

# **POLICIES AND STANDARD OPERATING PROCEDURES**

## **FOR THE CIVIL ARBITRATION PROGRAMS**



Hon. James R. Zazzali  
Chief Justice

Hon. Philip S. Carchman, J.A.D.  
Acting Administrative Director of the Courts

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## **POLICIES AND STANDARD OPERATING PROCEDURES FOR THE CIVIL ARBITRATION PROGRAMS**

This manual is intended to provide procedural and operational guidance for New Jersey Judiciary staff in the management of cases within their area of responsibility. The Manual was prepared under the supervision of the Conference of Civil Presiding Judges, along with the Conference of Civil Division Managers and the Civil Practice Division of the Administrative Office of the Courts (AOC). It is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Civil Presiding Judges, in order to promote uniform case management statewide and, as such, court staff are required to adhere to its provisions.

While the Manual reflects court policies existing as of the date of its preparation, in the event there is a conflict between the Manual and any statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, that statement of policy, rather than the Manual, will be controlling. Other than in those circumstances, however, this manual is binding on court staff.

Statement to accompany  
Operations Manuals  
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APPENDICES

## **WHAT IS ARBITRATION?**

Arbitration is a process in which a dispute is submitted to experienced and knowledgeable neutral attorneys or retired Superior Court judges to hear arguments, review evidence, and render a decision. It is less formal, less complex, and often concluded more quickly than court proceedings. Copies of the pertinent statutory and rule provisions relating to arbitration appear in the appendix.

## **PURPOSE OF ARBITRATION**

The purpose of arbitration is to provide an informal process for resolving civil cases in an economic and expeditious manner.

Pursuant to *R. 4:21A-1(d)*, an arbitration hearing must occur no later than 60 days after the closing date of discovery. The earlier the arbitration occurs, the greater the likelihood of meeting the goal of expeditious resolutions, thereby reducing litigation time and cost. Research has confirmed what practitioners have long believed that the existence of specific time standards for case disposition correlates with earlier dispositions.

The single most important thing a court can do to ensure that counsel and litigants are prepared for arbitration is to ensure that the arbitration occurs on the first scheduled date. Good preparation enhances the quality of the arbitration and the outcome.

The New Jersey arbitration program has shown that arbitration works most effectively and cost-efficiently when the court schedules matters for trial *de novo* on an expedited basis in cases in which a party rejects an arbitration award. Thus, the Rules of Court (*R. 4:21A-6(c)*) require that all trials *de novo* must be scheduled to be held within 90 days following the filing and service of a trial *de novo* request.

## **WHAT TYPES OF CASES ARE ARBITRATED?**

The following cases on Tracks I, II and III are subject to mandatory arbitration:

- all auto negligence cases, regardless of the amount in controversy;
- all personal injury cases, regardless of the amount in controversy, including assault and battery cases but not including products liability or professional malpractice cases;
- all Personal Injury Protection cases;
- all book account cases and actions on a negotiable instrument; and all other contract and commercial cases that, after screening by the case management teams, are determined to be appropriate for arbitration.

Cases on Track IV may be subject to arbitration in the discretion of the managing judge.

In addition, at its June 7, 2005 Administrative Conference, the Supreme Court approved a statewide pilot program that allows counsel and *pro se* parties in “lemon law” cases (*N.J.S.A. 56:12-29 et seq.*) to choose the complementary dispute resolution (CDR) modality to be used for the particular case. This pilot program commenced statewide on January 1, 2006 and applies to all lemon law cases answered subsequent to that date.

Under the program, following the filing of the first answer, all counsel and *pro se* parties are sent a notice providing them the opportunity to select whether the case should go to mediation pursuant to *Rules* 1:40-4 and 1:40-6, non-binding arbitration pursuant to *R. 4:21A et seq.*, or voluntary binding arbitration (VBA) pursuant to guidelines approved by the Supreme Court and posted on the Judiciary’s Internet website at [www.njcourtsonline.com](http://www.njcourtsonline.com). Copies of the VBA guidelines and forms appear in the appendix. Failure to affirmatively choose a CDR modality results in the case being referred to mediation no sooner than 90 days after joinder.

## **HOW DOES ARBITRATION WORK?**

All attorneys and all *pro se* parties are notified at least 45 days in advance of their scheduled arbitration hearing. Before the scheduled hearing date, all parties must exchange statements of the factual and legal issues. Two uniform statements of facts and issues have been adopted for statewide use, one for commercial cases and the other for all other cases. These appear as Appendices XXII-A and XXII-B to the Rules of the Court; copies are included in the appendix to this manual.

On the scheduled hearing date, all attorneys and parties are encouraged to appear. Although *R. 4:21A-4(f)* does not require a party to appear if an attorney is appearing on that party’s behalf, arbitration is more meaningful when parties attend. It affords litigants their “day in court.” When they arrive, they will be greeted by staff who will mark a calendar with appearances. Once all attorneys and parties in a particular case have arrived, the case will be placed on a “ready list” to be assigned accordingly. Cases are heard by a single arbitrator or a panel composed of two arbitrators, as determined by the Assignment Judge. See *R. 4:21A-2(c)*, a copy of which appears in the appendix.

The arbitrators having previously reviewed the statements of facts and issues, then conduct the hearing during which each party presents its case. A copy of the *Procedures Manual for Arbitrators in the Civil Arbitration Program* appears in the appendix. Parties are permitted to introduce exhibits and other relevant documentary evidence. Arbitrators generally exercise the power of the court in the management and conduct hearings. Although the parties themselves may testify during the arbitration, reports are offered in lieu of testimony of

witnesses. In more complex cases, however, counsel sometimes will present witnesses to provide limited testimony at the arbitration hearing.

## **ARBITRATION PROGRAM OPERATING STANDARDS**

The following standards were developed by the Supreme Court Arbitration Advisory Committee and approved by the Conference of Civil Presiding Judges for mandatory statewide use.

- The courts should ensure that arbitrators possess at least the minimum qualifications, (at least seven years of experience in New Jersey in the pertinent area of law), are approved by the local bar and the Civil Presiding Judge and regularly evaluated by the court in consultation with the local bar to ensure both competence and opportunity to serve. The local bar arbitrator selection committee should make every effort to include women and minorities as arbitrators to ensure cultural diversity.
- Unless there is an exceptional need to reserve a particular decision, arbitrators' decisions must be announced in the presence of the parties.
- Cases should be scheduled with at least 45 days' advance notice and with the hearing to occur within 60 days from the close of the discovery period.
- Arbitration hearings should not be adjourned except for exceptional circumstances. Any matters adjourned should immediately be given a new, firm hearing date.
- All those serving as arbitrators must complete at least three classroom hours of initial training and at least two hours of continuing education every two years thereafter. Written proof of this training must be provided to the AOC.
- There should be an annual assembly of civil judges, staff and arbitrators in the vicinage.
- Trials *de novo* must be scheduled to occur within 90 days after the filing of the trial *de novo* request.
- The staff and judges should coordinate with the insurance carriers and self-insured parties to block-schedule groups of ready cases whenever possible.
- Arbitrator lists should be broken down by areas of substantive expertise and, where possible, cases should be matched with arbitrators having relevant expertise.
- Once the court is aware of verbal threshold issues, attorneys should be encouraged to consider the use of voluntary binding arbitration.
- The Civil Presiding Judge is responsible for the overall administration of the arbitration program.
- Arbitration hearings should be conducted in facilities that convey the dignity of a court proceeding.



