judiciary Act Repealer Act of 1978 (JARA), 42 P.S. § 20002(a)(149).

(c) If no appeal is taken within thirty days after the entry of the award on the docket, the prothonotary on praecipe shall enter judgment on the award.

Note: Subdivision (c) continues the practice under the Act of June 16, 1836, P.L. 715, 5 P.S. § 58, repealed by JARA, and under superseded Rule 247.1.

(d) Where the record and the award disclose an obvious and unambiguous error in the award in mathematics or language, the court, on application of a party within the thirty-day period allowed for appeal, may mold the award to the same extent and with the same effect as the court may mold the verdict of a jury. The filing of such an application shall stay all proceedings including the running of the thirty-day period for appeal until disposition of the application by the court. Any party may file a

notice of appeal within the thirty-day appeal period prescribed by subdivision (a) or within ten days after disposition of the application, whichever is later.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

Subdivision (a) follows present practice under the Act of 1836 with respect to the filing and indexing of the award and its status as a judgment lien. Section 23 of the Act of 1836, 5 P.S. § 53, required the prothonotary to forthwith enter the award of record on the proper dockets. Section 24 of the Act, 5 P.S. § 54, provided that every award so entered shall have the effect of a judgment from the time of entry and shall be a lien upon real estate until reversed on appeal. Under the Act of April 21, 1840, P.L. 449, 5 P.S. §§ 55, 56, it remains a lien for five years as other judgments notwithstanding any appeal which may have been entered. If no appeal is entered, execution may issue under Section 34 of the Act of 1836, 5 P.S. § 58, on the judgment entered on the award. Also, under Section 34.1 of the Act of 1836, 5 P.S. § 58.1, as amended, any party may present the award to the court for approval and upon approval it shall be entitled to full faith and credit as a judicial proceeding under the full faith and credit clause of Article IV, Section 1 of the United States Constitution.

With the repeal of these substantive lien provisions of the Acts of 1836 and 1840, *supra*, Section 1722(b) of the Judicial Code, 42 Pa.C.S. § 1722(b), authorizes the Supreme Court to govern by general rule any void created by the repeal of statutes governing judgments and other orders of a tribunal, the extent of their lien and the manner of their enforcement. Rule 1307 incorporates the general scheme of the repealed legislation.

Subdivision (a)(2) provides that it is the prothonotary's duty to mail copies of the award and notice of the date and time of entry. This will make a change in some judicial districts which require the chairman of the arbitration board to mail the copies and certify to the mailing on the award filed with the prothonotary. The chairman will now submit the award to the prothonotary, who will mail it and record the mailing on the docket.

The prothonotary will include in the notice the amount of the compensation to be paid by the appellant on an appeal. See the form in Rule 1312.

Subdivision (b), as already noted, continues the present practice under the Act of 1836, as amended, and provides that the award shall be a lien and continue as a lien during the pendency of an appeal or until extinguished by law. Although the Act of 1836 provided that the award shall have the effect of a judgment, the courts have described the award as having the effect of a verdict upon which judgment can be entered. See Damon v. Berger, 191 Pa.Super. 165, 155 A.2d 388 (1959); Township of Hampden, Cumberland County, v. Tenny, 32 Pa.Cmwlth. 301, 379 A.2d 635 (1977). This has caused some misconception that an appeal with its right to trial de novo vitiates the effect of the award as a lien. The Rule makes clear that it is not intended to change the effect of the award as a continuing lien during the pendency of an appeal.

Subdivision (c) continues the practice under the Act of 1836 for the entry of judgment on the award, by praecipe, if no appeal is taken within thirty days of entry on the docket.

Subdivision (d) is new. If a judge may mold the verdict of a jury, after the jury has dispersed, to correct obvious and unambiguous errors in language or in mathematics, the judge should have the equivalent power with respect to an award of arbitrators.

These Rules contemplate that the board will disperse after rendering the award, not to reconvene and not to hear any motions or applications to amend, modify or change the award. If any party is dissatisfied with any aspect of the award, the sole remedy is an appeal for a trial de novo.

If the award is unintelligible or ambiguous or unclear or subject to alternative interpretations, an aggrieved party can only appeal. In the rather rare case of a clear error of language or mathematics, obvious on the face of the record and not subject to any ambiguity, for example, misspelling a party's name in the award or miscalculating interest at six percent on a fixed amount for a fixed number of days, and no party wishes to appeal, it is arbitrary to hold that an appeal, and the time and expense of a trial de novo, is obligatory.

Subdivision (d) sets two definite standards. First, the court may not mold the award beyond the extent it could mold it if it were a verdict of a jury. That standard will be found in Chief Justice Maxey's opinion in the leading case of Maize v. Atlantic Refining Co., 352 Pa. 51, 41 A.2d 850 (1945). Second, that standard is further narrowed by limiting it to the specific category of an "obvious and unambiguous error . . . in mathematics or language."

This subdivision should be rarely applicable but, when needed, should be useful to avoid useless and unwanted appeals.

The application to mold the award must be made within the thirty-day period for appeal and it will stay all proceedings, including the running of the appeal time. Upon disposition of the application, a notice of appeal must be filed either within the thirty-day appeal period or within ten days of disposition of the application, whichever is later.

Rule 1308. Appeal. Arbitrators' Compensation. Notice

(a) An appeal from an award shall be taken by

(1) filing a notice of appeal in the form provided by Rule 1313 with the prothonotary of the court in which the action is pending not later than thirty days after the entry of the award on the docket, and

(2) payment to the prothonotary of the compensation of the arbitrators not exceeding fifty percent of the amount in controversy, which shall not be taxed as costs or be recoverable in any proceeding;

provided that the court, in an appropriate case, upon petition may permit the appellant to proceed in forma pauperis.

(b) The appellant shall provide the prothonotary with the required notice for mailing and properly stamped and addressed envelopes. The prothonotary shall give notice to each other party of the taking of the appeal. Failure to give the notice shall not invalidate the appeal.

(c) The appellant shall not be required to post any bond, recognizance or other security or to pay any record costs which have accrued in the action. All record costs shall abide the event.

Note: This rule will supersede Rule 247.1 adopted January 21, 1980. It changes the prior practice with respect to a bond or recognizance and the payment of record costs.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

The form of appeal is simplified by the Rules. A simple notice of appeal substantially in the form prescribed by Appellate Rule 904 is all that is now required. The form appears in Rule 1313. The archaic oath or affirmation that the appeal is not for the purpose of delay but because the affiant firmly believes injustice has been done was abolished by Rule 247.1, effective February 2, 1980, and is not included in the form. Subdivision (c) abolishes the historic practice, mandated by Section 27 of the Act of 1836, of requiring the appellant to pay the costs accrued and to file a bond for further costs to accrue. Failure to pay the costs in full and post the bond as required by Sections 27 and 30 of the Act of 1836 and the Act of March 20, 1945, P.L. 188, 42 P.S. § 921, have been the subject of continual litigation and often resulted in quashing the appeal.

In Oakley, Inc. v. School District of Philadelphia, 464 Pa. 330, 346 A.2d 765 (1975), the Supreme Court reversed previous decisions of the Superior Court holding that the statutory requirement of payment of costs was discretionary and not mandatory. Oakley held that the statutory requirements for the perfecting of an appeal are jurisdictional and mandatory, unless fraud or some breakdown in the court's operation causes the failure to comply with the statutory requirements. It therefore remanded to permit the lower court to determine whether the prothonotary's docket notation of the costs had been so confusing and misleading that it led to a $10 underpayment.

There were many decisions on the effect of defects in the bond on the validity of the appeal.

The abolition of payment of accrued costs and the filing of bond will relieve the courts of much litigation without substantial impairment of the rights of litigants. The amount of accrued costs is in most cases not significant and if a monetary award is made and the losing party owns real estate, the award will constitute a lien continuing during pendency of appeal. The abolition of these prerequisites should not substantially increase the number of appeals.

The effect of this will be that payment of the compensation of the arbitrators will be the only financial burden on the appeal, other than the filing fee, if any, which may be established by legislation or general rule. The provision of subdivision (a)(2) as to repayment of arbitrators' fees follows prior practice without change.

The thirty-day period for appeal prescribed by subdivision (a)(1) follows the directive of Rule 247.1 and Sections 7361(d) and 5571 of the Judicial Code. Rule 247.1 is no longer needed and is rescinded.

Subdivision (a) also contains a concluding clause confirming the power of the court to permit the appellant to proceed in forma pauperis, namely, without prepaying the compensation of the arbitrators or paying the filing fee, if any.

Subdivision (b) changes prior practice under existing local rules which require the appellant to serve a copy of the appeal on all other parties to the action. It requires the prothonotary to give the notice, which the appellant must furnish him, postage prepaid.

Subdivision (b) settles the problem of whether failure of an appellant to give notice of the appeal required by a local rule warrants the dismissal of the appeal with prejudice. Mikita v. Bailey Homes, Inc., 265 Pa.Super. 399, 401 A.2d 1367 (1979), upheld the power of a local court to promulgate such a rule. Subdivision (a)(3) now prescribes that failure to give the notice shall not invalidate the appeal. Local rules to the contrary are no longer applicable.

In addition to the right of appeal de novo, Section 26 of the Act of 1836, 5 P.S. § 57, provided for setting aside an award if the arbitrators misbehaved or the award was obtained by corruption or other undue means. The Act did not place any time limit on the filing of the petition, but many local rules which incorporated Section 26 of the Act of 1836 provided the same time limit as the time for appeal. This raised problems if both an appeal and a petition to set aside the award were filed within the time for appeal. In Township of Hampden, Cumberland County v. Tenny, 32 Pa.Cmwlth. 301, 379 A.2d 635 (1977), the court held that dismissal of the petition to set aside the award was interlocutory and in effect was made moot by the appeal for trial de novo.

The Rules do not continue the practice of petitioning to set aside an award for corruption or misbehavior. Hearings or depositions on the petition proceedings could delay the proceedings. Rule 1311(b) creates quasi-judicial immunity for the arbitrators with respect to their official actions and they cannot be called to testify. As a practical matter, if the fraud or corruption were proved, remand and the appointment of a new panel could be the only relief. Trial de novo is preferable since it expedites the proceedings. The court would, of course, have power to punish the attorney-arbitrators involved for any professional misconduct that could be proved.

Rule 1309. Parties to Appeal

An appeal by any party shall be deemed an appeal by all parties as to all issues unless otherwise stipulated in writing by all parties.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

This Rule will end the interminable litigation as to when an appeal by one party inures to the benefit of one or more other parties to the action. The courts developed a set of rules, based on the perceived intention of the appellant and depending on who wins, who loses and who appeals. Judge Price, in Mitchell v. City of Pittsburgh, 233 Pa.Super. 119, 335 A.2d 403 (1975), found the decisions

so confusing that he proposed a simple rule that an appeal by any party will be an appeal by all parties as to all issues. Rule 1309 adopts this approach. The only exception is when all parties stipulate the contrary in writing.

Rule 1310. Discontinuance

No appeal may be discontinued except by leave of court after notice to all parties or upon the filing of the written consent of all parties.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

This Rule incorporates the policy of Section 33 of the Act of 1836, 5 P.S. § 81, that an appeal may not be withdrawn by the prothonotary without the consent in writing of the opposite party.

It makes the stylistic change of substituting "discontinued" for "withdrawn" to conform to Rule 229. It also provides for approval of discontinuance by the court after notice, where all other parties will not agree to the discontinuance.

Rule 1311. Procedure on Appeal

(a) The trial shall be de novo.

Note: The provisions of Rule 1305 governing conduct of hearing shall not apply on appeal.

(b) An arbitrator may not be called to testify as to what transpired before the arbitrators.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

The Rule makes no change in present practice. Subdivision (a) prescribes that a trial is de novo, as provided by former Section 27 V of the Act of 1836, 5 P.S. § 71 V, and continued by Section 7361(d) of the Judicial Code, 42 Pa.C.S. § 7361(d), as amended. The provision of subdivision (b) that arbitrators may not be called to testify as to what transpired before them is now found in most local rules. It confers an appropriate quasi-judicial immunity consistent with the arbitrators' oath.

The Rules make no change in the unlimited right to trial de novo, even if it is charged that a defendant abused the hearing by using it for discovery and without calling any witnesses. The Supreme Court, in Weber v. Lynch, 473 Pa. 599, 375 A.2d 1278 (1977), affirming 237 Pa.Super. 48, 346 A.2d 363 (1975), foreclosed consideration of the matter, holding that the right to trial de novo includes the right "to proceed to trial with no evidentiary limitations." Allegheny County Rule 303 J, which had contained a limiting provision, was invalidated. The repetition by the legislature in the Judicial Code of the de novo trial provision of the Act of 1836 would indicate a legislative approval of the Weber decision.

Rule 1312. Form of Oath, Award and Notice of Entry of Award

The oath, award of arbitrators and notice of entry shall be in substantially the following form:

(Caption)

OATH

We so solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that we will discharge the duties of our office with fidelity.

_____
Chairman

_____

_____

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

(Note: If damages for delay are awarded, they shall be separately stated.)

.....

.....

.....

....., Arbitrator, dissents. (Insert name if applicable.)

Date of Hearing: ....
Chairman

Date of Award: ....

.....

NOTICE OF ENTRY OF AWARD

Now, the ..... day of ....., 19..., at ....., ...M., the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

Arbitrators' compensation to be paid upon appeal: .....
Prothonotary

$ ..... By: .....
Deputy

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

This Rule follows the excellent forms developed in many judicial districts, putting all essential documentation in a single paper, easily reproduced.