- Arbitrators’ decisions should be based on relevant input by all parties and reflect jury verdicts in the county of venue.
- All participants at arbitration should be treated fairly, impartially, and with dignity.
- Arbitrators must be impartial in fact and in appearance.
- Attendance by the parties or their attorneys at arbitration is vital; absent extraordinary circumstances arbitration should never be done “on the papers.” Also, every effort should be made to have the plaintiff participate by telephone in the arbitration hearing in the event that the plaintiff is out of state on the date of the hearing.
- The 30-day time period for filing of trial *de novo* requests should not be enlarged absent “extraordinary circumstances.”
- Upon advance notice to the arbitration staff, every effort must be made to provide interpreters at arbitration hearings involving foreign language speaking or hearing impaired participants.
- Arbitrators should separate “economic” and “non-economic” damages.
- “Friendlies” must be held in all cases in which an arbitration award is accepted on behalf of an infant or a mentally incapacitated person.
- Since all parties even those in default receive notice of an arbitration hearing, an arbitration award can be confirmed against a party who was in default at the time the arbitration hearing took place.<sup>1</sup>

## **FEATURES OF THE ARBITRATION PROGRAM**

Some of the features of the arbitration program include:

- Arbitrators adjudicate cases thereby providing the parties with a decision on the merits and a “day in court.” See *R. 1:40-2(a)(1)*.
- The arbitration hearing must occur within 60 days after the close of the applicable discovery period permitted for the particular track, thereby providing a rapid resolution to the dispute but only after all parties are ready to proceed [*R. 4:21A-1(d)*].
- Arbitration hearings are held in court facilities and thus have the same dignity as trials; however, they are not recorded [*R. 4:21A-4(d)*].
- The Rules of Evidence do not apply at the arbitration hearing. Arbitrators may hear any evidence necessary to render a decision. Further, instead of bringing actual witnesses, other than the parties, to testify at the hearing, arbitrators may accept affidavits of witnesses, interrogatories, deposition transcripts, and bills and reports of

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<sup>1</sup> See, however, *America’s Pride v. Farry*, 175 N.J. 60 (2002), which was decided based upon the rules in effect prior to civil “best practices.”

hospitals, doctors, or other experts [R. 4:21A-4(c)]. This more informal and flexible procedure saves both time and witness fees.

- The average length of an arbitration hearing is considerably shorter than most trials. Simpler cases, such as two-party auto negligence cases, often can be heard in less than an hour. More complex cases may take an entire day to hear, but this is still significantly quicker than a trial.
- Arbitrators must be either attorneys with seven years of experience in New Jersey in the particular area of law or retired Superior Court judges. The qualification requirements for arbitrators are intended to ensure that those serving in the program are particularly skilled and competent in the particular area of law. Arbitrators must also complete at least three classroom hours of initial training and at least two hours of continuing training every two years. [R. 1:40-12(c)]. The roster of qualified arbitrators in each county is maintained by the Civil Presiding Judge and is composed of names recommended by the arbitrator selection committee of the county bar association. Each selection committee, appointed by the county bar association, consists of two plaintiffs' attorneys, two defense attorneys and one attorney who does not regularly represent either side. The selection committee must also include attorneys having relevant subject matter expertise in each substantive area arbitrated [R. 4:21A-2(b)]. This procedure is designed to ensure that the arbitrators in each county are chosen in an unbiased manner and have the confidence of the local bar and the litigants.
- Although the rules provide that the parties to an arbitration hearing may choose the arbitrator(s) who will hear their case by stipulating in writing to the name(s) of the arbitrator(s) [R. 4:21A-2(a)], this alternative procedure is rarely, if ever, used.
- Counties have the option of using either single arbitrators or two-person arbitrator panels. Single arbitrators are paid \$350 per day and two-arbitrator panels are paid \$450 per day, to be split evenly by the panel members.
- If any party is not satisfied with an arbitration award, that party can request a trial *de novo* upon demand filed and served within 30 days of the filing of the arbitration award and upon payment of \$200 [R. 4:21A-6(b)(1), -6(c)]. A trial *de novo* must be scheduled to occur within 90 days of the filing of the trial *de novo* request. This provision is intended to prevent the use of a trial *de novo* request as a delay tactic and to alleviate the burden on attorneys and litigants of having to prepare a case twice.
- If the party demanding a trial *de novo* does not improve its position at trial by at least 20 percent, that party may be subject to monetary sanctions, up to a total of \$750 in attorney's fees and \$500 for witness costs [R. 4:21A-6(c)].
- If no trial *de novo* is requested, the case will be dismissed 50 days after the filing of the arbitration award unless either party moves for confirmation of the arbitration

award and entry of judgment, or submits a consent order to the court detailing the terms of settlement and providing for dismissal of the action or entry of judgment [R. 4:21A-6(b)].

## **PROVISIONS RELATING TO ARBITRATORS**

### **Who Are the Arbitrators?**

Arbitrators must be either attorneys who have at least seven years of experience in New Jersey in the particular area of law or retired Superior Court judges. Separate rosters must be maintained for each discrete area of law. Arbitrators must complete at least three classroom hours of initial training and at least two hours of continuing education every two years thereafter [R. 1:40-12(c)]. A copy of the application form to become an arbitrator appears in the appendix.

Attorneys wishing to serve as an arbitrator should submit a completed application and a resume to the Civil Presiding Judge and the county bar arbitration selection committee for review and determination. The Arbitrator Screening Guidelines are included in the appendix. The selection committee sends recommendations to the Civil Presiding Judge. Once the Civil Presiding Judge acts on an application, all approved individuals must complete the required initial training and must submit proof to the AOC before they can be added to the roster.

### **Evaluation of the Program and Arbitrators and Reappointment of Arbitrators**

The success of the arbitration programs depends in large part upon the perception of the litigants and the bar of the effectiveness of the program and of the arbitrators. For example, do arbitrators appear impartial? Do they allow each side to tell its story? Do they conduct the hearing with dignity? Are they familiar with the cases before them? Do they know the law involved? Was the award rendered in the presence of the litigants? Evaluation forms have been developed for statewide use. These forms should be provided to every litigant and attorney attending arbitration hearings. The Conference of Civil Presiding Judges has recommended that the completed forms should be reviewed on an ongoing basis. Moreover, at least annually, the Civil Presiding Judges, staff and the local arbitrator selection committee shall review each roster of arbitrators in accordance with the arbitration screening guidelines and consider the results of the completed evaluation forms received. Following this review, however, the AOC should be contacted in order to verify the names of all individuals who have submitted proof of completion of the continuing training required under R. 1:40-12(c). Upon verification received from the AOC that individuals have completed the required continuing education, the individual may be added to the roster. Every September, the counties shall forward copies of the updated rosters of arbitrators to the AOC Civil Practice Division. Finally, the AOC should be contacted immediately as roster information is changed.

## **Arbitrator Standards of Conduct**

Attached and appearing in the appendix are the *Standards of Conduct for Arbitrators in the Court-Annexed Arbitration Program*. The standards were approved by the Supreme Court in May 2003 and apply to all individuals serving in the civil court-annexed arbitration program.

## **Arbitrator Checklist**

A checklist has been developed to guide arbitrators in the optimal handling of hearings. A copy appears in the appendix.

## **Arbitrator Settlement Protocol**

At its June 9, 2006 Administrative Conference, the Supreme Court approved the following settlement protocol for civil arbitrators to follow:

### **Disclosures by the Parties at Arbitration**

With the consent of all counsel and *pro se* litigants, any previous or current offers or demands in the case may be disclosed to the arbitrator(s). Said disclosures shall not result in that arbitrator's disqualification. The arbitrator shall not be bound by these disclosures, unless the respective litigants have entered into a binding high/low agreement.

### **Settlement Conferences at Arbitration**

Upon the consent of all counsel and *pro se* litigants, given prior to the commencement of the hearing, the arbitrator(s) may conduct a settlement conference. In the event that the conference does not result in settlement of the case, the arbitration shall be conducted by a different arbitrator or panel. Nothing herein shall preclude the arbitrator or panel from conducting a settlement conference, upon the request of all parties after the determination by the arbitrator panel.

## **Arbitrator Appreciation**

Certificates of appreciation are used to recognize the contributions of the attorney arbitrators to the success of the arbitration programs. To be eligible to receive a certificate, an arbitrator must have served in a particular county's arbitration programs on at least ten separate hearing dates. Finally, it is recommended that a special time be set aside each year, *e.g.*, Law Day, for the formal awarding of the certificates of appreciation.

## **Powers of Arbitrators**

Arbitrators serving in the civil arbitration program have the following powers:

- To issue subpoenas, at the request of a party or on their own initiative, to compel the attendance of witnesses or the production of documents at the arbitration hearing. See *N.J.S.A.* 39A:6A-4(b) and 2A:23A-24. An arbitrator faced with a case in which a party fails or refuses to obey a subpoena or request for the production of documents should immediately bring the matter to the attention of the Assignment Judge or the Civil Presiding Judge for appropriate action.
- To administer oaths and affirmations. See *R.* 4:21A-4(b).
- To determine the law and facts in the case. See *R.* 4:21A-4(b).
- To exercise the powers of the court in the management and conduct of the hearing. See *R.* 4:21A-4(b).
- To receive any reliable, relevant evidence and determine its weight, regardless of the Rules of Evidence. See *R.* 4:21A-4().
- Because they act as both judge and jury, arbitrators should determine whether the plaintiff has met the verbal threshold. In situations in which the arbitrator feels that there is a clear failure to meet the verbal threshold, the arbitrator should not hesitate to declare a "no cause."

## **Liability, Defense and Indemnification of Arbitrators**

Arbitrators are entitled to a defense by the Attorney General of New Jersey and to indemnification by the State pursuant to the provisions of the New Jersey Tort Claims Act for claims or actions arising out of their service as arbitrators. See Opinion Letter of Attorney General dated January 8, 1985 (copies available from the AOC upon request).

## **SCHEDULING OF CASES FOR ARBITRATION**

### **Creating an Arbitration Calendar on the Automated Case Management System (ACMS)**

To schedule cases for an arbitration proceeding, a calendar of cases to be scheduled must first be created following these steps:

1. From the civil menu selection, press PF2 “Scheduling menu.”
2. From the scheduling menu, type “docket type.”
3. Press PF3 “CALENDAR ENTRY.”
4. Type the session date, *e.g.*, 01 01 2004.
5. Type AM/PM code, *e.g.*, “am.”
6. Type the courtroom number where the proceeding will take place, *e.g.*, 3rd fl.
7. Type the scheduled judge ID (Judge's First, Middle, Last Initial and 01), *e.g.*, MJG01.
8. Type Proceeding Type Code.  
*e.g.*, 38- Automobile Arbitration
9. Type maximum court session - the maximum number of cases to be scheduled, *e.g.*, 80 for the am calendar.
10. Press “ENTER.”
11. Repeat the above steps for the pm calendar.

### **Using ACMS to Schedule Cases for Arbitration**

Once a calendar is created, select the cases to be assigned to the calendar. From the scheduling menu:

#### **Mass Scheduling**

1. Press PF2 “CALENDAR LIST.”
2. Type an “S” to select the date and the proceeding to which cases are to be assigned.
3. Press PF4 “TO BE SCHEDULED.”
4. Enter case criteria and press PF1 “TO BE SCHEDULED.”
5. The “TO BE SCHEDULED” list is a list of all the cases ready to be scheduled for the particular proceeding and date selected.
6. Some counties print the list of cases and then manually check each case to ensure eligibility, *e.g.*, absence of relevant pending motions.
7. Type an “S” next to all the cases to be scheduled for that proceeding date and enter a time. The am calendar can be broken into time slots.
8. Press PF24 - to schedule.

9. An asterisk (\*) will appear beside all cases successfully scheduled.

### **Individual Scheduling of a Case**

From the scheduling menu:

1. Type the docket number to be scheduled.
2. Press PF2 – “CALENDAR LIST.”
3. Type an “S” beside date/proceeding.
4. Press PF5 “PROCEEDING SCHEDULED.”
5. Change time event scheduled, if necessary.
6. Press “ENTER” to schedule the proceeding.

### **Using the “To Be Scheduled Report”**

Cases can also be scheduled after using RMDS report CVB0247, the “To Be Scheduled Report.”

From the AOC NJ map screen:

1. Type NJ.
2. Type user ID and password – press “ENTER”.
3. Press RMDS and “ENTER” and then enter the report number, CVB0247, on the line to the right of “PF7-REPORT REQUEST MENU.”
4. Press PF7 REPORT REQUEST MENU.
5. Enter the request information in the following fields:  
VENUE: Defaulted to user’s venue  
COURT: Defaulted to LCV  
READY DATE: This date can be a calendar date, a discovery end date or the current date.  
SORT OPTION: Select one of six sort options from the help window.
  1. Venue, Court, Team, Case Type, Docket Number
  2. Venue, Court, Docket Number
  3. Venue, Court, Case Type, Docket Number
  4. Venue, Court, Jury Indicator, Docket Number
  5. Venue, Court, Ready Date Sequential
  6. Venue, Court, Team, Ready Date Sequential

NOTE: The above four fields are required fields. All of the information in these fields must be entered; failure to do so will return an error message.

6. “THE FOLLOWING FIELDS ARE OPTIONAL” and will change the report based on the information entered in each field.  
CASE TYPE: Enter Case Type; Help Window available.  
JUDGE ID: Enter Judge. If left blank, all Judges’ cases will print to the report.  
CDR INDICATOR: Enter “A” for auto, “P” for personal injury, or “O” for book accounts, actions on a negotiable instrument or commercial cases (whichever type of cases are being scheduled)  
JURY: Enter “N” for non-jury.

7. Enter the desired information in:  
ANSWER FILE FROM: TO:
8. Press "ENTER" to store the request. The reports are generated overnight and will be available to print in RMDS the following day.

### **Using ACMS to Generate Arbitration Notices**

Once staff has completed either mass scheduling or individual scheduling, notices will be generated through RMDS and will be ready to be printed on the following day.

### **Procedure for Generating Mailers**

From the AOC NJ map screen:

1. Type NJ.
2. Type user ID and Password - press "ENTER."
3. Press 3- "RMDS" and "ENTER." The RMDS main menu will appear.
4. In the Select Option - Type N (Refresh list of reports) in the select field. Press "ENTER."

The system returns with the RMDS Index Screen.

Press D to display "ACMS MAILERS" and view for pages of notices to be printed. Return to index.

5. Enter option P- "SYSTEM PRINT."  
The "BYPASS PRINTER NUMBER" should be set on your printer number. Specify page range to be printed. Press "ENTER."
6. To start printing, press "P." The last step is to enter the number of copies to be printed.

### **Block-Scheduling of Cases Involving Common Insurance Carriers**

Although *R. 4:21A-1(a)(d)* states that the arbitration hearing must take place no later than 60 days following the expiration of the discovery period, the Conference of Civil Presiding Judges determined that counties can be allowed to hold cases for block scheduling no more than 90 days after the close of discovery. ***(9/28/04 Conference of Civil Presiding Judges' meeting)***. Cases ready to be scheduled can be identified by use of RMDS report 1CVB0294, Cases To Be Scheduled By Insurance Company.

### **Scheduling of Arbitrators**

Arbitrators, including retired judges, are selected in rotating order from the approved roster for each sub-specialty. ***(4/19/05 Conference of Civil Presiding Judges' meeting)***. Arbitrators should not be scheduled on days when they have other commitments in the courthouse, including representing clients at hearings before other arbitrators. ***(12/13/05 Conference of Civil Presiding Judges' meeting)***



## **Scheduling Considerations and Arbitrator Caseload**

Experience in the auto arbitration program indicates that the settlement/ adjournment/ removal rate of cases scheduled for arbitration is approximately 65 percent. This should be taken into consideration in scheduling cases. The Arbitration Advisory Committee recommends that, on the average, arbitrators should be hearing at least five to six negligence cases per arbitration day. Such a calendaring approach is intended to promote the purposes and goals in expediting the resolution of arbitrable matters and reducing costs. However, complex cases such as more complicated commercial matters will generally take longer to handle and therefore fewer such cases should be scheduled.