It includes the oath or affirmation, with places for signatures; the award, including damages for delay, if any, a note of a dissent, if any, with places for signature; the prothonotary's notice of entry of the award on the docket and the certification of the arbitrators' compensation upon appeal. This last provision is important since compensation varies in many judicial districts.

The form assumes an award in a very few words, simply the name of the victor and the money damages, if any. In a complicated case, a supplementary sheet can be attached

or use made of the reverse side to include additional material.

Rule 1313. Form of Notice of Appeal

(a) The notice of appeal shall be in substantially the following form:

(Caption)

NOTICE OF APPEAL FROM AWARD OF BOARD OF ARBITRATORS

TO THE PROTHONOTARY:

Notice is given that ..... appeals from the award of the board of arbitrators entered in this case on ..... .

A jury trial is demanded ☐. (Check box if a jury trial is demanded. Otherwise jury trial is waived.)

I hereby certify that

(1) the compensation of the arbitrators has been paid, or

(2) application has been made for permission to proceed in forma pauperis. (Strike out the inapplicable clause.)

.....
Appellant or Attorney for Appellant

Note: The demand for jury trial on appeal from compulsory arbitration is governed by Rule 1007.1(b).

(b) No affidavit or verification is required.

Adopted March 16, 1981, effective in 60 days.

Explanatory Note—1981

This form is adapted from Appellate Rule 904(a). It eliminates the statutory form of affidavit, variance from which caused much litigation in prior practice. A place for the demand for jury trial by the appellant (see Rule 1007.1(b)) is provided, as well as notation of compliance with the requirements of Rule 1308(a) respecting payment of the arbitrators' compensation.

The form makes it clear that the appeal may be taken without payment of the arbitrators' compensation if proceedings in forma pauperis have only been requested but not yet authorized. If the application is rejected, the appellant would have to pay the compensation promptly; otherwise the appeal will be quashed.

Rule 1314. Suspension of Acts of Assembly. Abolition of Practice and Procedure under Repealed Statutes

After the effective date of these rules,

(a) all Acts or parts of Acts of Assembly inconsistent with these rules are suspended to the extent of such inconsistency; and

(b) the practice and procedure provided in all former Acts of Assembly governing compulsory arbitration, which have been repealed by the Judiciary Act Repealer Act (JARA), Act of April 28, 1978, No. 53, and which are now part of the common law of the Commonwealth by virtue of Section 3(b) of JARA, are hereby abolished and shall not continue as part of the common law of the Commonwealth.

Adopted March 16, 1981, effective in 60 days.

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PHILADELPHIA CIVIL RULE 180

Rule I. Cases for Submission

(A) All cases including appeals from Municipal Court having an amount in controversy, exclusive of interest and costs, of Twenty Thousand ($20,000) Dollars or less, except those involving title to real estate or actions in equity, shall be assigned to the Arbitration Program of the Philadelphia Court of Common Pleas. *

Rule II. Arbitration Panel Qualifications and Selection

(A) The Deputy Court Administrator for Civil Administration shall select from the respective Court approved lists, panelists and Chairpersons who are members of the Bar and who maintain principal offices in Philadelphia County.

(B) Attorneys not currently enrolled may be eligible for appointment by filing the appropriate form with the Deputy Court Administrator for Civil Administration, certifying all they have tried a civil case in any forum in Pennsylvania, attended the Arbitration Seminar, and engaged in the active practive of law for a minimum of one year subsequent to admission to the Supreme Court of Pennsylvania. Chairpersons must have been engaged in the active practice of law for a period of five years subsequent to admission to the Supreme Court of Pennsylvania.

(C) When the arbitrators are assembled, they shall be sworn or affirmed in accordance with the Judicial Code

* With respect to actions initiated on or before June 5, 1980, the amount in controversy is $10,000 or less unless the parties by written Stipulation agree to the larger amount.

by any person having authority to administer oaths or, in the absence of such person, by one of their number.

Rule III. Conduct of Hearings

(A) Hearings shall be heard in facilities provided by the Philadelphia Court of Common Pleas at times designated by the Deputy Court Administrator.

(B) The Board shall have the general powers of a Court and hearings shall be conducted in accordance with the established rules of evidence, liberally construed to promote justice, including the following:

(1) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.

(2) To receive in evidence without further proof:

(a) bills, records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers.

(b) bills for drugs, medical appliances and prostheses.

(c) bills for or written estimates of value, damage to, costs of repair of or loss of property.

(d) a report of rate of earnings and time lost from work or lost compensation prepared by an employer.

(e) an official weather or traffic signal report or a standard United States Government life expectancy table, and any other official record kept within the Commonwealth without certification if the provisions of subdivision (3) are followed.

(f) expert witness reports.

(3) The above may be received in evidence provided that at least twenty days written notice was given to the adverse party accompanied by a copy of the bill, report or estimate. Property damage bills or estimates must bear a certificate of the maker that it is true and correct and that the charge or charges are fair, reasonable and those customarily charged. Estimates must also include a statement indicating whether the property was repaired and whether the estimated repairs were made in full. A copy of the receipted bill showing the items of repair and the amount paid must be attached.

Any other party may subpoena the person whose testimony is waived by this rule to appear at the hearing and any adverse party may cross-examine him as to the document as if he were a witness for the party offering the documents.

(C) A stenographic record or a recording of the hearing shall not be made unless a party does so at his own expense. If a party has a stenographic record or a recording made, a copy shall be furnished to any other party requesting same upon payment of a proportionate share of the total cost of making the record or recording.

(D) The Supervising Judge for Arbitration and the Arbitration Commissioner shall have full supervisory powers with regard to questions arising in any arbitration proceeding, including the application of these rules.

(E) Witness fees and costs shall be in the same amount and shall be paid by the same party or parties, as provided for in trials in the Philadelphia Court of Common Pleas.

Rule IV. Scheduling

(A) All arbitration cases will be assigned a date and time of hearing at the time the action is commenced. All Arbitration Complaints must state in upper case on the upper right-hand corner of the cover page - "THIS IS AN ARBITRATION CASE".

(B) A hearing date may be advanced by filing a Stipulation with the Arbitration Administrator, which should include the present as well as the proposed new date for the hearing. Absent agreement, a Petition, sworn to by the filing party, may be filed with the Supervising Judge or the Arbitration Commissioner.

Such Petition shall contain the following:

(1) The present hearing date and time.

(2) The proposed hearing date and time.

(3) A concise statement of the reason for advancement.

A copy must be served on opposing counsel within forty-eight hours and opposing counsel may, if desired, answer within five days after service.

(C) The Supervising Judge for Arbitration or the Arbitration Commissioner may grant continuances upon Petition for good cause.

(D) Consolidated actions shall be heard on the date assigned to the latest case involved.

(E) Counsel shall give immediate written notification to the Arbitration Administrator of any settlement of cases or changes of appearance. Failure to do so will result in the imposition of sanctions.

(F) When the Board is convened for hearing if one party is ready and the other is not, the case shall proceed and the arbitrators shall make an award unless the Court orders a continuance.

(G) Except as otherwise prescribed by these Rules, the Board shall conduct the hearing in conformity with Pa.R.C.P. 1038(a). A voluntary nonsuit may be taken by a plaintiff as permitted by Pa.R.C.P. 230. If the plaintiff fails to appear or if at the conclusion of the plaintiff's case, the Board deems the evidence insufficient to support an award in favor of the plaintiff, it shall enter an award in favor of the defendant. If the Board does not do so, the defendant may proceed to offer evidence.

Rule V. Damages for Delay

(A) Arbitrators shall consider the subject of damages for delay after an award has been made.

(B) After said award has been made, the Board shall make a determination as to delay damages in accordance with Pa.R.C.P. 238 by

(1) Accepting a sealed envelope containing a stipulation as to:

(a) whether an offer was made in writing

(b) the amount of the offer

(c) the date of the offer, or

(2) if no stipulation is submitted, the Board shall immediately hear evidence regarding said damages.

(C) If delay damages are awarded, the amount of same shall be added to the principal amount awarded but shall be separately stated on the Report and Award.

Rule VI. Filing the Report and Award

(A) The Report and Award shall be prepared in a form acceptable for entry on the docket and signed by the arbitrators who heard the case. A dissenting vote, without comment, may be noted thereon.

(B) The Prothonotary shall:

(1) Enter the award of record upon the proper docket and in the judgment index.

(2) Immediately send by ordinary mail a copy of the award, with notice of the date and the time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal to each party's attorney of record or to the party if he has no attorney of record; and

(3) note in the docket the date of mailing the notice.

(C) The award when entered shall be a lien upon the party's real estate, which shall continue during the pendency of an appeal or until extinguished according to law.

(D) If no appeal is taken within thirty days after the entry of the award on the docket, the Prothonotary, on praecipe, shall enter the judgment on the award.

(E) Where the record and the award disclose an obvious and unambiguous error in the award in mathematics or language, the court, on application of a party within the thirty-day period allowed for appeal, may mold the award to the same extent and with the same effect as the court may mold the verdict of a jury. The filing of such an application shall stay all proceedings including the running of the thirty-day period for appeal until disposition of the application by the court. Any party may file a notice of appeal within the thirty-day appeal period prescribed by subdivision (B) or within ten days after disposition of the application, whichever is later.

Rule VII. Compensation of Arbitrators

(A) All arbitrators, whether panel members or Chairpersons, shall be compensated at the rate of $200.00 per diem or $100.00 if the arbitrator serves for one-half day.

Rule VIII. Appeals

(A) An appeal from an award shall be taken by:

(1) filing a notice of appeal with the Prothonotary not later than thirty days after the entry of the award on the docket;

(2) payment to the Prothonotary of the compensation of the arbitrators in the amount of $200.00 which shall not be taxed as costs or be recoverable in any proceeding; provided that the court, in an appropriate case, upon petition may permit the appellant to proceed in forma pauperis.

(B) The appellant shall provide the Prothonotary with the required notice for mailing with properly stamped and

addressed envelopes. The Prothonotary shall give notice to each other party of the taking of the appeal; however failure to give such notice shall not invalidate the appeal.

(C) The appellant shall not be required to post any bond, recognizance or other security or to pay any record costs which have accrued in the action. All record costs shall abide the event.

(D) An appeal by any party shall be deemed an appeal by all parties as to all issues unless otherwise stipulated in writing by all parties.

(E) No appeal may be discontinued except by leave of court after written notice to all parties or upon the filing of the written consent of all parties.

(F) The trial shall be de novo.

(G) An arbitrator may not be called to testify as to what transpired before the arbitrators.

Rule IX. Disqualification of a Board Member

(A) Not more than one member or associate of a firm or association of attorneys shall be appointed to the same board.

(B) A member of a Board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as an arbitrator.

(C) Any issue concerning disqualification of an arbitrator shall be referred to the Supervising Judge and/or the Arbitration Commissioner for determination.

These Rules shall be effective as to all cases commenced on or after May 4, 1981. Cases commenced before that date shall be governed by the prior Philadelphia Rules as amended and supplemented effective May 16, 1981 by the Rules promulgated by the Supreme Court of Pennsylvania.

PHILADELPHIA'S COMPULSORY ARBITRATION PROGRAM

One of the main causes of court case congestion is the number of negligence or trespass actions arising from automobile accidents. It used to be common for civil cases in this category to take more than six years to come to trial. During this long period, there was no relief for plaintiffs who, out of economic necessity, often settled out of court for much less than they were due.

On the other hand, defendants - usually insurance companies for uninsured motorists and utilities - protested that they had to set up huge reserve funds and that claimants would add new injury complaints in the interim.

Compulsory Arbitration provided the solution.

Although not a new idea, the Philadelphia Arbitration System has evolved to become nationally recognized as the premier program of its kind. This distinction is the result of a radical revision by Common Pleas Court President Judge Edward J. Bradley in December, 1981. Space was acquired for a centralized Arbitration Center on the twentieth floor of 1234 Market Street. This initial step represented a tremendous improvement in the provision of prompt service for civil litigants.

At the time the Arbitration Center was opened, the Philadelphia program was cited by United States Chief Justice Warren Burger in his annual State of the Judiciary Address as an example for other major jurisdictions to emulate. Since that time, numerous requests for information are received, as well as on-site visits, from court systems throughout the United States and other parts of the world.

A brief explanation of the workings of the program would serve to illustrate its present success. Suits in arbitration are commenced in the same manner as in other cases by filing with the Prothonotary of the Philadelphia Court of Common Pleas. All claims involving $20,000 or less are automatically assigned to the Arbitration Program. Only cases involving title to real estate and actions in equity are excluded by law. Each case is then heard and decided by a panel of three lawyer-arbitrators. Their majority decision on the award amount, unless appealed, has the same effect as if it were determined by a judge and jury. Arbitrators are lawyers who have been certified by the Court as experienced in the handling of civil litigation. They are chosen from a list of volunteer members of the Philadelphia Bar Association by alphabetic rotation. Arbitrators are compensated at the rate of $200 per day, or $100 for a half day, regardless of the number of cases assigned to the panels. At the conclusion of their daily service, they are paid immediately.

Prior to the establishment of the centralized Arbitration Program, hearings were held in individual law offices throughout the city. Arbitrators attempted to fix hearing dates at the convenience of opposing attorneys and, frequently, cases were delayed for long periods of time. The Courts heard complaints about the delays which ensued.



President Judge Edward J. Bradley (center) welcomes visitors to the Philadelphia Arbitration Center. The guests are members of the Commonwealth of Kentucky State Legislature and the staff of the Chief Justice of the Commonwealth of Kentucky.

Shown (left to right) are **Kentucky State Senator Edward O'Daniel, Administrative Assistant to the Chief Justice Susan Stokely, President Judge Bradley, Administrative Director of Kentucky State Courts Donald Cetrulo** and **Kentucky State Representative Louis Johnson.**

In marked contrast, the new Arbitration Center facilities are spacious and attractive, and provide an atmosphere of dignity and decorum which aids substantially in the fair and expeditious disposition of cases. There are ten hearing rooms, a listing room, and a courtroom, as well as adequate office space for the administrative staff. The program is structured to accommodate an expanding case volume with little or no increase in resources.

The volume of cases processed by arbitration has drastically increased from approximately 7200 cases in 1958 to over 25,000 in 1983. However, the number of arbitrators has not increased proportionately. In 1958 there were about 2500 arbitrators compared to about 3500 in 1983.

The present system offers additional advantages. Attorneys and litigants are given time and date within eight months of the date a suit is filed. This fact alone increases the likelihood of a large percentage of cases to settle prior to the actual hearing date.



The Supervising Judge of the Arbitration Program, Hon. Ethan Allen Doty (right) retains full supervisory powers over questions related to the rules of evidence and conduct of the hearings. The Arbitration Administrator, Mary Alleva, supervises staff, notifies attorneys of their assignments as arbitrators and oversees the daily assignment of cases.

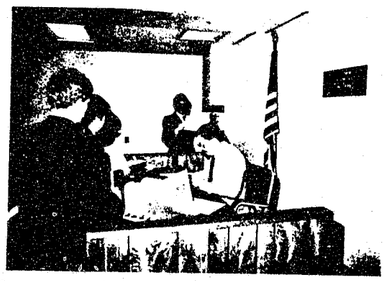
The Center has resulted in savings in excess of $450,000 per year in arbitrators' fees because, without additional compensation, they promptly receive substitute cases to hear when scheduled cases are settled shortly before hearing.



Legal questions are submitted to the **Arbitration Attorney, Ms. Beverly Selnick, Esq.**, who is assigned full-time to the Arbitration Center.

The new system is fully automated from commencement of action through final disposition. Cases are decided and reports and awards are submitted immediately following a hearing, which permits expedited docketing and prompt notification to the parties involved.

The Supervising Judge for Arbitration, Honorable Ethan Allen Doty, is present at the Arbitration Center to decide any legal matters and problems attendant to the program. Under his direction, the staff is supervised by an Arbitration Administrator and legal questions are submitted to the Arbitration Attorney. It should be noted that continuances are kept to a minimum and are for emergency applications only.



Cases are assigned to panels, consisting of three lawyer-arbitrators, at various pre-scheduled times during the day. **Donald R. Smith, Legal Clerk,** handles these assignments in the Listing Assembly Room.

Judge Doty recently remarked that "the Arbitration Program accounts for approximately 70% of all Philadelphia civil cases. Without this program, our Courts would be hopelessly bogged down. The members of the Philadelphia Bar deserve high praise for their cooperation serving as panelists and giving of their valuable time to this most important program."

Despite the abnormally high national inflation rate and a constantly increasing number of cases, the Arbitration Center concept enables disposition within shorter time periods and at a lower cost than was previously possible.



Arbitration Center staff members **Robert Ruess** (standing) and **Donald McAvey** verify sequence of cases ready for arbitration on a daily basis.



An arbitration hearing in progress illustrates three lawyer-arbitrators (left) and attorneys with clients and witnesses.

The efficiency and economy of the Arbitration System in Philadelphia is dependent upon the cooperative atmosphere between the Judiciary and the Bar Association. The willingness of the members of the Bar to devote their time and effort to perform this public service greatly benefits the citizens of Philadelphia in expediting the resolution of smaller claims, while making it possible for the Court System to concentrate on disposing of the larger ones.

While appeal is available with a right to a trial de novo by jury, the success of Philadelphia's Arbitration System is evidenced by a low annual rate of about 8%, with most of these cases settling before going to trial. This reflects the degree of satisfaction with the system by the public, the Philadelphia Bar Association and the insurance industry.



PHILADELPHIA COURT OF COMMON PLEAS

ARBITRATION DISPOSITION REPORT
January through December Terms 1983

ABITRATION CENTER

The Arbitration Center disposed of 26,459 cases during 1983 representing an increase of 8% more dispositions than 1982. The following is an account of those dispositions:

Settlements (more than 3 days prior to hearing)	5,544
Settlements (within 3 days of hearing)	3,910
Judgments / Defaults	4,958
Reports and Awards	7,713
Dismissed by Judicial Order	2,317
Miscellaneous (transferred out of Philadelphia)	2,017
Total	**26,459**

MAJOR / GENERAL CASE SUMMARY
January through December Terms 1983

NEW CASE FILINGS

JURY	NON-JURY	TOTAL
15,900	8,248	24,148

DISPOSITIONS

7,829	4,188	12,017

Disposition Summary

Assumpsit	970
Trespass (Motor Vehicle)	2,569
Trespass (General)	2,143
Equity	538
Miscellaneous	5,797
Total	12,017

WASHINGTON

Chapter 7.06
MANDATORY ARBITRATION OF CIVIL ACTIONS

Sections

7.06.010 Authorization.
7.06.020 Actions subject to mandatory arbitration.
7.06.030 Implementation by supreme court rules.
7.06.040 Qualifications, appointment and compensation of arbitrators.
7.06.050 Decision and award——Appeals——Trial——Final judgment.
7.06.060 Costs and attorney's fees.
7.06.070 Right to trial by jury.
7.06.900 Severability——1979 c 103.
7.06.910 Effective date——1979 c 103.

7.06.010 Authorization. The superior court of a county by majority vote of the judges thereof may authorize mandatory arbitration of civil actions under this chapter. [1979 c 103 § 1.]

7.06.020 Actions subject to mandatory arbitration. All civil actions, except for appeals from municipal or justice courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of ten thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration. [1979 c 103 § 2.]

7.06.030 Implementation by supreme court rules. The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter. [1979 c 103 § 3.]

7.06.040 Qualifications, appointment and compensation of arbitrators. The qualifications and appointment of arbitrators shall be prescribed by rules adopted by the supreme court. Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. [1979 c 103 § 4.]

7.06.050 Decision and award——Appeals——Trial——Final judgment. Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, the clerk shall enter the arbitrator's decision and award as a final judgment in the cause, which shall have the same force and effect as judgments in civil actions. [1979 c 103 § 5.]

7.06.060 Costs and attorney's fees. The supreme court may by rule provide for costs and reasonable attorney's fees that may be assessed against a party appealing from the award who fails to improve his position on the trial de novo. [1979 c 103 § 6.]

7.06.070 Right to trial by jury. No provision of this chapter may be construed to abridge the right to trial by jury. [1979 c 103 § 7.]

7.06.900 Severability——1979 c 103. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 103 § 9.]

7.06.910 Effective date——1979 c 103. This act shall take effect July 1, 1980. [1979 c 103 § 10.]

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WASHINGTON

SUPERIOR COURT MANDATORY ARBITRATION RULES (MAR)

Originally Effective July 1, 1980

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I. SCOPE AND PURPOSE OF RULES

RULE 1.1 APPLICATION OF RULES

These arbitration rules apply to mandatory arbitration of civil actions under RCW 7.06. These rules do not apply to arbitration by private agreement or to arbitration under other statutes, except by stipulation under Rule 8.1.

Judicial Council Comment

A number of statutes authorize arbitration in specific instances. See, e. g., RCW 3.62.070 (justice court filing fee—city and county); 4.56.240 (personal injury damages—annuity payments); 7.70.030 (medical malpractice); 39.04.120 (public works contracts); 39.12.060 (public works contracts); 41.56.450 (collective bargaining by uniformed personnel); 49.66.090 (health care activities); 59.18.320 (landlord-tenant disputes); 77.12.280 (damages caused by game). The rules do not apply to arbitration under these specialized statutes.

The rules do not apply to arbitration by private agreement except when the parties stipulate to arbitration under these rules of a case which would not otherwise be subject to arbitration under RCW 7.06.

These rules do not restrict voluntary methods of settlement such as mediation.

RULE 1.2 MATTERS SUBJECT TO ARBITRATION

A civil action, other than an appeal from a court of limited jurisdiction, is subject to arbitration under these rules if the action is at issue in a superior court in a county which has authorized mandatory arbitration under RCW 7.06, if the sole relief sought is a money judgment, and if (1) no party asserts a claim in excess of $10,000, exclusive of attorney's fees, interest and costs, or if (2) all parties for purposes of arbitration waive claims in excess of $10,000, exclusive of attorney's fees, interest and costs. Other matters may be arbitrated under these rules only by stipulation under Rule 8.1.

Judicial Council Comment

The rule, up through subdivision (1), parallels RCW 7.06.020. A second provision is added allowing arbitration if all parties waive claims in excess of $10,000 for purposes of arbitration. Thus, for example, a plaintiff who could potentially be awarded more than $10,000 may choose to limit the claim to $10,000 in order to qualify for arbitration. Neither provision restricts the assertion of larger claims upon a trial de novo in superior court. A trial de novo is available, however, only to an aggrieved party. Thus, if the plaintiff asserts a claim for $10,000 and is awarded that amount by the arbitrator, the plaintiff is not entitled to a trial de novo under Rule 7.1. The plaintiff would be entitled to a trial de novo only if the arbitrator's award were less than the amount claimed by the plaintiff.

Reference is made to Rule 8.1, allowing parties to arbitrate by stipulation in cases not otherwise within the statute.

RULE 1.3 RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES

(a) Superior Court Jurisdiction. A case filed in the superior court remains under the jurisdiction of the superior court in all stages of the proceeding, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the court.

(b) Which Rules Apply. Until a case is assigned to the arbitrator under Rule 2.3, the rules of civil procedure apply. After a case is assigned to the arbitrator, these arbitration rules apply except where an arbitration rule states that a civil rule applies.

Judicial Council Comment

Rule 1.3 disengages the court from the arbitration process to the extent feasible. The court, after assignment of a case to the arbitrator, will not ordinarily entertain procedural motions, receive

papers for filing, or the like. The case is, for all practical purposes, in the hands of the arbitrator until entry of the award.

The court will intervene in the arbitration process only under the most exceptional circumstances. In most instances, a trial de novo under Rule 7.1 or a motion to vacate under Rule 7.2 will provide an adequate safeguard against an unjust result from arbitration. See also the comment to Rule 3.2.

II. TRANSFER TO ARBITRATION AND ASSIGNMENT OF ARBITRATOR

RULE 2.1 TRANSFER TO ARBITRATION

The point at which a case is transferred to arbitration and the procedures for accomplishing the transfer to an arbitration calendar shall be established by local rule adopted in accordance with Rule 8.2.

RULE 2.2 COURT MAY DETERMINE ARBITRABILITY

(a) Generally. The court may, on its own motion or on motion of a party, determine whether a case is actually subject to arbitration under RCW 7.06.020 and Rule 1.2 and may accordingly order a case transferred to or from the arbitration calendar. Only in extraordinary circumstances after a case has been assigned to an arbitrator under Rule 2.3 will the court order a case returned from the arbitration calendar to the trial calendar.

(b) Effect on Right to Appeal. If a party asserts a claim which disqualifies a case for arbitration but the court nevertheless orders a transfer to arbitration under section (a), any party is deemed aggrieved under Rule 7.1 if the arbitrator awards less than the party's original claim.

Judicial Council Comment

The court may determine whether a case should be arbitrated under Rule 1.2 and the underlying statute. Thus, for example, if frivolous equitable claims or exaggerated damages are asserted for the sole purpose of avoiding arbitration, the court might order the case transferred to arbitration if the case is otherwise eligible for arbitration.

The second sentence of Rule 2.2 reflects the belief that the court should intervene in the arbitration process only under exceptional circumstances. Any party to the arbitration who has asserted a disqualifying claim and has been awarded less than the claimed amount is an "aggrieved party". See also the comments to Rules 1.3 and 3.2.

RULE 2.3 ASSIGNMENT TO ARBITRATOR

(a) Generally. The parties may select an arbitrator by stipulation. If an arbitrator is not chosen by stipulation within 14 days after a case has been placed on the arbitration calendar, the court shall promptly select an arbitrator and notify the arbitrator and the parties of the assignment. The case is deemed assigned for purposes of Rule 1.3 upon the final selection of the arbitrator under this rule.

(b) Communication with Potential Arbitrator Restricted. The restrictions on communication defined by Rule 4.1 apply to communication with a person under consideration as a possible arbitrator in a case.

Judicial Council Comment

Rule 2.3 leaves most of the details of the assignment procedure to be developed by local rule. By local rule, for example, an arbitrator might be selected from a panel on the basis of special expertise or experience. It is expected that by local rule each party will have one opportunity to object to an arbitrator selected by the court, paralleling the opportunity to object to the judge assigned to a trial. Other methods of selection and objection may also be developed locally.

The authority of the arbitrator to act does not arise until the case is assigned to a specific arbitrator and any disputes over the assignment are settled. See Rule 1.3.

III. ARBITRATORS

RULE 3.1 QUALIFICATIONS

Unless otherwise ordered or stipulated, an arbitrator must be a member of the Washington State Bar Association who has been admitted to the bar for a minimum of five years, or who is a retired judge. The parties may stipulate to a non-lawyer arbitrator.

To qualify as an arbitrator, a person must sign and file an oath of office, either to serve in a particular case, or as a member of a panel of arbitrators.

Judicial Council Comment

The rule requires arbitrators to be lawyers unless otherwise ordered or stipulated. Membership in the Washington State Bar Association is required and assures the ability to discipline an arbitrator who acts improperly. Both active and inactive members qualify under the rule.