## **Scheduling after Discovery End**

The issue was raised as to whether a case may be scheduled *before* discovery has ended for arbitration or trial to occur *after* the discovery end date (DED). *Rule 4:21A-1(d)* requires 45 days' notice of an arbitration hearing; *Rule 4:36-3(a)* requires eight weeks notice of trial. Can this notice period start to run prior to the DED? The Conference of Civil Presiding Judges has agreed that the scheduling of a case for arbitration or trial should not occur until the date the discovery period ends, at the earliest. *(2/26/02 Conference of Civil Presiding Judges' meeting)*

## **No Scheduling of Previously Mediated Cases**

Effective September 1, 2004, cases that were previously referred to mediation should not be scheduled for arbitration, unless all parties request arbitration or the court finds good cause for the matter to be arbitrated. See *R. 4:21A-1(a)*.

## **Motions to Extend Discovery – Impact on Arbitration**

- If a motion to extend discovery is filed *before the arbitration date is fixed*, no arbitration should be scheduled until the motion is decided and the discovery end date passes.
- If a motion to extend discovery is filed *after the arbitration date has been scheduled* and the motion is heard *before* the scheduled arbitration date, the judge will decide whether the arbitration date will be adjourned. This is not a problem if the judge does not grant the motion, but if discovery is extended beyond the scheduled arbitration date, the arbitration must be adjourned to occur after the discovery end date has passed. If the discovery end date is extended after an arbitration hearing is scheduled (which might occur if an 'exceptional circumstances' motion to extend discovery is made after the discovery end date has passed and a hearing scheduled), the order should expressly adjourn the arbitration date." If, discovery is extended

and the order is silent on the arbitration date, the court must adjourn the arbitration, whether the attorneys request this or not. However, if all attorneys expressly consent that the arbitration may go forward prior to the discovery end date, this is permissible.

- If the motion to extend the discovery end date is *returnable after the scheduled arbitration date*, the vicinage has the discretion to adjourn the arbitration until after the motion is heard or to require that the arbitration go forward on the scheduled date. **(9/30/03 Conference of Civil Presiding Judges' meeting)**
- At the February 24, 2004 meeting of the Conference of Civil Presiding Judges, the issue was again raised as to whether a case may be scheduled *before* discovery has ended for arbitration or trial to occur *after* the discovery end date. *Rule 4:21A-1(d)* requires 45 days' notice of an arbitration hearing; *Rule 4:36-3(a)* requires 8 weeks' notice of trial. The Conference considered whether these notice periods may start to run prior to the discovery end date and agreed that the act of scheduling of a case for arbitration or trial should not occur until the date the discovery period ends, at the earliest.

Therefore, with respect to the ***initial scheduling of an arbitration date***, the Conference determined that a judge extending the discovery end date has no discretion to set the initial arbitration date. Thus, if a motion to extend the discovery end date is filed and considered prior to the discovery end date and before any arbitration date is set, the judge does not have the discretion in the order granting the motion to set the initial arbitration date, even if it is to take place 45 days after the discovery end date fixed in the order. **(2/24/04 Conference of Civil Presiding Judges' meeting)**

## **REMOVAL FROM ARBITRATION**

Prior to the notice of the scheduling of the case for an arbitration hearing or within 15 days thereafter, removal from arbitration can be sought upon submission of a certification to the arbitration administrator, rather than by motion. If the stated reasons are not sufficient, the request to remove must be denied even if all parties consent to removal. The only situations in which staff may grant the removal request is if the case involves a non-arbitrable case type, *e.g.*, medical malpractice, that was scheduled in error. A judge must act upon all other certifications for removal such as those alleging that the case involves unusually complex factual or novel legal issues. After 15 days of the notice of arbitration hearing, removal can only be requested by formal motion.

**To process a certification before the case is scheduled, staff must update the CDR**

**indicator to reflect the changes in order for the case to be scheduled for another court event.**

To do this from the civil menu selection:

1. Depress PF4 “CASE MANAGEMENT MENU.”
2. Enter the docket number and depress PF2 “CASE MANAGEMENT MAINT.” Using the ACMS help window, change the CDR indicator to indicate that the case is not eligible for arbitration. The document must then be entered onto ACMS.

### **Removing a Scheduled Case from Arbitration on ACMS**

If either party seeks to remove a case from arbitration subsequent to 15 days after the notice of hearing, a formal motion must be made to the Civil Presiding Judge or designee.

From the civil menu selection:

1. Depress (PF2) “SCHEDULING MENU.”
2. Enter docket number and depress PF1 “CASE PROCEEDING LIST.” A list of court events will be displayed.
3. Select “S,” the arbitration proceeding and depress PF1 “PROC-RECORD.”
4. Change the “PG” (pending) status to “RM”(removed). This will automatically place the case back into the pending mode for scheduling another court event.
5. The next field “BY” enables staff to enter the filing party, *i.e.*, “P” (plaintiff) or “D” (defendant) by depressing the “ENTER” key.
6. The message “PROCEEDING MODIFIED” will be displayed at the bottom of the terminal to verify acceptance. The document must then also be entered onto ACMS.

### **ACMS Document Entry**

From the civil menu selection:

1. Depress PF12 “DOCUMENT MANAGEMENT.”
2. Depress PF10 “DOCUMENT ENTRY.”
3. Select “S,” the party filing the document. Under “DOCUMENT DATA,” enter the “DOCUMENT TYPE,” *i.e.*, XD8 “removal arbitration” and date filed.
4. Depress PF24, “FILE DOCUMENT.” The message displayed at the bottom of the terminal will read DOCUMENT SUCCESSFULLY ADDED.”

### **HANDLING ADJOURNMENT REQUESTS**

Because arbitration is not scheduled until after the close of discovery, arbitration hearings should not be adjourned barring “exceptional circumstances.” According to

R. 4:21A-1(d), adjournment requests must be handled the same way trial adjournment requests R. 4:36-3(b). The procedure is as follows:

- Adjournment requests must be made in writing to the Civil Division Manager or designee and must state the reason for the request;
  - must be made by Wednesday of the week preceding the scheduled arbitration hearing date;
  - state that all parties have consented to the adjournment; AND
  - include a proposed arbitration date agreed upon by all parties. The date must be on a regularly scheduled arbitration day.
- If all parties do not consent to the adjournment or to a proposed rescheduled date, or if the arbitration has already been adjourned once at a party's request, the court will conduct a conference call with all parties to determine if the case should be adjourned and, if so, when it should be rescheduled.

### **Statewide Adjournment Procedure**

Attached and appearing in the appendix is a copy of AOC Directive #6-04, effective May 14, 2004. The directive provides the statewide adjournment procedure for civil trials and arbitrations.

### **Reasons for Adjournment Requests**

- Adjournment requests should generally be made only if a necessary attorney, party or witness is unavailable.
- No adjournment request based on incomplete discovery should be made or granted barring exceptional circumstances.
- No adjournment request should be granted to accommodate a dispositive motion returnable on or after the arbitration date.

If the court grants an adjournment, all pertinent information is to be entered in the comments field on ACMS. Such cases are to be immediately rescheduled for a new date and noticed accordingly. The party requesting the adjournment is required to send a confirmation letter to the court and copy all adverse parties.

Pursuant to R. 4:21A-1(d) and 4:36-3(b), once a case is scheduled for arbitration, there should be no adjournments barring exceptional circumstances. This requires a judicial determination; the Arbitration Administrator may not adjourn cases for incomplete discovery. If, however, a judge extends the discovery end date after an arbitration hearing has already been scheduled, the order extending discovery should specify whether the arbitration date is to remain fixed or be rescheduled. (The judge may determine to allow additional discovery without changing the date of the arbitration hearing.) *(10/30/02 Conference of Civil Presiding Judges' meeting)*

## **Adjourning a Case on ACMS**

From the civil menu selection:

1. Enter the docket number and depress PF1 “PROCEEDING LIST.” A list of proceedings will appear.
2. Select “S,” the scheduled arbitration hearing to be adjourned and depress PF1 “PROCEED RECORD.”
3. Bring cursor to “PROCEED STATUS” (this field is associated with a help screen). By depressing the “ALT” and PF22 keys you will be given a list of adjournment codes.
4. Once the code has been selected that best describes the reason for the adjournment, clear back to the “PROCEED STATUS” field and enter that code. The next field “BY” is for identifying the party requesting the adjournment. Again, a help facility screen is available. In the last field, “VIA,” staff should specify whether the adjournment was requested by letter or phone call.
5. Depress the “ENTER” key. The cursor will now be at the “RESCHEDULING DATE SCREEN.” Enter the “PROCEED TYPE” 29, 35, or 38. Tab over and enter the time of the rescheduled hearing and the calendar date. Depress the “ENTER” key. A message will appear at the bottom of your screen “PROCEEDING STORED” to confirm that the case has been rescheduled successfully.