RULE 3.2 AUTHORITY OF ARBITRATORS

An arbitrator has the authority to:

(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to the qualifications of an arbitrator;

(2) Invite, with reasonable notice, the parties, to submit trial briefs;

(3) Examine any site or object relevant to the case;

(4) Issue a subpoena under Rule 4.3;

(5) Administer oaths or affirmations to witnesses;

(6) Rule on the admissibility of evidence under rule 5.3;

(7) Determine the facts, decide the law, and make an award;

(8) Perform other acts as authorized by these rules or local rules adopted and filed under Rule 8.2.

Judicial Council Comment

An arbitrator may exercise the authority conferred by Rule 3.2 only after the case is assigned to a specific arbitrator and any disputes over the assignment are settled. See Rules 1.3 and 2.3. After the case is assigned to an arbitrator, the superior court retains jurisdiction but will intervene in the arbitration process only under the most exceptional circumstances. The court, for example, might entertain a challenge to the qualifications of an arbitrator on grounds which could not reasonably be discovered prior to the assignment of the arbitrator to the case.

Neither the rule nor the underlying statute authorizes the arbitrator to award witness fees or other costs. Costs are not awarded until entry of the judgment on the award.

IV. PROCEDURES AFTER ASSIGNMENT

RULE 4.1 RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES

No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator except in the presence of, or on reasonable notice to, all other parties.

Judicial Council Comment

The Code of Professional Responsibility also restricts ex parte communication between counsel and an arbitrator.

RULE 4.2 DISCOVERY

After the assignment of a case to the arbitrator, a party may demand a specification of damages under RCW 4.28.360, may request from the arbitrator an examination under CR 35, may request admissions from a party under CR 36, and may take the deposition of another party, unless the arbitrator orders otherwise. No additional discovery shall be allowed, except as the parties may stipulate or as the arbitrator may order. The arbitrator will allow discovery only when reasonably necessary.

Judicial Council Comment

Before assignment of a case to an arbitrator, discovery is allowed to the full extent authorized by the civil rules. In determining the extent of discovery, the arbitrator should consider the amount in controversy and the nature of the case.

RULE 4.3 SUBPOENA

In accordance with CR 45, a lawyer of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing. A subpoena for discovery purposes may be issued only with the permission of the arbitrator or by stipulation.

Judicial Council Comment

Rule 4.3 allows an arbitrator to issue a subpoena regardless of whether the arbitrator is a lawyer.

V. HEARING

RULE 5.1 NOTICE OF HEARING

The arbitrator shall set the time, date, and place of the hearing and shall give reasonable notice of the hearing date to the parties. Except by stipulation or for good cause shown, the hearing shall be scheduled to take place not sooner than 21 days, nor later than 63 days, from the date of the assignment of the case to the arbitrator. The hearing shall take place in appropriate facilities provided or authorized by the court.

Judicial Council Comment

The rule follows the current practice of defining time limits in multiples of seven days. This approach allows time to be computed by the week and ordinarily results in the due date falling on a business day.

MAR 5.1 RULES FOR SUPERIOR COURT

The last sentence of the rule authorizes a court to allow, by local rule, hearings in facilities other than the courthouse.

RULE 5.2 PREHEARING STATEMENT OF PROOF

At least 14 days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a statement containing a list of witnesses whom the party intends to call at the arbitration hearing and a list of exhibits and documentary evidence. The statement shall contain a brief description of the matters about which each witness will be called to testify. Each party, upon request, shall make the exhibits and other documentary evidence available for inspection by other parties. A party failing to comply with this rule, or failing to comply with a discovery order may not present at the hearing the witness, exhibit, or documentary evidence required to be disclosed or made available, except with the permission of the arbitrator.

RULE 5.3 CONDUCT OF HEARING

The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the facts, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. A witness shall be placed under oath or affirmation by the arbitrator prior to presenting testimony, a violation of which oath shall be deemed a contempt of court in addition to any other penalties that may be provided by law. The arbitrator may question a witness. The extent to which the Evidence Rules will be applied shall be determined in the exercise of discretion of the arbitrator.

Judicial Council Comment

The first sentence is adapted from Evidence Rule 611(a).

RULE 5.4 ABSENCE OF PARTY AT HEARING

The arbitration hearing may proceed, and an award may be made, in the absence of any party who after due notice fails to participate or to obtain a continuance. If a defendant is absent, the arbitrator shall require the plaintiff to submit the evidence required for the making of an award. In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award damages against the defendant or defendants who are absent. The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A party who fails to participate without good cause waives the right to a trial de novo.

VI. AWARD

RULE 6.1 FORM AND CONTENT OF AWARD

The award shall be in writing and signed by the arbitrator. The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages. Findings of fact and conclusions of law are not required.

Judicial Council Comment

Costs are not awarded until entry of a judgment on the award, as in other civil cases.

RULE 6.2 FILING OF AWARD

Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service of a copy on each party. On the arbitrator's application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

Judicial Council Comment

The rule does not authorize the use of an amended award to change the arbitrator's decision on the merits. An amended award may only modify an award in order to correct an inadvertent miscalculation or description, to adjust the award in a matter of form rather than substance, or the like. In general, the grounds for modifying an award under this rule parallel the grounds for modifying an award in voluntary, private arbitration. See RCW 7.04.170.

RULE 6.3 JUDGMENT ON AWARD

If within 20 days after the award is filed no party has sought a trial de novo under Rule 7.1, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

Judicial Council Comment

The judgment on an award is not subject to appellate review. As a practical matter, appellate review is precluded by the lack of a record of the arbitration proceeding. The remedy to correct an error or impropriety in the arbitration proceeding is a trial de novo or a motion to vacate the judgment on the award.

The rule does not restrict appellate review of a judgment following a trial de novo or of a ruling on a motion to vacate.

RULE 6.4 WITNESS FEES AND COSTS

Witness fees and other costs provided for by statute or court rule in superior court proceedings shall be payable upon entry of judgment in the same manner as if the hearing were held in court.

VII. TRIAL DE NOVO

RULE 7.1 REQUEST FOR TRIAL DE NOVO

(a) Service and Filing. Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case. The 20-day period within which to request a trial de novo may not be extended.

(b) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with Rule 8.2 in a manner established by local rule.

Judicial Council Comment

Only an aggrieved party may seek a trial de novo. For an explanation of the relationship between this requirement and the claims originally asserted, see Rule 2.2 and the comment to Rule 1.2.

RULE 7.2 PROCEDURE AT TRIAL

The trial de novo shall be conducted as though no arbitration proceeding had occurred. If tried to a jury, no reference may be made during the trial to the arbitration award, to the fact there had been an arbitration proceeding, or to any other aspect of the arbitration proceeding.

RULE 7.3 COSTS AND ATTORNEY'S FEES

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's posi-

KING COUNTY LOCAL RULES FOR MANDATORY ARBITRATION

I. SCOPE AND PURPOSE OF RULES

RULE 1.1 APPLICATION OF RULES—PURPOSE AND DEFINITIONS

(a) *Purpose.* The purpose of mandatory arbitration of civil actions under RCW 7.06 as implemented by the Mandatory Arbitration Rules is to provide a simplified and economical procedure for obtaining the prompt and equitable resolution of disputes involving claims of $10,000 or less. The Mandatory Arbitration Rules as supplemented by these local rules are not designed to address every question which may arise during the arbitration process, and the rules give considerable discretion to the arbitrator. The arbitrator should not hesitate to exercise that discretion. Arbitration hearings should be informal and expeditious, consistent with the purpose of the statutes and rules.

(b) *"Director" Defined.* In these rules, "Director" means the Director of Arbitration for the King County Superior Court. The appointment of the Director and other administrative matters are addressed in Local Rule 8.6, Administration.

RULE 1.2 MATTERS SUBJECT TO ARBITRATION [no local rule]

RULE 1.3 RELATIONSHIP TO SUPERIOR COURT JURISDICTION AND OTHER RULES—MOTIONS

All motions before the court relating to mandatory arbitration shall be noted on the civil motions calendar in accordance with Local Civil Rule 12, except as otherwise provided in these arbitration rules.

II. TRANSFER TO ARBITRATION AND ASSIGNMENT OF ARBITRATOR

RULE 2.1 TRANSFER TO ARBITRATION

(a) *Statement of Arbitrability.* In every civil case the party filing the note for trial provided by CR 40(a)(1) and Local Civil Rule 40(a)(1) shall, upon the form prescribed by the court, complete a statement of arbitrability.

(b) *Response to a Statement of Arbitrability.* Within 14 days after the note for trial and statement of arbitrability have been served and filed, any party disagreeing with the statement of arbitrability shall serve and file a response to the statement of arbitrability on the form prescribed by the court. In the absence of such response, the statement of arbitrability shall be deemed correct and the non-re-

sponding party shall be deemed to have stipulated to arbitration if the statement of arbitrability provides that the case is arbitrable. If a party asserts that its claim exceeds $10,000 or seeks relief other than a money judgment, the case is not subject to arbitration except by stipulation.

(c) *Failure to File—Amendments.* A party failing to serve and file an original response within the time prescribed may later do so only upon leave of court. A party may amend the statement of arbitrability or response at any time before assignment of an arbitrator or assignment of a trial date and thereafter only upon leave of court for good cause shown.

(d) *By Stipulation.* A case in which all parties file a stipulation to arbitrate under MAR 8.1(b) will be placed on the arbitration calendar regardless of the nature of the case or amount in controversy.

[Amended Sept. 1, 1981.]

RULE 2.2 COURT MAY DETERMINE ARBITRABILITY [no local rule]

RULE 2.3 ASSIGNMENT TO ARBITRATOR

(a) *Generally; Stipulations.* When a case is set for arbitration, a list of five proposed arbitrators will be furnished to the parties. A master list of arbitrators will be made available on request. The parties are encouraged to stipulate to an arbitrator. In the absence of a stipulation, the arbitrator will be chosen from among the five proposed arbitrators in the manner defined by this rule.

(b) *Response by Parties.* Each party may, within 14 days after a list of proposed arbitrators is furnished to the parties, nominate one or two arbitrators and strike two arbitrators from the list. If both parties respond, an arbitrator nominated by both parties will be appointed. If no arbitrator has been nominated by both parties, the Director will appoint an arbitrator from among those not stricken by either party.

(c) *Response by Only One Party.* If only one party responds within 14 days, the Director will appoint an arbitrator nominated by that party.

(d) *No Response.* If neither party responds within 14 days, the Director will appoint one of the five proposed arbitrators.

(e) *Additional Arbitrators for Additional Parties.* If there are more than two adverse parties, at least two additional proposed arbitrators shall be added to the list with the above principles of selection to be applied. The number of adverse parties shall be determined by the Director, subject to review by the Presiding Judge.

Amended Sept. 1, 1981.

III. ARBITRATORS

RULE 3.1 QUALIFICATIONS

(a) *Arbitration Panel.* There shall be a panel of arbitrators in such numbers as the administrative committee may from time to time determine. A person desiring to serve as an arbitrator shall complete an information sheet on the form prescribed by the court. A list showing the names of arbitrators available to hear cases and the information sheets will be available for public inspection in the Director's office. The oath of office on the form prescribed by the court must be completed and filed prior to an applicant being placed on the panel.

(b) *Refusal; Disqualification.* The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the Director immediately if refusing to serve or if any cause exists for the arbitrator's disqualification from the case upon any of the grounds of interest, relationship, bias or prejudice set forth in CJC Canon 3(c) governing the disqualification of judges. If disqualified, the arbitrator must immediately return all materials in a case to the Director.

RULE 3.2 AUTHORITY OF ARBITRATORS

An arbitrator has the authority to:

(a) Determine the time, place and procedure to present a motion before the arbitrator including motions for summary award in a manner generally described in CR 56.

(b) Require a party or attorney advising such party or both to pay the reasonable expenses, including attorney's fees, caused by the failure of such party or attorney or both to obey an order of the arbitrator unless the arbitrator finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The arbitrator shall make a special award for such expenses and shall file such award with the Clerk of the Superior Court, with proof of service of a party on each party. The aggrieved party shall have 10 days thereafter to appeal the award of such expense in accordance with the procedures described in RCW 2.24.050. If within 10 days after the award is filed no party appeals, a judgment shall be entered in a manner described generally under MAR 6.3.

(c) Award attorney's fees as authorized by these rules, by contract or by law.

[Amended Sept. 1, 1981.]

LMAR 4.1 SUPERIOR COURT FOR KING COUNTY

IV. PROCEDURES AFTER ASSIGNMENT

RULE 4.1 RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES [no local rule]

RULE 4.2 DISCOVERY

(a) In determining when additional discovery beyond that directly authorized by MAR 4.2 is reasonably necessary, the arbitrator shall balance the benefits of discovery against the burdens and expenses. The arbitrator shall consider the nature and complexity of the case, the amount in controversy, values at stake, the discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise which may result if discovery is restricted. Authorized discovery shall be conducted in accordance with the civil rules except that motions concerning discovery shall be determined by the arbitrator.

(b) *Discovery Pending at the Time Arbitrator is Assigned.* Discovery pending at the time the case is assigned to an arbitrator is stayed pending order from the arbitrator or except as the parties may stipulate or except as authorized by MAR 4.2.

Amended Sept. 1, 1981.

RULE 4.3 SUBPOENA [no local rule]

V. HEARING

RULE 5.1 NOTICE OF HEARING—TIME AND PLACE—CONTINUANCE

An arbitration hearing may be scheduled at any reasonable time and place chosen by the arbitrator. The arbitrator may grant a continuance without court order. The parties may stipulate to a continuance only with the permission of the arbitrator. The arbitrator shall give reasonable notice of the hearing date and any continuance to the Director.

RULE 5.2 PREHEARING STATEMENT OF PROOF—DOCUMENTS FILED WITH COURT

In addition to the requirements of MAR 5.2, each party shall also furnish the arbitrator with copies of pleadings and other documents contained in the court file which that party deems relevant.

RULE 5.3 CONDUCT OF HEARING—WITNESSES—RULES OF EVIDENCE

(a) *Oath or Affirmation.* The arbitrator shall place a witness under oath or affirmation before the witness presents testimony.

(b) *Recording.* The hearing may be recorded electronically or otherwise by any party or the arbitrator.

(c) *Rules of Evidence, Generally.* The Rules of Evidence, to the extent determined by the arbitrator to be applicable, should be liberally construed in accordance with Local Rule 1.1 (Application of Rules) to promote justice. The parties should stipulate to the admission of evidence when there is no genuine issue as to its relevance or authenticity.

(d) *Certain Documents Presumed Admissible.* The documents listed below, if relevant, are presumed admissible at an arbitration hearing, but only if (1) the party offering the document serves on all parties a notice, accompanied by a copy of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing in accordance with MAR 5.2, and (2) the party offering the document similarly furnishes all other parties with copies of all other related documents from the same author or maker. This rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. The documents presumed admissible under this rule are:

(1) A bill, report, chart, or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead;

(2) A bill for drugs, medical appliances or other related expenses on a letterhead or billhead;

(3) A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid.

(4) A police, weather, wage loss, or traffic signal report, or standard United States government life expectancy table to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(5) A photograph, x-ray, drawing, map, blueprint or similar documentary evidence, to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(6) The written statement of any other witness, including the written report of an expert witness, and including a statement of

opinion which the witness would be allowed to express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury;

(7) A document not specifically covered by any of the foregoing provisions but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the policies and purposes expressed in Local Rule 1.1 and the interests of justice.

(e) *Opposing Party May Subpoena Author or Maker as Witness.* Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross examination.

RULE 5.4 ABSENCE OF PARTY AT HEARING [no local rule]

VI. AWARD

RULE 6.1 FORM AND CONTENT OF AWARD

(a) *Form.* The award shall be prepared on the form prescribed by the court.

(b) *Return of Exhibits.* When an award is filed, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

RULE 6.2 FILING OF AWARD

A request by an arbitrator for an extension of time for the filing of an award under MAR 6.2 may be presented to the Director, ex parte. The Director may grant or deny the request, subject to review by the Presiding Judge. The arbitrator shall give the parties notice of any extension granted.

RULE 6.3 JUDGMENT ON AWARD

(a) *Presentation.* A judgment on an award shall be presented to the ex parte department, by any party, on notice in accordance with MAR 6.3.

VII. TRIAL DE NOVO

RULE 7.1 REQUEST FOR TRIAL DE NOVO—CALENDAR

Every case transferred to the arbitration calendar shall maintain its position on the trial calendar as if the case had not been transferred to arbitration unless in the discretion of the Presiding Judge the trial date is accelerated. A case that has been given a trial date will not lose that date by reason of being transferred to arbitration.

Amended Sept. 1, 1981.

RULE 7.2 PROCEDURE AT TRIAL

The clerk shall seal any award if a trial de novo is requested.

RULE 7.3 COSTS AND ATTORNEY FEES

MAR 7.3 shall apply only to costs and reasonable attorney's fees incurred since the filing of the request for a trial de novo.

Added Sept. 1, 1981.

VIII. GENERAL PROVISIONS

RULE 8.1 STIPULATIONS—EFFECT ON RELIEF GRANTED

If a case not otherwise subject to mandatory arbitration is transferred to arbitration by stipulation, the arbitrator may grant any relief which could have been granted if the case were determined by a judge.

RULE 8.2 LOCAL RULES [no local rule]

RULE 8.3 EFFECTIVE DATE

These rules become effective on October 1, 1980. With respect to civil cases pending on that date, if the case has not at that time received a trial date, or if the trial has been set for later than January 1, 1981, any party may serve and file a statement of arbitrability indicating that the case is subject to mandatory arbitration. If within 14 days no party files a response indicating the case is not subject to arbitration, the case will be transferred to the arbitration calendar. A case set for trial earlier than January 1, 1981, will be transferred to arbitration only on stipulation.

RULE 8.4 TITLE AND CITATION

These rules are known and cited as the King County Superior Court Mandatory Arbitration Rules. LMAR is the official abbreviation.

RULE 8.5 COMPENSATION OF ARBITRATOR

(a) *Generally.* Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. Hearing time and reasonable preparation time are compensable.

(b) *Form.* When the award is filed, the arbitrator shall submit to the Director a request for payment on a form prescribed by the court. The Director shall determine the amount of compensation to

LMAR 8.5 SUPERIOR COURT FOR KING COUNTY

be paid. The decision of the Director will be reviewed by the Presiding Judge at the request of the arbitrator.

RULE 8.6 ADMINISTRATION

(a) The Presiding Judge shall designate a person to serve as Director of Arbitration. The Director, under the supervision of the Presiding Judge, shall supervise arbitration under these rules, and perform any additional duties which may be delegated by the Presiding Judge.

(b) There shall be an administrative committee composed of three judges chosen by the Presiding Judge and three members of the Washington State Bar Association, one each chosen by the Seattle-King County Bar Association, the Washington Association of Defense Counsel, and the Washington State Trial Lawyers' Association. The members of the committee shall serve for staggered three year terms and may be reappointed.

(c) The administrative committee shall have the power and duty to:

(1) Select its chairperson and provide for its procedures;

(2) Appoint the panel of arbitrators provided in Rule 3.1(a);

(3) Remove a person from a panel of arbitrators;

(4) Establish procedures for selecting an arbitrator not inconsistent with the Mandatory Arbitration Rules or these rules;

(5) Review the administration and operation of the arbitration program periodically and make recommendations as it deems appropriate to improve the program.



Mandatory arbitration: is it working?

By Greg Walters, Wayne Blair and Carole Greene

Mandatory arbitration has become a firmly established part of the practice of law in King County over the past two years. On October 1, 1980 the King County Superior Court implemented mandatory arbitration after passage of enabling legislation during the 1979 session. In 1981 the Yakima County Superior Court instituted mandatory arbitration. Following the experience of King County, the Superior Court judges in Pierce County have just recently voted to institute mandatory arbitration. The judges in Multnomah County (Portland), Oregon have done likewise. Currently there are four other Washington jurisdictions seriously considering mandatory arbitration. This article provides a general assessment of the King County arbitration program to determine if the program is meeting its objectives.

Arbitration was introduced into the Superior Court to provide parties, attorneys and the court with a simplified and equitable means of resolving "minor" civil suits in a faster and less costly way. At the same time it was intended to reduce court congestion and delay. For cases not referred to arbitration the program was intended to reduce the delay between requesting a trial date and the trial itself by removing arbitrable cases from the backlog of pending civil suits. For cases referred to arbitration, the program was intended to reduce delay for litigants and attorneys by establishing time limits and streamlining the procedures.

Arbitration was intended to reduce the costs of litigation for everyone involved. The courts and taxpayers were to benefit by resolving cases without judicial involvement, and without the costs of court reporters, bailiffs, clerks and courtrooms. Litigants and the legal community were to accrue savings in arbitration through less reliance on expert testimony, reduced discovery, "relaxed" rules of evidence at the hearing and a generally more expeditious and simplified process.

Program Description

Under the King County mandatory arbitration rules, the process begins when a civil case is "noted for trial". (LMAR2.1). The noting party is required to declare whether or not the case is subject to arbitration. Cases seeking a money judgment of $15,000 or less per claim exclusive of attorney's fees, interest and costs are subject to mandatory arbitration in King County. (LMAR 1.1, as amended). Originally set at $10,000, the limit was raised in June, 1982 to $15,000 by the King County Superior Court following legislative action.

If the case is noted as arbitrable, the other party has 14 days to "respond" and declare that the case is not arbitrable because that party's claim or counterclaim exceeds $15,000 or involves relief other than a money judgment. If there is no negative response, the process automatically moves to the selection of an arbitrator. Cases not arbitrable proceed to trial in the normal manner.

A single arbitrator is selected by stipulation or by means of a strike list. (LMAR 2.3). The parties may stipulate to an arbitrator, including non-attorneys. If there is no stipulation, the parties are sent a list of five proposed arbitrators who are members of the panel of approximately 750 attorneys who have agreed to serve as arbitrators. Arbitrators have previously indicated which types of cases they are willing and believe themselves qualified to hear.

From the list of proposed arbitrators each party may select one or two arbitrators whom he/she prefers to hear the case, and may strike one or two arbitrators whom they prefer not to hear the case. In the event both parties select the same arbitrator, he/she is chosen. Otherwise one of the persons not stricken is assigned as arbitrator.

Normally an arbitrator is appointed 28 days after the case is "noted for trial". At that point, all discovery, including pending discovery ceases. Further discovery, except that authorized as a matter of right by MAR 4.2, is determined by the arbitrator unless the parties stipulate to such discovery. Once the arbitrator is chosen, the case for all practical purposes is in the hands of the arbitrator until entry of the award. (MAR 1.3). The arbitrator sets a hearing date, hears motions concerning discovery or other issues, arranges for a hearing room and handles all communication with the parties.

The arbitrator must schedule the hearing between 21 and 63 days after assignment. (MAR 5.1). However, the case may be continued beyond this time upon showing of good cause to the arbitrator.

The arbitration hearing routinely takes place in the arbitrator's offices, although the Superior Court does maintain a hearing room for these purposes. The procedure at the hearing generally follows that of a trial, but is more informal.

Within two weeks after the hearing, the arbitrator makes a ruling and provides a written award to the parties. The award must be in writing, though it need not include findings of fact or conclusions of law. (MAR 6.1).

The parties have 20 days after the award is filed to request a trial de novo. (MAR 7.1). If a trial de novo is requested, the case normally proceeds to trial within 45 to 60 days of the filing of the request. The party who appeals (requests a trial de novo) must improve his or her position at trial or pay the attorney's fees of the other party incurred since the appeal. (MAR 7.3). The trial judge makes the determination as to whether the appellant improved its position.

If no trial de novo is requested, the parties present the award to the court which then becomes a judgment with the same effect as a Superior Court judgment. (MAR 6.3).

Program Performance

In order to assess the program a survey was sent to 575 attorneys and pro se parties who were involved in cases resolved through arbitration during August and September of 1982. This survey included all cases in that period, regardless of whether the cases were settled, resolved by award or appealed. The results reported in this article are based upon 300 returned questionnaires. Also reviewed in this article are the results of 83 cases

Seattle-King County Bar Bulletin, April 1983, p. 1.

Mandatory arbitration reduces delays

(Continued from page 1)

which were appealed and tried de novo from October 1, 1980 through December 31, 1982.

Attorney and Pro Se Response

The questionnaire asked the following: "At this time, what is your general opinion of the mandatory arbitration process?"

General Opinion of Mandatory Arbitration

	Responding	Percent
Strongly Approve	150	50.7
Approve	115	40.2
Neutral	17	5.7
Disapprove	6	2.0
Strongly Disapprove	4	1.4
TOTAL	296	100%

A significant 91% of those responding indicated that they either approved or strongly approved of mandatory arbitration as it operates in King County. Less than 4% voiced disapproval or strong disapproval. Attorneys who describe their primary area of practice as plaintiffs personal injuy or defendants personal injury approved or strongly approved of the program by percentages of 97% and 80% respectively.

Delay

The respondents were asked if the case in which they were involved was resolved more rapidly through arbitration compared to the time which would have been required to try it. One hundred fifty-three (57%) of those answering the question said that mandatory arbitration provided a much more rapid resolution. An additional 75 people said that the resolution was somewhat more rapid through arbitration. Totally, 85% said that the case was resolved more rapidly through arbitration while less than 7% said that the case took longer to resolve because of arbitration.

The relative speed of the arbitration process can be measured more directly. If a hearing is held, the time for a case to be resolved from the date the case was noted for trial through the award is approximately 4 months. The time for resolution by trial is discussed below but is considerably longer. The arbitration hearing itself is shorter. Of the arbitration cases appealed and tried the "average" arbitration hearing lasted 4 hours. The "average" trial of such cases was 8 hours.

Litigation Expense

The question of whether mandatory arbitration significantly reduces the expense of litigation to the parties is complex. Plaintiffs who have retained an attorney on a contingent fee basis will not normally accrue savings unless the contingent fee agreement provides for a smaller percentage to the attorney if the case is resolved through arbitration. For parties paying their attorney on an hourly basis, arbitration should reduce the time an attorney spends on a case and consequently reduce fees. Arbitration appears to reduce the costs of experts and other such expenses, although to what extent is not known without further study. According to the survey the expense to litigants is substantially less under arbitration. Of the 272 people who responded to this question, 128 (47%) felt that the expense to the parties was much less under arbitration; 92 (34%) felt that the expense was somewhat less; and 41 (14%) felt that the expense was about the same. A total of 11 people (4%) said that arbitration involved somewhat more or much more expense to the client. No doubt if a case is appealed and only finally resolved by trial, the arbitration process results in more expense to the parties since it add another layer of hearings to the trial process.

A related question concerned the amount of an attorney's time required to resolve the case through arbitration. One hundred ninety attorneys (64%) responded that the case required less of their own time to process through arbitration. Sixty people (20%) indicated that about the same amount of time was required to resolve the case. Sixteen people (5.3%) said it took more or much more time.

Fairness

The survey requested information regarding specific cases that had proceeded to an award to which 161 people responded.

Fairness of Arbitration Award

	Responding	Percent
Very Fair	68	42
Reasonably Fair	62	38
Slightly Unfair	17	11
Very Unfair	14	9
TOTAL	161	100

Eighty percent of the respondents felt that the award was reasonably fair or very fair. This result is surprisingly high for an adversarial process in which only one party can prevail.