## **ATTENDANCE AT ARBITRATION HEARINGS**

*Rule 4:21A-4(f)* provides that an appearance by or on behalf of each party is required at the arbitration hearing. The comment to the rule makes clear that it is sufficient for either the party or the party’s attorney to appear. Nevertheless, to ensure that the purpose of arbitration to provide litigants a “day in court” is not compromised, litigants should routinely be encouraged to attend and participate in arbitration hearings. Therefore, arbitrations “on the papers” are strongly discouraged. Evaluations of the arbitration program have found that there is a real benefit in having people come to the courthouse, tell their stories and receive a impartial assessment of their cases from an experienced, competent arbitrator.

If the attendance of a particular party is critical to the other side’s proof of his or her case, the opposing party should serve a notice in lieu of a subpoena on the party whose attendance is needed.

If neither the party claiming damages nor that party’s attorney appears, the party’s pleading will be dismissed. If neither a defendant nor the defendant’s attorney appears, the answer will be stricken, the arbitration will proceed and the non-appearing party shall be deemed to have waived the right to request a trial *de novo*. Relief from any order entered as a result of a non-appearance shall be granted only on motion showing good cause and on such terms as the court deems appropriate, including payment of litigation expenses and counsel fees

incurred as a result of the non-appearance. In this regard, see *Delaware Valley Wholesale Florist, Inc v. Addalia*, 349 N.J. Super. 228 (App. Div. 2002).

## **UNIFORM ARBITRATION STATEMENTS OF FACTS FORMS**

Pursuant to R. 4:21A-4(a) uniform statements of facts forms must be exchanged by all parties at least 10 days prior to the scheduled arbitration hearing. There are two different forms set forth in Appendix XXII - A and B of the Rules of Court, one to be used in commercial cases and the other for all other cases. Copies of the forms also appear in the appendix.

Attorneys who fail to bring the completed applicable uniform statement of facts form appearing in the Appendices to the Court Rules to arbitration will be required to fill out the requisite form on the day of arbitration and prior to the start of the hearing. If attorneys' statements were not exchanged 10 days prior to the hearing, as required by R. 4:21A-4(a), the aggrieved attorney may enforce this requirement by bringing the dereliction to the attention of the judge. *(9/26/00 Conference of Civil Presiding Judges' meeting)*

## **THE ARBITRATION AWARD**

After each side has completed its presentation, arbitrators render a decision and prepare a written award. A copy of the award form appears in the appendix to this manual. The decision is normally made on the day of the arbitration hearing in the presence of the participants. The parties are given a copy of the decision (for which they must sign) along with a trial *de novo* request form. A copy of the request form also appears in the appendix. In consolidated cases, arbitrators should use a separate award sheet for each separate case. In order to avoid confusion in the application of *N.J.S.A. 2A:15-53*, the comparative negligence statute, when completing the arbitration award form, arbitrators should separate the economic and non-economic damages awarded in those situations in which the plaintiff is asserting a claim for economic damages.

The original award should be given to court staff by arbitrators at the conclusion of each hearing and staff must immediately date-stamp it "filed" on the day of the arbitration hearing. In the event that the decision is reserved, court staff must stamp it "filed" on the date that it is received from the arbitrators. Thereafter, the court must provide a copy of the decision to all parties pursuant to R. 4:21A-5. This procedure is intended to eliminate any question as to when the 30-day period for requesting trial *de novo* begins to run (*i.e.*, from the "filing" date).

## **Unanimity Required; Procedure When Lacking**

When more than one arbitrator hears a case, the decision must be unanimous. If the arbitrators cannot agree, they must immediately advise the parties and the arbitration administrator of the conflict. Within 10 days of being so advised, the parties may request either the designation of a new panel to conduct a second hearing or a trial in Superior Court without

further arbitration. In the event that a trial is requested, the provisions of *R. 4:21A-6(c)*, providing for the payment of a trial *de novo* fee and for the award of costs following a trial *de novo* do not apply.

### **Public Access to Arbitration Awards**

Because of the nature of arbitration as a court-annexed, adjudicatory procedure, the public has a right of access to arbitration awards and arbitration hearings.

### **Prejudgment Interest on Arbitration Awards**

The prejudgment interest rule provides that prejudgment interest on arbitrated matters accrues from the date the complaint was filed or six months after the cause of action arose, whichever is later, and ends on the date a court order is entered terminating the action. See *R. 4:21A-6(b)(3)* and *R. 4:42-11(b)*. Therefore, the full amount of prejudgment interest cannot be calculated until an order has been entered terminating the action. It should be noted that in the absence of the calculation of prejudgment interest, the plaintiff is nevertheless entitled to such interest in addition to the damages awarded, and it continues to accrue until the action is terminated. Prejudgment interest should be calculated by counsel for the party to whom it accrues.

## **HANDLING CLAIMS ON BEHALF OF INFANTS AND INCAPACITATED PERSONS**

In the event that an award is accepted on behalf of an infant or mentally incapacitated person, it must be approved by the court and a “friendly” settlement proceeding must be held as expeditiously as possible. See *R.4:21A-7* and *Mack v. Berry*, 205 *N.J. Super.* 600 (Law Div. 1985).

## **RESOLUTIONS**

Once all of the arbitration hearings are concluded, the calendar is marked according to the manner of resolution of each case. ACMS is then updated to reflect the new status. Below are a list of codes used in entering resolutions.

### **Applicable ACMS “Disposition Codes” Used in the Arbitration Programs**

- RM- “REMOVED FROM ARBITRATION”
- CM- “COMPLETED ARBITRATION HEARING”
- SP- “SETTLED PRIOR TO ARBITRATION”
- SE- “SCHEDULED IN ERROR”
- NA- “NON-APPEARANCE”
- RS- “RESCHEDULED”

CT- "CONTINUED"  
CC- "CANCELLED"  
SD- "SETTLED DURING ARBITRATION".

The code for adjourned cases needs to be precise. There are several codes used to track reasons for the adjournment. For this reason, the help screen is used for specific adjournment codes.

Using the marked calendar, the mode of resolution of each case is entered on ACMS. The following steps are necessary:

### **Updating Case Dispositions on ACMS**

From the scheduling menu:

1. Enter the docket number and PF1 "CASE PROCEEDING LIST."
2. Select "S" the pending arbitration proceeding and depress PF1 "PROCD-RECORD."
3. When entering a completed or non-appearance status, you must first enter the date of the hearing at the "END DATE" field. Otherwise ACMS will not accept your input.
4. Enter the disposition code in the "PROCEED STATUS FIELD."
5. Depress "ENTER."  
The message "PROCEEDING MODIFIED" will be displayed to confirm acceptance.
6. After completing the disposition status, the amount of the arbitration award must then be entered on ACMS.

### **Entry of Report and Award Forms on ACMS**

From the civil menu selection:

1. Depress PF12 "DOCUMENT MANAGEMENT."
2. Enter the docket number and depress PF10 "DOCUMENT ENTRY."
3. Bring the cursor to the "DOCUMENT TYPE". The code is X88 "REPORT AND AWARD" and the date filed will be date of the arbitration hearing.
4. Depress PF24 "FILE DOC." You should be given a message "DOCUMENT ENTERED SUCCESSFULLY" confirming the acceptance of the document.

Awards should then be reviewed and the presence of non-served parties should be clearly noted by the arbitrator on the report and award. An Order (a sample appears in the appendix) should then be prepared dismissing all claims asserted against the non-served parties for lack of prosecution.