Trial De Novo

A non-attitudinal, but less straightforward measure of the fairness of the program is the number of trials de novo that have occurred. From October 1, 1980 through December 31, 1982, 3,412 cases have been resolved through arbitration, of which 1,672 were settled prior to the hearing and 1,740 were resolved by award. An appeal was made in 25% of the awards entered (429 appeals); however, only 83 of those appeals were tried. Thus, less than 20% of the cases appealed were ultimately resolved by trial, which is less than 5% of the cases resolved by an award and less than 2.5% of the cases referred to arbitration. There are, of course, reasons other than unfairness for requesting a trial de novo, i.e., delay.

Costs to the Court

Arbitrators are paid a total of $25.44 per hour for their efforts. Half of this amount is paid by the county and half by the state. In arbitrator's fees, the average cost per resolution (includes both cases settled and heard) has been $97.10. The average cost per hearing has been $181.00 per case and per settlement has been $47.80 per case. These figures represent arbitrator's fees only.

The administrative costs of the program are approximately $65,000 per year. Considering these costs, the average total cost per resolution increases to $138.00.

A 1982 Rand Corporation report entitled *Cost of the Civil Justice System* estimates the per case cost to the government for every civil case filed in the Washington State Superior Court to be $525 and to the government for every trial held to be $4,298. Although these figures are not strictly comparable for a variety of reasons, they do reveal significant cost differences.

Court Congestion

It is not possible to measure accurately the impact of the mandatory arbitration process on court congestion and delay in the King County Superior Court. Arbitration was initiated in a time of great concern over congestion and delay in the courts and was but one of several reforms implemented at that time. At approximately the same time, the legislature increased the number of authorized judges by five, increased the jurisdictional limit in district justice courts from $3,000 to $5,000, and eliminated trial de novo for lower court appeals. At the same time, the King County Superior Court initiated new calendaring

Arbitration statistics and suggestions

(Continued from page 9)

procedures and created a Family Law Department. These changes all were intended to reduce court congestion and delay as well as provide other improvements to the court system.

In October, 1980, the period between noting a civil or domestic case for trial and the first available trial date was in excess of two years and climbing. Today, there is a 9 month wait from noting for non-jury cases and a 15 month wait for a civil jury case. A significant portion of the reduction in time is attributable to the arbitration program.

Concerns

Although the mandatory arbitration program certainly appears to be meeting its objectives, the program is not free of concerns as reflected by comments in the survey.

Most of the concern centered on what some parties believe to be the erratic quality of the arbitrators on the panel. A number of people responded that the arbitrator panel was simply too large and that many of the arbitrators were not well known. They suggested that a more detailed biographical sketch be developed on each arbitrator and mailed to the parties with the strike list. Similarly, some suggested that more rigid practice requirements be adopted before an attorney is allowed to sit on the panel. There were also a number who requested that some mechanism be developed to purge the "bad" arbitrators from the panel. At this time, the panel is strictly self-regulating. There is no method to control who volunteers. Thus the selection process becomes more important. Parties are encouraged to stipulate to an arbitrator.

The pre-hearing statement of proof which is required under LMAR 5.2 is rarely prepared in a timely and thorough manner. Parties believe it is largely ignored by the arbitrator. This particular concern has been voiced regularly through the program's existence.

Many believe that the authority of the arbitrator should be more clearly delineated. The rules are not sufficiently clear as to when motions are heard by the arbitrator and when, if ever, a motion for a case referred to arbitration should be brought before the civil motion calendar.

Some responses suggested that the arbitration award should include findings and conclusions or at least some explanation of the arbitrators award. Currently, the arbitrator is only required to state an amount; however, approximately one-third of the awards entered include findings and conclusions or a memorandum opinion.

These and other concerns will be reviewed by the administrative committee which oversees the program. The committee is comprised of Judges Dixon, Piehler and Soukup, M. Wayne Blair of the Seattle-King County Bar Association of Defense Counsel and Thomas J. Chambers of the Washington State Trial Lawyers' Association. Comments or suggestions for improvements to the program are invited and may be sent to any member of the committee, Greg Walters or Carole Greene.

Comparison of Arbitration Awards and De Novo Trial Results

The clerk's file was reviewed for the 83 arbitration cases which were appealed and tried from October 1, 1980 through December 31, 1982 to compare the award with the results at trial.

Two cases settled during the trial and therefore no judgment was entered. Of the 81 remaining cases, five cases are currently on appeal to the Court of Appeals. One of these cases started in Justice Court (arbitrated by stipulation). Twelve cases involved what would traditionally be considered motor vehicle-personal injury cases. Eight cases were tried to a jury.

Arbitrators found for the plaintiffs in 65 cases (78%) and for the defendants in 18 cases (22%). Overall the plaintiffs appealed 26 cases and the defendants 57.

The trial court reached the same basic result as the arbitrator, i.e., for plaintiff or defendant in 61 cases (75%) and reversed in 19 cases (23%). In one case involving two defendants, the result on appeal was the same as to one defendant and reversed as to the other. In assessing the high percentage of "affirmances" many parties who requested a trial de novo were doing so not with the expectation of changing the result but more with the intent of increasing or decreasing the amount of the money judgement. In a jury trial the jury has no knowledge that an arbitration took place. In a non-jury trial the judge is aware that an arbitration was held but has no knowledge of the result. Of the 62 cases that did not involve a total reversal, 23 (37%) cases resulted in the same money judgment, 21 (34%) resulted in an increase in money judgment and 18 (29%) resulted in a lower money judgment.

The appealing party did not improve its position in 41 cases (51%) and did in 38 cases (47%). In two cases involving multiple defendants, the plaintiff as the appealing party did improve its position as to one defendant but not as to the other.

Generally, attorney's fees are being assessed against the party who files a request for trial de novo and fails to improve its position at the trial. Of the 41 cases in which the appealing party did not improve its position 37 such cases were assessed fees. Two cases were not awarded fees. In two other cases such could not be determined from the file. Where no fees were awarded although mandated by MAR 7.3 no explanation was found in the file. Many of the cases appealed contained an independent basis for assessing attorneys fees against either party, i.e., contract provision or promissory note. A high percentage of parties requested and received fees based upon RCW 4.84.250, which allows attorney's fees to the prevailing party in damage actions of $5,000 or less. In this discussion, the award of statutory attorney's fees pursuant to RCW 4.84.280 was not considered.

Whether the attorney's fees awarded were "reasonable" is a subjective determination. Fees ranged from a low of $275 to a high of $10,000. Most fees were in the $2,000 to $3,000 range. Excluding the $10,000 fee, the average fee was $2,075.

The results of the eight jury trials vary considerably and are therefore summarized:

Case 1 involved a claim of personal injuries. The arbitrator awarded the plaintiff $1,700. The plaintiff appealed. The jury found for the defendant. The defendant was awarded fees of $1,250.

Case 2 involved a motor vehicle accident. The arbitrator awarded the plaintiff $7,500. The defendant appealed. The jury awarded the plaintiff $3,500.

Case 3 involved a motor vehicle accident. The arbitrator awarded the plaintiff $182 and the defendant $187. The plaintiff appealed. The jury awarded the defendant $181. The defendant was awarded fees of $900.

Case 4 involved the conversion of personal property. The arbitrator ruled for the defendants. The plaintiff appealed. The jury awarded the plaintiff $1,500. The plaintiff received fees of $3,060 based upon the Residential Landlord-Tenant Act, RCW 59.18.

Case 5 involved a personal injury claim. The arbitrator awarded the plaintiff approximately $7,600. The defendant appealed. The jury awarded the plaintiff approximately $13,400. No fees were awarded.

Case 6 involved a collection of funds. The arbitrator awarded $732 to the defendant and fees under RCW 4.84.250 of $3,150. The plaintiff appealed. The jury awarded the defendant approximately $5,200. The defendant was awarded fees of approximately $4,500.

Case 7 involved a collection action. The arbitrator found for the defendant. The plaintiff appealed. The jury awarded the plaintiff approximately $4,800.

Case 8 involved a claim of personal injuries. The arbitrator awarded the plaintiffs approximately $2,250. The plaintiffs appealed. The jury awarded the plaintiffs approximately $27,000.

Effective September 1, 1981, MAR 7.1 was amended to authorize the presiding judge to accelerate arbitration cases on appeal. Commencing January 1, 1982 the presiding judge began accelerating such trials. As of now the average case goes to trial 45 to 60 days after the appeal is filed.

In sum, few cases have actually gone to trial considering that as of December 31, 1982 over 3,500 cases have been referred to arbitration. Of those cases tried de novo 23% have been reversed. Of the parties appealing, approximately half do improve their position at trial which is a higher figure than anticipated. Parties who do not improve their position at the trial de novo are generally being assessed reasonable attorney's fees.

Future Directions

Mandatory arbitration will probably be adopted in several more Western Washington counties in the near future. As to King County, there are no existing plans for expanding the program. For information, the survey contained the following question, "What monetary limit would you like to see placed on mandatory arbitration?" Of the 293 responses, 166 people (56.7%) indicated that they wanted the limit to remain at $15,000, 20 (6.8%) wanted it decreased by various amounts (mostly to $10,000) and 107 (36.5%) wanted the limit increased (mostly to $20,000 or $25,000).

Conclusion

Although improvements should continue to be made to the arbitration program, overall the program is meeting its objectives. The authors, in conjunction with the Superior Court judges, want to express appreciation to the members of the Seattle-King County Bar Association, the Washington Association of Defense Counsel and the Washington State Trial Lawyers' Assocation for making this program effective. □

Appendix B

ARBITRATION RULES
FEDERAL COURTS

This appendix contains program rules for federal courts for the Northern District of California, the Middle District of North Carolina, and the Eastern District of Pennsylvania.

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CHAPTER V—ARBITRATION

RULE 500

MANDATORY ARBITRATION

500-1. Scope and Effectiveness of Rule.

This Rule governs the mandatory referral of certain actions to arbitration. It shall remain in effect until further order of the court. Its purpose while in effect is to provide an incentive for the just, efficient and economical resolution of controversies involving moderate amounts by informal procedures while preserving the right to a full trial.

500-2. Actions Subject to This Rule.

(a) Categories of Actions. All civil actions falling within any of the following categories shall be subject to this Rule, except as otherwise provided:

(i) Actions in which the United States is not a party which—

(A) Seek relief limited to money damages not exceeding $100,000, exclusive of interest and costs, and in which any claim for non-monetary relief is determined by the assigned judge to be insubstantial; and

(B) Are founded on diversity of citizenship (28 U.S.C. § 1332), federal question (28 U.S.C. § 1331) or admiralty or maritime jurisdiction (28 U.S.C. § 1333) and arise under a contract or written instrument, or out of personal injury or property damage.

(ii) Actions in which the United States is a party which—

(A) Seek relief limited to money damages not exceeding $100,000, exclusive of interest and costs, and which arise under the Federal Tort Claims Act or the Longshoremen's and Harbor Workers Act (33 U.S.C. § 901 *et seq.*), or under the suits in Admiralty Act (46 U.S.C. § 741, et seq., § 781 et seq.) and involve no general average, or

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hear motions and in all other respects supervise the action in accordance with these Rules notwithstanding its referral to arbitration.

(c) Relief From Referral. At any time prior to the expiration of the twenty-day period following the filing of the last responsive pleading, any party may notice a motion for relief from the operation of this Rule. Such motion shall conform to Rule 220 and shall be supported by a memorandum and, if appropriate, declarations showing good cause. The assigned judge may, in his discretion, exempt an action from application of this Rule where a party has demonstrated the existence of significant and complex questions of law or fact or other grounds for finding good cause.

500-4. Selection and Compensation of Arbitrators.

(a) Selection of Arbitrators. The office of the clerk shall maintain a roster of arbitrators who shall hear and determine actions under this Rule. Arbitrators shall be selected from time to time by the court from applications submitted by or on behalf of attorneys willing to serve. Any attorney who has been admitted to practice in California for not less than five years and is a member of the bar of this court shall be eligible for selection by the court. Each person shall upon selection take the oath or affirmation prescribed in 28 U.S.C. § 453.

Whenever an action is referred to arbitration pursuant to this Rule, the clerk shall forthwith furnish to each party a list of ten arbitrators whose names shall have been drawn at random from the roster of arbitrators maintained in the clerk's office. The parties shall then confer for the purpose of selecting a single arbitrator or, if both parties so request in writing, a panel of three arbitrators in the following manner:

(i) Each side shall be entitled to strike two names from the list, plaintiff(s) to strike the first name, defendant(s) the next, then plaintiff(s) and then defendant(s);

(ii) The parties shall then select the panel from the remaining six names by alternating selecting one name, defendant(s) to make the first choice, plaintiff(s) the next, and continuing in this fashion.

(iii) At the conclusion of this process, the parties shall list the six names in the order selected and submit them to the clerk

within ten days of receipt by them of the original list of ten names. In the event the parties fail to submit such a list within the time provided, the clerk shall make the selection of arbitrators at random from the original list of ten names;

(iv) The clerk shall promptly notify the person or persons whose names appear as the first choice or choices of the parties of their selection, or, if no choices have been made, the persons he has selected. If any person so selected is unable or unwilling to serve, the clerk shall notify the person whose name appears next on the list. If the clerk is unable to select an arbitrator or constitute a panel of arbitrators from the six selections, the process of selection under this Rule shall begin anew. When the requisite number of arbitrators has agreed to serve, the clerk shall promptly send written notice of the selections to each arbitrator and to the parties.

(b) Disqualification. No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist.

(c) Withdrawal by Arbitrator. Any person whose name appears on the roster maintained in the clerk's office may ask at any time to have his name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(d) Compensation and Reimbursement. Arbitrators shall be paid $150 per day or portion of each day of hearing in which they participate serving as a single arbitrator or seventy-five dollars for each day or portion of a day if serving as a member of a panel of three. At the time when the arbitrators file their decision, each shall submit a voucher on the form prescribed by the clerk for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of the duties under this Rule. No reimbursement will be made for the cost of office or other space for the hearing.

500-5. Hearings.

(a) Hearing Date. The clerk shall set a date for hearing not less than 20 nor more than 120 days after the clerk has been informed of the parties' ranking in accordance with Rule 500-4(a) (or of the clerk's random selection in accordance with Rule 500-4(a)(iii)).

This date shall not be continued except for extreme and unanticipated emergencies as established in writing and approved by the judge assigned to the case. Discovery shall terminate twenty days prior to the hearing.

(b) Default of Party. Subject to the provisions of subparagraph (a) above, the hearing shall proceed on the noticed date. Absence of a party shall not be a ground for continuance but damages shall be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrators.

(c) Conduct of Hearing. The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses except as herein provided. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence which he considers to be relevant and trustworthy and which is not privileged. A party desiring to offer a document otherwise subject to hearsay objections at the hearing may serve a copy on the adverse party not less than ten days in advance of the hearing indicating his intention to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross-examine the author of the document, any hearsay objection to the document shall be deemed waived. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure.

(d) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to the party at no charge, unless the parties have otherwise agreed. In the absence of agreement of the parties and except as provided in Rule 500-7(b) relating to impeachment, no transcript of the proceedings shall be admissible in evidence at any subsequent de novo trial of the action.

(e) Place of Hearing. Hearings shall be held at any location within the Northern District of California designated by the arbitrators. Hearings may be held in any courtroom or other room in any federal courthouse or office building made available to the arbitrators by the clerk's office. When no such room is available, the hearing shall be held at any other suitable location selected by

the arbitrator. In making the selection, the arbitrator shall consider the convenience of the panel, the parties and the witnesses.

(f) Time of Hearing. Unless the parties agree otherwise, hearings shall be held during normal business hours.

(g) Optional Waiver of Trial De Novo; Voluntary Arbitration. At any time prior to the commencement of the hearing, the parties may by written stipulation approved by order of the assigned judge waive the right to a trial de novo following the award and proceed as in voluntary arbitration. In the event of such a stipulation, the provisions of state and federal law governing review of awards rendered in voluntary arbitration shall govern.

(h) Authority of Arbitrator. The arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before him. Any two members of a panel shall constitute a quorum, but (unless the parties stipulate otherwise) the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(i) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

500-6. Award and Judgment.

(a) Filing of Award. The arbitrator shall file the award with the clerk's office promptly following the close of the hearing and in any event not more than ten days following the close of the hearing. The clerk shall serve copies on the parties.

(b) Form of Award. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief if any awarded. It shall be in writing and (unless the parties stipulate otherwise) be signed by the arbitrator or by at least two members of a panel. No member shall participate in the award without having attended the hearing.

(c) Entry of Judgment on Award. Promptly upon the filing of the award with the clerk, the clerk shall enter judgment thereon in

accordance with Rule 58, Federal Rules of Civil Procedure. Unless either party files a demand for a trial de novo within thirty days of the entry of judgment, the judgment shall have the same force or effect as any judgment of the court in a civil action, except that no appeal shall lie from such a judgment (any notice of appeal shall be treated as a demand for a trial de novo).

500-7. Trial De Novo.

(a) Time for Demand. If either party files and serves a written demand for a trial de novo within thirty days of entry of judgment on the award, that judgment shall immediately be vacated by the clerk and the action shall proceed in the normal manner before the assigned judge.

(b) Limitation on Evidence. At a trial de novo, unless the parties have otherwise stipulated, no evidence of or concerning the arbitration may be received into evidence, except that statements made by a witness at the arbitration hearing may be used for impeachment only.

(c) Costs. If the party who has requested the trial de novo fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, costs within the meaning of Rule 265-1 may be assessed against that party.

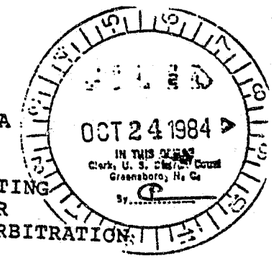
RULE 505

VOLUNTARY ARBITRATION

Notwithstanding the provisions of Rule 500, the parties to any action or proceeding may stipulate to its referral to arbitration upon such terms as they may agree to, subject to approval by order of the assigned judge. In the case of such referral, the provisions of state and federal law governing voluntary arbitration shall control.

NORTH CAROLINA

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

IN THE MATTER OF RULES OF PRACTICE AND PROCEDURE IN THIS COURT	)))	ORDER ADOPTING RULES FOR COURT-ANNEXED ARBITRATION

For good cause appearing to the Court,

IT IS ORDERED that:

1. The following Rules for Court-Annexed Arbitration (Part VI to the Rules of Practice and Procedure of this Court) be and they hereby are adopted, effective at 12:01 a.m., on the 1st day of January 1985. These rules shall apply to all cases filed after that date and time.

2. These rules are adopted in compliance with and pursuant to the authority of Rule 83, Fed. R. Civ. P., and other federal rules and statutes providing for district court local rules.

3. The Clerk is directed to make appropriate arrangements to see that these rules are published promptly and that copies of the rules are made available for distribution to the bar and the public.

This the 24th day of October 1984.

Chief Judge, United States District Court

Judge, United States District Court

Judge, United States District Court

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RULE 601

PURPOSE OF COURT-ANNEXED ARBITRATION

These rules govern reference of selected actions to nonbinding arbitration. Their purpose is to provide for the speedy, fair, and economical resolution of controversies by informal procedures while preserving the right of all parties to a conventional trial.

The arbitration program created by these rules is administered by the court in association with the Private Adjudication Center, Inc., Duke University School of Law. The Private Adjudication Center provides the court with a resource for administration, research and evaluation of arbitration procedures.

RULE 602

CASES TO BE REFERRED TO ARBITRATION

(a) Mandatory Reference to Nonbinding Arbitration. Unless the court exempts a case from mandatory arbitration, the court shall refer to nonbinding arbitration any civil action, if:

(1) the monetary relief sought does not exceed $150,000.00, exclusive of punitive damages, statutory multiple damages, costs, and interest. Under these rules, the relief sought shall be presumed not to exceed $150,000.00 unless counsel for plaintiff, or counsel for defendant with respect to any counterclaim, files a document which certifies that to the best of counsels' knowledge, information and belief, reached in good faith and after reasonable inquiry, the monetary relief in issue exceeds $150,000.00;

(2) the case is neither a class action nor a case pending on a multi-district docket; and

(3) the action is one:

(i) where the United States is a party and the action arises:

(A) under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b); 2671, et seq.);

(B) under the Longshoreman's and Harbor Workers' Compensation Act (33 U.S.C. § 905); or

(C) under the Miller Act (Sec. 2 of Act, August 24, 1935, as amended, Title 40 U.S.C. § 270(b); or

(ii) where the United States is not a party, jurisdiction is premised upon 28 U.S.C. §§ 1331, 1332, 1333, or 1335, and recovery is sought:

(A) for injury or death of a seaman under the Jones Act (46 U.S.C. § 688);

(B) based on a negotiable instrument or a contract;

(C) for personal injury or property damage;

(D) for personal injury under the Federal Employers Liability Act (45 U.S.C. § 51, et seq.).

(b) **Exemption From Mandatory Arbitration.** The court may exempt a case from mandatory arbitration if it finds that the case does not fall within the categories set forth in Rule 602(a) or that:

(1) the legal issues presented are unusually complex or novel;

(2) the legal issues predominate over factual issues;

(3) the action includes a material claim for declaratory or injunctive relief;

(4) the monetary relief sought appears, on the basis of a certificate of counsel as described in Rule 602(a)(1), to exceed $150,000.00; or

(5) mandatory arbitration will not likely accomplish the purpose of these rules stated in Rule 601.

A party may request exemption by filing with the court a motion for exemption within twenty (20) days after entry of the initial pretrial order, or any other order, which selects the

case for arbitration. A response to the motion may be filed within ten (10) days thereafter. The court may determine the motion with or without a hearing. The filing of a motion for exemption does not serve to stay discovery or extend any other deadline set by these rules or court order.

(c) **Voluntary Reference to Nonbinding Arbitration.** The court may refer to nonbinding arbitration under these rules any civil action upon consent of the parties.

(d) **Binding Arbitration.** In any civil action, the parties may agree that the case be referred to binding arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) The order of reference shall specify agreements of the parties with respect to conduct of the arbitration and payment of the arbitrator.

RULE 603

PRELIMINARY PROCEDURE

(a) Initial Pretrial Order. Within fifteen (15) days after the issues are joined, or as soon thereafter as is practicable, the clerk shall, in each case subject to mandatory arbitration pursuant to Rule 602(a), enter an initial pretrial order which:

(1) selects the case for arbitration;

(2) establishes a twenty day deadline for the filing of motions for leave to amend pleadings or to join parties;

(3) establishes a three month deadline for the conduct of discovery; and

(4) notifies the parties of their opportunity to select an agreed upon arbitrator. The parties may select an arbitrator from the list of arbitrators maintained by the Private Adjudication Center, or they may select any other person, whether or not an attorney, on the basis of that person's expertise or experience. To select an agreed upon arbitrator, the parties must file with the Private Adjudication Center a statement identifying the arbitrator within fifteen (15) days after entry of the initial pretrial order.

(b) Discovery. Discovery shall proceed as in any other civil action. The court will require that discovery be accomplished in a diligent and expeditious fashion.

(c) Dispositive Motions. In a case selected for mandatory arbitration, summary judgment and other dispositive motions will not be ruled upon by the court, and need not be filed, until

the case has proceeded through an arbitration hearing and has returned to the court calendar in accordance with Rule 610.

RULE 604

ARBITRATORS

(a) Certification. The Private Adjudication Center shall receive applications from attorneys who agree to serve as arbitrators. From time-to-time, the Center shall submit to the Chief Judge applications of attorneys for certification pursuant to section (b)(3) of this rule. The Center shall maintain a list of certified arbitrators, showing the name, address, telephone number, and professional affiliation of each arbitrator. The Center shall also maintain a file of resumés for the arbitrators, each resumé to contain a short professional history of the arbitrator.

(b) Eligibility. Any individual may be certified to serve as an arbitrator if:

(1) The person has been for at least eight years a member of the bar of the highest court of any state or the District of Columbia; and

(2) The person is either a member of the bar of this court or a member of the faculty of an accredited law school within North Carolina, and

(3) The person is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

(c) Oath or Affirmation. Each arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as an arbitrator. A written statement made under penalty of perjury and filed with the Private Adjudication Center will satisfy this requirement.

(d) Compensation and Expenses of Arbitrators. Arbitrators shall be reimbursed for travel, telephone, and postage expenses in connection with arbitration proceedings. They shall be compensated as follows:

(1) at the rate of $40.00 per hour, up to a maximum of $150.00, for work performed prior to the arbitration hearing;

(2) at the rate of $100.00 for each half day, up to three hours, and $250.00 for each full day (in excess of three hours) on which an arbitration hearing is held, up to a maximum of $500.00, and

(3) at the rate of $40.00 per hour, up to a maximum of $40.00, for time spent in a posthearing conference pursuant to Rule 610(c).

Arbitrators shall submit vouchers to the clerk who shall administer all payments made under these arbitration rules.

RULE 605

SELECTION OF THE ARBITRATOR

(a) Selection by Agreement. If the parties file with the Private Adjudication Center a timely statement pursuant to Rule 603(a)(4), identifying an agreed upon arbitrator, the Center shall thereupon appoint such person as the arbitrator and give notice of the appointment to the arbitrator and the parties.

(b) Selection by the Private Adjudication Center. If no timely statement pursuant to Rule 603(a)(4) is filed, the Private Adjudication Center shall send to each party a list of five (5) proposed arbitrators, with resumés enclosed. The Center shall notify each party of its right to strike two proposed arbitrators. (If more than two parties appear in the litigation, the Private Adjudication Center shall submit a larger list of proposed arbitrators, so that the list is one greater than the total number of arbitrators who may be struck.) Within fifteen (15) days of the Center's mailing of the list of proposed arbitrators, each party may file with the Private Adjudication Center a statement striking two proposed arbitrators. From the proposed arbitrators who have not been struck, the Private Adjudication Center shall designate an arbitrator and give notice of the appointment to the arbitrator and the parties.

(c) Disqualification. On motion made to the court no later than twenty (20) days before a scheduled arbitration hearing, an arbitrator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. § 144. Further, an arbitrator shall

disqualify himself if he could be required to do so under 28 U.S.C. § 455 if he were a justice, judge, or magistrate.

RULE 606

REFERENCE AND SCHEDULING ORDER

(a) Order. After the close of the discovery period, the clerk shall enter a Reference and Scheduling Order which:

(1) orders the case referred to the Private Adjudication Center for the conduct of an arbitration hearing in accordance with these rules;

(2) establishes a sixty (60) day deadline for the conduct of the arbitration hearing. The arbitrator shall schedule the actual date and time of the hearing after consultation with the clerk and the parties; and

(3) establishes the place of the hearing, generally to be a lawyers' conference room or courtroom within a United States courthouse, except that the arbitrator may move the hearing to another location after consultation with the clerk and the parties.

(b) Copies of Court Papers. The clerk shall send to the Private Adjudication Center a complete copy of the court file for use by the Center and the arbitrator in conducting the arbitration proceedings.