## **Updating Party Status on ACMS to Dismissed for Non-Service**

From the civil menu selection:

1. Depress PF2- “SCHEDULING MENU.”
2. Enter the docket number and depress PF4-“DISPOSITION MANAGEMENT.”
3. Enter an “X” for the status of the dismissed party.  
The resolution date is then entered. This will be the date of the dismissal.
4. Depress “ENTER.” The party status is now updated.
5. The document must also then be entered onto ACMS.

## **Entering Non-Service Dismissal Order on ACMS**

From the civil menu selection:

1. Depress PF12 “DOCUMENT MANAGEMENT.”
2. Enter the docket number and depress PF10 “DOCUMENT ENTRY.”  
The order will be court-initiated, so you do not have to select a filing party.
3. Bring your cursor to the “DOCUMENT TYPE.”  
The code is OF1. “DISMISSAL ORDER.”
4. In the next field, “DATE FILED” enter the date of the dismissal order.
5. The last field to be entered is the identification number for the judge who signed the order. Depress PF24. “FILE DOC.”  
A message will appear at the bottom of the screen, “ORDER SUCCESSFULLY ENTERED” to confirm acceptance.

## **NON-APPEARING PARTIES AT ARBITRATION HEARINGS**

R. 4:21A-4(f) provides that an appearance by or on behalf of each party is required at the arbitration hearing. The comment to the rule makes clear that it is sufficient for either the party or the party’s attorney to appear. If neither the party claiming damages or that party’s attorney appears, the party’s pleading will be dismissed. If neither a defendant nor the defendant’s attorney appears, the answer will be stricken, the arbitration will proceed, and the non-appearing party shall be deemed to have waived the right to demand a trial *de novo*. However, relief from any order entered as a result of a non-appearance shall be granted only on motion showing good cause and on such terms as the court deems appropriate, including payment of litigation expenses and counsel fees incurred as a result of the non-appearance. If the motion is granted, the judge may send the case either to a second arbitration or to a trial, depending on the circumstances.

In *Severino v. Marks*, 366 N.J. Super 275 (App. Div. 2004), the Appellate Division reversed and remanded a case in which the trial judge dismissed plaintiff’s demand for a trial *de novo*. The court held that the plaintiffs’ failure to be personally present at the arbitration hearing and the failure of plaintiffs’ counsel to file an arbitration statement did not constitute a

waiver of the plaintiffs' right to a trial *de novo*. The court also noted that the arbitration should not have been scheduled before the completion of discovery.

If a plaintiff appears for arbitration and the defendant does not and the plaintiff requests adjourning the case rather than going forward with the arbitration, staff may not adjourn the case, but rather should refer the matter to a judge for review.

If a plaintiff and plaintiff's attorney appear for arbitration and the defendant appears but defense counsel, despite notice, does not appear, staff must make a good faith effort to reach defense counsel by telephone. If after this good faith effort defense counsel still cannot be reached or refuses to attend, staff may not adjourn the matter, but rather the matter must be referred to a judge who will determine whether there is good cause to adjourn.

If a previous non-appearing party on "good cause" gets a case reinstated on motion following dismissal or striking of the answer because of failure to appear at arbitration and the judge orders the case to a trial rather than to a second arbitration, the \$200 trial *de novo* fee must be paid within 10 days of the judge's order. Such order should specifically provide for payment of the trial *de novo* fee within 10 days as a condition of granting the motion.

### **Updating Case Status on ACMS for a Dismissed/Non-Appearance Plaintiff**

From the scheduling menu:

1. Enter the docket number and press PF1 "CASE PROCEEDING LIST."
2. Select the pending arbitration date and depress PF1.
3. At the "END DATE" field enter the date of the hearing.
4. The next field is "PROCEEDING STATUS." Use code "NA" - no appearance by: "P" -to indicate plaintiff depress ENTER. A message "ALL MODIFICATIONS HAVE BEEN MADE" will be displayed.
5. Depress PF7 "DISPOSITION ENTRY." Here you will update party status. Enter an "X" for the party status and the disposition date.
6. Depress PF1 "GLOBAL UPDATE."  
All active parties will be updated to a dismissed status.
7. Depress "ENTER."
8. The cursor is now at "CASE DISPOSITION." The disposition code is "12" "DISMISSED WITHOUT PREJUDICE." The "DISPOSITION DATE" is the date the case was dismissed.
9. Depress "ENTER."  
The "CASE STATUS" will now become "CLOSED."
10. The Order must also be entered on ACMS. The code is OA1 "ORDER DISMISSING COMPLAINT." Follow the same steps for entering the non/service order.

## **Procedure for Handling a Defendant's Non-Appearance**

1. The defendant's non-appearance should be entered on the calendar.
2. The arbitrator should note the non-appearance on the report and award form.
3. An order must then be entered noting the defendant's non-appearance and striking the answer. The code is "OB1."
4. ACMS must then be updated so that the arbitration is noted as "CM" with a notation in the comment field regarding the non-appearance and the amount of the award.
5. The defendant's answer must then be stricken on ACMS through document maintenance.
6. A copy of the report and award must be immediately mailed along with the signed Order to the defendant's counsel.

## **Trial *De Novo* Requests Filed by Non-Appearing Parties**

*Rule 1:5-6(c)* permits staff to reject trial *de novo* requests and accompanying fees submitted beyond the applicable 30-day time period within which such requests must be filed as well as those submitted by parties in default or whose answers have been suppressed. Therefore, if a party's pleading is stricken for failure to appear at arbitration pursuant to *R. 4:21A-4(f)*, they may not file a trial *de novo* request unless their pleading has been timely restored.

## **HANDLING ARBITRATIONS INVOLVING CASES WITH DEFAULTING OR STRICKEN PARTIES**

The Conference of Civil Presiding Judges considered a variety of issues relating to arbitrating cases in which a defendant's answer had been stricken for failure to provide discovery or in which a defendant, who had previously answered or appeared in the case, is in default, and made the following determinations:

- if there is but one defendant and that defendant's answer has been stricken or the defendant is in default, the case should **not** be scheduled for arbitration;
- if there are multiple defendants and one or more (**but not all**) are in default or have had their answers stricken for failure to provide discovery:
  - the case should be scheduled for arbitration;
  - the stricken or defaulted defendant(s) should receive notice of the arbitration hearing;
  - the stricken or defaulted defendant(s) should be allowed to participate in the proceeding as they would be allowed to participate at trial, that is, they may cross-examine but may not present affirmative witnesses;

- the stricken or defaulted defendant(s) that participate in the arbitration hearing are not entitled to a trial *de novo* unless that party has moved to vacate the dismissal or default and that motion has been granted before the time to file the trial *de novo* has run;
- if another party files for a trial *de novo*, the defendant(s) in default or whose answer(s) have been stricken should get notice and may participate in the trial; and
- the defendant(s) in default or whose answer(s) have been stricken are bound if the arbitration award is confirmed. *(5/14/02 and 6/25/02 Conference of Civil Presiding Judges' meetings)*

## **PROCESSING SETTLEMENTS**

A settlement is processed when an agreement is reached either prior to or following the filing of an arbitration award. However, in cases involving minors or mentally incapacitated parties, “friendlies” must first occur, as previously discussed. A settlement can dispose of all counts to a complaint or a portion of the case. When a case is settled, arbitration staff should be notified immediately by filing the “NOTICE OF SETTLEMENT/ORDER OF DISMISSAL” (see appendix). To process the “NOTICE OF SETTLEMENT/ORDER OF DISMISSAL,” staff should find out whether the case is disposed of completely or if it is only a partial settlement. This will be noted on the settlement form. If the notice of settlement applies to the entire case, the following steps are taken:

### **Updating Proceeding Status on ACMS to Reflect a Settlement**

From the civil menu selection:

1. Depress PF2, “SCHEDULING MENU.”
2. Depress PF1, “CASE PROCEEDING LIST.”
3. A list of all proceedings will appear. Select “S” - the pending arbitration hearing date and depress PF1, “PROCD-RECORD.”
4. Change the “PROCEED STATUS” from “PG” (pending) to “SP” (settled prior) or “SD” (settled during).
5. Depress PF7 “DISPOSITION ENTRY.”
6. Change the party status from “A”- (active) to “S” (settled). Since the settlement pertains to all parties, depress PF1 “GLOBAL UPDATE.” All active parties will be updated to a settled status.
7. Depress the “ENTER” key. This will bring you to “CASE DISP” where you would enter the settlement code.