(c) Continued Authority of the Court. Notwithstanding reference of cases to the Private Adjudication Center, every civil action shall remain at all times subject to the authority and control of the court.

RULE 607

ARBITRATION PROCEDURE

(a) No Ex Parte Communication. There shall be no ex parte communication between the arbitrator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the arbitrator from discussing substantive issues in the case with all parties present or from assisting settlement negotiations between the parties at any time following his appointment.

(b) Prehearing Exchange of Information. No later than ten (10) days prior to the hearing date, each party shall file with the Private Adjudication Center and serve on the arbitrator and other parties a statement which sets forth for such party the following information:

(1) identification of the issues to be determined;

(2) identification of all witnesses to be called at the arbitration hearing; and

(3) identification of all exhibits to be presented at the hearing.

Each party may, at the same time, file and serve a prehearing brief. Statements and briefs filed with the Private Adjudication Center under this rule are not to be filed with the court.

(c) Record. No official record of the arbitration hearing will be made. Any party desiring the attendance of a reporter shall make the necessary arrangements with a reporting agency.

The costs of the reporter's attendance fee, record, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless they shall otherwise agree, and shall be paid for by the responsible parties directly to the reporting agency.

(d) Subpoenas. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under these rules.

(e) Testimony Under Oath or Affirmation. All witnesses shall testify under oath or affirmation administered by the arbitrator (who is designated a Master for this purpose only) or by any duly qualified person.

(f) Conduct of Hearing. At the opening of the arbitration hearing, the arbitrator shall make a written record of the place, time, and date of the hearing, and the presence of the parties and counsel. The arbitrator and the parties shall review the written statements concerning issues, witnesses, and exhibits filed with the Private Adjudication Center pursuant to section (b) of this rule. Plaintiff may then present its exhibits (copies only) and witnesses, who may be cross-examined. Defendant may then present its exhibits (copies only) and witnesses, who may be cross-examined. The arbitrator may in his discretion vary this procedure.

(g) Evidence. The arbitrator shall weigh all evidence presented to him upon his assessment of its relevance and

trustworthiness. The Federal Rules of Evidence shall not apply, except for rules applying to privilege.

(h) Conclusion of Hearing. When the parties state that they have no further exhibits or witnesses to offer, the arbitrator shall declare the hearing closed. Counsel may make oral argument, but the filing of posthearing briefs will ordinarily not be permitted. If the arbitrator decides to accept briefs, such briefs must be filed with the Private Adjudication Center and served upon the arbitrator and other parties within 14 days or less, as determined by the arbitrator.

(i) Sanctions for Failure to Proceed. For any failure of a party or its counsel to proceed in good faith in accordance with these rules, the Court may impose sanctions pursuant to Local Rule 122.

RULE 608

FILING OF PAPERS WITH THE PRIVATE ADJUDICATION CENTER

Whenever under these rules a party must file papers with the Private Adjudication Center, such filing may be accomplished by mailing the documents by first class mail to The Private Adjudication Center, Inc., Duke University School of Law, Durham, North Carolina, 27706; or by delivering the documents to The Private Adjudication Center, Inc., Room 002, Duke University School of Law, Tower View Road and Science Drive, Durham, North Carolina, 27706; telephone 919/684-2253.

RULE 609

ARBITRATION AWARD AND JUDGMENT

(a) Issuance of Award. The arbitrator shall issue his award within fifteen (15) days of the date of the closing of the hearing or the receipt of posthearing briefs, whichever is later.

(b) Award Procedure. The arbitrator shall submit the award and the written record to the clerk, who shall file the same under seal. The award shall dispose of all monetary claims presented to the arbitrator and shall be signed by the arbitrator. The arbitrator is not required to issue an opinion explaining the award. The clerk shall mail a copy of the award to the parties and copies of both the award and the written record to the Private Adjudication Center, such records to be held in confidence by the Center.

(c) Judgment upon Award. Unless the parties, within thirty (30) days after the filing of the award, file a stipulation of dismissal or a party files a demand for trial de novo in accordance with Rule 610, the award shall be unsealed and incorporated within a judgment of the court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect, as a consent judgment of this court in any civil action.

RULE 610

TRIAL DE NOVO

(a) Thirty Day Limit. Within thirty (30) days after the filing of the sealed arbitration award, any party may file with the court a written demand for trial de novo.

(b) Return to Court Calendar. Upon such a demand for a trial de novo, the action shall be placed upon the court's trial calendar. The arbitration award shall remain under seal until final judgment is entered or the case is dismissed.

(c) Conference With Arbitrator. Within fifteen (15) days after the filing of a demand for trial de novo, the parties or counsel shall confer with the arbitrator who conducted the arbitration hearing. The arbitrator shall frankly discuss with the parties the strengths and weaknesses of their cases. The parties or counsel shall thereafter, within thirty (30) days after the demand for trial de novo, inform the court by letter whether prospects for settlement appear to be excellent, good, fair, poor, or remote.

(d) Evidence From the Arbitration Hearing. At the trial of the action, the court shall not admit evidence that there has been an arbitration proceeding or that an arbitration award has been entered. Recorded testimony given at an arbitration hearing may be used for the same purposes as any deposition under the Federal Rules of Civil Procedure.

(e) Taxation of Arbitration Expense as a Cost. If, after trial before the district court, the party who demanded trial de novo does not obtain a judgment which, exclusive of interest and costs, is more favorable than the award of the arbitrator, the clerk shall tax as a cost against such party the fees and expenses paid to the arbitrator. The cost collected by the clerk under this rule shall be paid to the Treasury of the United States.

RULE 611

EVALUATION OF ARBITRATION RULES

(a) Purpose of Evaluation. These arbitration rules are experimental rules. In order to assess their impact upon the court, the bar, and litigants, it is essential that the rules be evaluated at a reasonably early time so that their performance can be compared with their stated purpose.

(b) Research Committee. The Chief Judge shall appoint at least three members of the bar and at least two representatives of the Private Adjudication Center to a Research Committee. The Chief Judge may appoint such other members as he deems advisable. The Chief Judge and the clerk shall serve as ex officio members of the committee.

(c) Research Techniques. The Research Committee shall be responsible for developing research tools and techniques in order to evaluate the operation of these rules. For the purpose of creating a control group for statistical comparisons, the clerk may exempt cases, on a random basis, from reference to arbitration. If litigant or counsel surveys are conducted, the Research Committee shall afford the information obtained such confidentiality as it shall deem appropriate. The Research Committee may compile statistical information based upon arbitration awards.

(d) Report of the Research Committee. Thirty (30) months after the effective date of these rules, the Research Committee shall file a report with the clerk's office. The report shall be drawn by committee members other than judicial officers and

officials of this court. The report shall include an evaluation of the arbitration rules in comparison with their stated purpose and shall make such recommendations as the Research Committee deems appropriate.

(e) Court Review. The court shall review the report of the Research Committee and, within six (6) months of the filing thereof, issue a standing order which continues, modifies, or terminates these arbitration rules.

PENNSYLVANIA

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U.S. DISTRICT COURT OF THE
EASTERN DISTRICT OF PENNSYLVANIA
LOCAL CIVIL RULE 8 - ARBITRATION

Section 1. Certification of Arbitrators.

A. The Chief Judge shall certify as many arbitrators as he determines to be necessary under this rule.

B. An individual may be certified to serve as an arbitrator if: (1) he has been for at least five years a member of the bar of the highest court of a state or the District of Columbia, (2) he is admitted to practice before this court, and (3) he is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

C. Each individual certified as an arbitrator shall take the oath or affirmation prescribed by Title 28, U.S.C. § 453 before serving as an arbitrator.

D. A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

Section 2. Compensation and Expenses of Arbitrators.

The arbitrators shall be compensated $75.00 each for service in each case assigned for arbitration. Whenever the parties agree to have the arbitration conducted before a single arbitrator, the single arbitrator shall be compensated $75.00 for services. In the event that the arbitration hearing is protracted, the court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to the order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this rule.

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Section 3. Civil Cases Eligible for Compulsory Arbitration.

The clerk of the court shall designate and process for compulsory arbitration the following civil actions:

1. Where the United States is a party, money damages only are being sought in an amount not in excess of $50,000, exclusive of interest and costs, and the action is:

(A) under the Federal Tort Claims Act (28 U.S.C. §§ 1346 (b); 2671 et seq.);

(B) under the Longshoreman's and Harbor Workers' Compensation Act (33 U.S.C. §905);

(C) under the Miller Act (Sec. 2 of Act, August 24, 1935, as amended, Title 40 U.S.C. §270(b)).

2. Where the United States is not a party, money damages only are being sought in an amount not in excess of $50,000, exclusive of interest and costs, federal jurisdiction is present, and the action is:

(A) for injury or death of a seaman under the Jones Act (46 U.S.C. §688);

(B) based on a negotiable instrument or a contract;

(C) for personal injury or property damage;

(D) for personal injury under the Federal Employers Liability Act (45 U.S.C. §51 et seq.).

3. Where the parties consent to arbitration, the relief sought is only for money damages, and the parties agree to pay a reasonable fee to the arbitrators.

4. For the sole purpose of making the determination as to whether the damages are in excess of $50,000, exclusive of

interest and costs, as provided in Sections (1) and (2), damages shall be presumed in all cases to be less than $50,000, exclusive of interest and costs, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for defendant at the time of filing an answer containing a counterclaim, files with the court a document signed by said counsel which certifies that the damages recoverable exceed the sum of $50,000, exclusive of interest and costs. The court may disregard such certification and require arbitration if satisfied that recoverable damages do not exceed $50,000.

Section 4. Referral to Arbitration.

(a) After an answer is filed in a case determined eligible for arbitration, the arbitration clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing. The date of the arbitration hearing set forth in the notice shall be a date about five (5) months from the date the answer was filed. The notice shall also advise counsel that they may agree to an earlier date for the arbitration hearing provided the arbitration clerk is notified within thirty (30) days of the date of the notice. The notice shall also advise counsel that they have 120 days to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. In the event a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

(b) The arbitration hearing shall be held before a panel of three arbitrators, one of whom shall be designated as

chairperson of the panel unless the parties agree to have the hearing before a single arbitrator. The arbitration panel shall be chosen through a random selection process by the clerk of the court from among the lawyers who have been certified as arbitrators by the Chief Judge. The arbitration panel shall be scheduled to hear not more than three (3) cases on a date or dates several months in advance.

(c) The judge to whom the case has been assigned shall thirty (30) days prior to the date scheduled for the arbitration hearing sign an order setting forth the date and time of the arbitration hearing and the names of the arbitrators designated to hear the case. In the event that a party has filed a motion for judgment on the pleadings, summary judgment or similar relief, the judge shall not sign the order until the court has ruled on the motion, but the filing of such a motion on or after the date of said order shall not stay the arbitration unless the judge so orders.

(d) Upon entry of the order designating the arbitrators, the arbitration clerk shall send to each arbitrator a copy of all the pleadings, including the order designating the arbitrators, and the guidelines for arbitrators.

(e) Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in Title 28, U.S.C. §144, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. §455 to disqualify themselves if they were a justice, judge, or magistrate.

Section 5. Arbitration Hearing.

(a) The arbitration hearing shall take place on the date and at the time set forth in the order of the Court in the United States Courthouse in a room assigned by the arbitration clerk. The arbitrators are authorized to change the date and time of the hearing provided the hearing is commenced within thirty (30) days of the hearing date set forth in the Court's order. Any continuance beyond this thirty (30) day period must be approved by the judge to whom the case has been assigned. The arbitration clerk must be notified immediately of any continuance.

(b) Counsel for the parties shall report settlement of the case to the arbitration clerk and all members of the arbitration panel assigned to the case.

(c) The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the arbitration process in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

(d) Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter. Testimony at an arbitration hearing shall be under oath or affirmation.

(e) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs

of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least ten (10) days prior to the hearing and the arbitrators shall receive exhibits into evidence without formal proof unless counsel has been notified at least five (5) days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrators may refuse to receive into evidence any exhibit, a copy or photograph of which has not been delivered to the adverse party, as provided herein.

(f) A party may have a recording and transcript made of the arbitration hearing at his expense.

Section 6. Arbitration Award and Judgment.

The arbitration award shall be filed with the court promptly after the hearing is concluded and shall be entered as the judgment of the court after the thirty (30) day time period for requesting a trial de novo pursuant to Section 7 has expired, unless a party demands a trial de novo before the court pursuant to that section. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any segregable part of an arbitration award not appealed from the aggrieved party before the expiration of the thirty (30) day time period provided for filing a

demand for trial de novo pursuant to Section 7 shall become part of the final judgment with the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal.

Section 7. Trial De Novo.

(a) Within thirty (30) days after the arbitration award is entered on the docket, any party may demand a trial de novo in the district court. Written notification of such a demand shall be served by the moving party upon all counsel of record or other parties. Withdrawal of a demand for a trial de novo shall not reinstate the arbitrators' award and the case shall proceed as if it had not been arbitrated.

(b) Upon demand for a trial de novo and the payment to the clerk required by paragraph (d), infra, the action shall be placed on the calendar of the court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(c) At the trial de novo, the court shall not admit evidence that there had been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for impeachment at a trial de novo.

(d) Upon making a demand for trial de novo, the moving party shall, unless permitted to proceed in forma pauperis, deposit with the clerk of court an amount equal to the arbitration

fees of $75.00 for each arbitrator as provided in Section 2. The sum so deposited shall be returned to the party demanding a trial de novo in the event that party obtains a final judgment, exclusive of interest and costs, more favorable than the arbitration award. In the event that the party demanding a trial de novo does not obtain a more favorable result, the sum so deposited shall be paid to the Treasury of the United States.

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