The codes used are as follows:

Code 25 (settled while scheduled for arbitration).

Code 17 (settled after arbitration).

8. The date of the settlement is then entered. Depress “ENTER,” the “case status” will become “CLOSED.”  
The document must also be entered on ACMS.

### **ACMS Document Entry of Settlement/Order of Dismissal**

From the civil menu selection:

1. Depress PF12 “DOCUMENT MANAGEMENT.”
2. Enter the docket number and depress PF10 “DOCUMENT ENTRY.”
3. Select the party filing the document.
4. The next field to be entered is the “DOCUMENT TYPE” enter code “OQ3” (Notice of Settlement Order of Dismissal).
5. A judge’s signature must always appear on an Order and must be entered along with the document on ACMS; otherwise the system will not accept the Order. The particular judge’s ACMS identification number should be entered under “JUDGE.”  
Depress PF24. The message displayed on the bottom of your terminal should read “ORDER SUCCESSFULLY ENTERED.”

### **Partial Settlement**

If the Notice of Settlement/Order of Dismissal does not pertain to all parties, staff should only update the party status to whom the settlement pertains. The case would remain on the arbitration calendar to be decided as to the remaining parties.

### **ACMS Entry to Update Party Status**

From the scheduling menu:

1. Depress PF4 “DISPOSITION/MAINTENANCE.”
2. Enter an “S” next to the party to whom the settlement pertains and the date of the settlement.
3. Depress “ENTER” to accept input.
4. If you receive a telephone call advising of a settled case, be sure to get the name of the person who is calling. Staff should then update ACMS accordingly and indicate in comments the name of the person to whom you spoke. Advise the caller to submit the notice of settlement by mail.

### **PROCEEDINGS FOLLOWING ARBITRATION HEARINGS**

An order shall be entered dismissing the action following the filing of the arbitrator's

award unless:

1. within 30 days after the filing of the arbitration award, a party files and serves on all adverse parties a notice of rejection of the award and demand for a trial *de novo*; or
2. within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment (see previous section on “Processing Settlements”); or
3. within 50 days after the filing of the arbitration award, any party moves for confirmation of the award and entry of judgment thereon.

## **TRIALS DE NOVO**

Within 30 days after the filing of the arbitration award either party may file and serve a trial *de novo* request (see the appendix). A party demanding a trial *de novo* must tender with the request a check in the amount of \$200 made payable to the “Treasurer, State of New Jersey.” The case is then returned to the active trial list as to all parties. Accordingly, only one party needs to request a trial *de novo*. Any subsequent requests should be returned to the filer. Similarly, in consolidated cases, only one trial *de novo* request and fee is needed to place all non-settling cases within the consolidation back on the trial calendar.

To process a trial *de novo* request, staff must first ensure that it has been filed and served on a timely basis. When calculating the time, the day of the event (arbitration hearing) is not to be included. If the 30th day is a Saturday, Sunday, or a legal holiday, the time period will run until the end of the next business day. If timely received and served, stamp the original and copies “filed,” return conformed copies to the attorney, write the docket number on the check, and separate the check from the request. The checks should be kept in order by docket number. Staff should then attach the original report and award to the original trial *de novo* request. The trial *de novo* request must now be entered onto ACMS. *Rule. 1:5-6 (c)* specifically authorizes staff to reject late trial *de novo* requests, as well as those submitted by parties in default or whose answer has been suppressed.

## **Time for Request**

A trial *de novo* request must be filed and served within 30 days after the arbitration award is filed. See *R. 4:21A6(b)(1)*. See also *Jones v. First National Supermarkets, Inc.*, 329 *N.J. Super.* 125 (App. Div. 2000) making it clear that service of the request on all adverse parties within the 30-day period is as critical as filing it with the court. See also *Corcoran v. St. Peter’s Medical Center*, 339 *N.J. Super.* 337 (App. Div. 2001), holding that the substantial compliance doctrine excusing strict application of the requirements of *R. 4:21A-6(b)(1)* applies to service of a request for a trial *de novo*. See also *Woods v. Shop-Rite Supermarkets, Inc.*, 348 *N.J. Super.* 613 (App. Div. 2002), holding that oral notification of an intention to file a trial *de*

*novo* request following arbitration was insufficient and did not constitute substantial compliance with the requirement of timely service of the demand on one's opposing party.

### **Late Trial *De Novo* Requests**

Trial *de novo* requests received beyond the 30-day time period must be returned by staff. See *R.* 1:5-6(c)(3).

### **Grounds for Enlargement of Time for Requesting a Trial *De Novo* -- Extraordinary Circumstances**

The 30-day time period for filing a demand for a trial *de novo* may be extended upon a showing of "extraordinary circumstances."

For example, if plaintiffs contend that defendants, through negotiations, lulled them into missing the filing date, a court might determine that defendants should be equitably stopped from raising the 30-day bar and that the petition should be deemed filed timely. There may also be a finding of substantial compliance with the filing limitation. Generally, when asked after the passage of 30 days to bypass the binding effect of this statutory arbitration, the trial courts should be guided by the same principles as they would apply in passing upon a motion for relief from an order or a judgment under *R.* 4:50-1. Of course, the one year limitation of *R.* 4:50-2 would not apply, since this proceeding has its own internal limitation. But, considering the intention of the arbitration program to provide finality, the passage of time should be a critical factor in a judge's consideration. See *Mazakas v. Wray*, 205 *N.J. Super.* 367, 371-372 (App. Div. 1985.)

In *Behm v. Ferreira*, 286 *N.J. Super.* 566 (App. Div. 1996), the court held that the fact that counsel was too busy or had too heavy a workload to properly handle the litigation or supervise staff was insufficient to constitute "extraordinary circumstances." Similarly, an attorney's failure to review his diary and ensure that his secretary followed his instructions to timely file a trial *de novo* request was not found to constitute "extraordinary circumstances." See *Hartsfield v. Fatini*, 149 *N.J.* 611 (1997). See also *Wallace v. JFK Hartwych*, 149 *N.J.* 605 (1997) and *Martinelli v. Farm-Rite, Inc.*, 345 *N.J. Super.* 306 (App. Div. 2001).

See also *Flett Associates v. Catalano*, 361 *N.J. Super.* 127 (App. Div. 2003), in which good cause for the relaxation of the 30-day period under *R.* 4:21A-6(b)(1) was demonstrated by the unusual circumstances of an accident which prevented the legal secretary to the client's attorney from serving the demand for a trial *de novo* in a timely manner.

### **Mere Carelessness is Insufficient**

A communication breakdown between a claims agent and a motorist's attorney was not a sufficient ground for granting the motorist's untimely request for trial *de novo* of an arbitrated claim. The motorist's attorney, never having received instructions from the agent to reject the arbitrator's decision and proceed with a trial *de novo*, failed to request the trial *de novo* within the 30-day period required by law. These circumstances were found to constitute mere

carelessness or lack of proper diligence, which are insufficient to extend the time for filing a request for a trial *de novo*. *Lawrence v. Matuszewski*, 210 N.J. Super. 268 (Law Div. 1986).

### **Substantial Compliance (Can be Basis for Enlarging Time)**

The filing of a request for a trial *de novo* one business day late was held to constitute substantial compliance with the Rules of Court and constituted an “extraordinary circumstance” permitting the enlargement of the time within which to demand a trial *de novo*. See *Gerzenyi v. Richardson*, 211 N.J. Super. 213 (Law Div. 1986). Similarly, in *De Rosa v. Donohue*, 212 N.J. Super. 698 (Law Div. 1986), the court found that the particular circumstances in the case, namely, that the mailed trial *de novo* notice took eight days to travel a distance of only fifteen miles, constituted exceptional reasons for extending the 30-day time constraint. The court specifically pointed out, however, that its ruling should not be interpreted to excuse the late arrival of a trial *de novo* request mailed a few days before the filing deadline. *Id.* at 703. See also *Nascimento v. King*, 381 N.J. Super. 593 (App. Div. 2005).

### **Actual Filing Required**

Actual filing rather than mailing within the 30-day period is required. See *Gerzenyi v. Richardson*, 211 N.J. Super. 213 (Law Div. 1986).

### **State of New Jersey Not Required to Pay Fees or Monetary Sanctions; Unsatisfied Claim and Judgment Fund Cases Exempt**

Whenever the State of New Jersey is a party to an arbitrated case, it is not required to pay a trial *de novo* fee or monetary sanctions pursuant to R. 4:21A-6(c). Therefore, attorneys filing trial *de novo* requests on behalf of the Unsatisfied Claim and Judgment Fund are exempt from payment of the fee. Staff should be sure that the attorney filing the request is the attorney representing the Fund and not one representing another party to the case.

### **Handling Receipt of Multiple Fees on a Single Case**

Since a trial *de novo* request from one party returns the entire case to the trial calendar, any additional trial *de novo* fees received after the initial fee is received are surplusage and should be returned to the party or parties submitting them. It is important that staff update ACMS so that there is a record of the details of the fees being returned. *(9/30/03 Conference of Civil Presiding Judges’ meeting)*

### **Effect of Failure of a Party Requesting a Trial *De Novo* to Submit the Proper Fee**

Trial *de novo* requests sent without the proper fee should be returned to the filer. In the past, in some vicinages attorneys were given a reasonable grace period within which to submit the required fee without jeopardizing the timeliness of the trial *de novo* request. However, the



Arbitration Advisory Committee has found that such practice dilutes the effectiveness of the trial *de novo* request, thereby frustrating the legislative goals of the program.

### **Refundability of Trial *De Novo* Fees**

Trial *de novo* fees are non-refundable even if the case settles shortly after the trial *de novo* request is made. To refund fees would be administratively cumbersome and costly, and would encourage the routine rejection of arbitrators' awards. The \$200 fee and the 30-day period during which a party may decide whether or not the award is acceptable are designed to preserve the finality of an arbitrator's decision while also allowing the litigants a reasonable opportunity to request a trial *de novo*.

### **Faxed Requests Not Acceptable**

Just as in the case of any other trial *de novo* request unaccompanied by the requisite fee, faxed requests should be returned to the attorney faxing them. R. 4:21A-6(c) requires a trial *de novo* fee to accompany the trial *de novo* request and service of the request on all adverse parties in order for the filing to be effective. Filing by fax in such cases circumvents the intent of the rule.

### **Effect Upon Other Defendants When Only One Defendant Requests a Trial *De Novo***

When only one defendant requests a trial *de novo*, the matter is returned to the trial calendar as to all parties. See R. 4:21A-6(c).

### **Other Consequences of Requesting a Trial *De Novo* - Award of Costs Following Trial *De Novo***

Rule 4:21A-6(c) provides that if a party rejects an arbitrator's award and the case thereafter goes to a trial *de novo*, that party may be liable to pay reasonable costs, including attorney's fees, incurred by those parties not demanding a trial *de novo*. Reasonable costs shall be awarded on motion supported by detailed certification. However, no costs may be awarded if the verdict is not at least 20 percent more favorable than the award. Moreover, if the rejected arbitration award was for a "no cause," no costs will be awarded if the party requesting the trial *de novo* has obtained a verdict of at least \$250. See R. 4:21A-6(c)(2). The award of attorney's fees shall not exceed \$750 in total, nor \$250 per day. Compensation for witness costs, including expert witnesses, shall not exceed \$500. See R. 4:21A-6(c)(3) and (4).

### ***Per Quod* Claims to Be Combined with Award to Injured Spouse in Determining Whether to Award Costs**

A *per quod* claim should be combined with the award to the injured spouse in determining a party's potential eligibility for counsel fees and costs under R. 4:21A-6(c)(1)

following a trial *de novo*. See *Coughlin v. Morell and Pfeiffer*, 222 N.J. Super. 71 (App. Div. 1987).

### **Costs Limited to Extent of Damages Awarded**

If a plaintiff who had rejected an arbitrator's award is found to have no cause of action following a trial *de novo*, no attorney's fees or costs may be assessed against that plaintiff. This is because under N.J.S.A. 39:6A-34 attorney's fees and costs can only be offset against any damages awarded to a party. See *Ghazouly v. Benjamin*, 251 N.J. Super. 1 (App. Div. 1991).

### **Substantial Economic Hardship Justifying Denial of Costs**

In *Helstoski v. Hyckey*, 255 N.J. Super. 142 (App. Div. 1988), the court provided guidance as to the circumstances necessary to justify the denial of costs following a trial *de novo* of an arbitrated case in which the plaintiff failed to improve its position by 20 percent. A hardship giving rise to a denial of reasonable costs under R. 4:21A-6(c)(5) might exist, if an award for costs exceeds the amount of the recovery. Furthermore, although the economic hardship does not have to be created by the subject matter of the lawsuit, a substantial hardship determination may not be made without full disclosure of all assets and liabilities, the current employment status and all sources and amounts of income of the party seeking a waiver from the imposition of costs. Finally, the reasonableness of a party's rejection of an arbitration award is irrelevant to the determination. See *Helstoski v. Hyckey*, *supra*.

### **Delegation of Power to Determine Applications for Costs**

In *Helstoski v. Hyckey*, *supra*, one of the issues raised on appeal was whether the trial judge had the power to rule on an application for the imposition of costs following a trial *de novo* of an arbitrated case since the pertinent rule (R. 4:21A-6(c)) provided, at that time, that such an application shall be made to the Assignment Judge. As the court disposed of the case on other grounds, however, it did not reach or rule upon that issue.

Following the decision in the *Helstoski* case, R. 4:21A-8(a) was amended effective 1989 so as to provide expressly that such functions are delegable.

### **ACMS Entry to Schedule a Trial *De Novo***

From the civil menu selection:

1. Depress PF2 "SCHEDULING MENU."
2. Enter the docket number and depress PF1 "PROCEEDING LIST." A list of proceedings will appear.
3. Select "S," the completed arbitration hearing and depress PF1- "PROCEED RECORD."
4. Change the "PROCEEDING STATUS" from "CM" (completed arbitration hearing) to "DN"- (*de novo* proceeding).

5. In the next field “BY” enter the filing party “P” or “D” and depress the “ENTER” key. The case is now in a scheduling mode.

### **ACMS Document Entry of a Trial *De Novo***

From the civil menu selection:

1. Depress PF12 “DOCUMENT MANAGEMENT.”
2. Enter docket number and depress PF10 “DOCUMENT ENTRY.”
3. Select “S” for the filing party and tab until you come to “DOCUMENT TYPE.” Enter the document type “X18” and the filed date.
4. Depress the “ENTER” key.

A message will appear to confirm that the document has successfully added.

### **ACMS Report 216 Trial *De Novo* Report**

Once all trial *de novo* requests have been processed, staff should request ACMS report 216. Staff must request this report in date range (from the latest filing date of the trial *de novo* requests being processed to the most current filing date). This report will show the docket number, case title, filing party and whether the filer was the plaintiff or defendant. The report is printed from RMDS the following day and is sorted by case type. Once this report is printed, trial *de novo* checks should be compared with it. The report and checks should then be promptly submitted to the Vicinage Finance Manager for deposit.

### **ACMS Entry to Request the Trial *De Novo* Report**

From the civil menu selection:

1. Depress PF7 “REPORT REQUEST MENU.”
2. The “COURT CODE” is LCV OR SCP.
3. The “REPORT NUMBER” is “216”.
4. Enter the applicable dates in the “from and to date” field. Once you have entered this information you will receive a message “Any changes Y/N?” If the dates you entered are correct type, “N.” You should receive another message that will read “REPORT REQUEST HAS BEEN STORED SUCCESSFULLY.”

Your report will be ready to print the following day.

### **Printing the Trial *De Novo* Report from RMDS**

1. Select option “N” (refresh list) and depress ENTER. A list of all reports in RMDS will appear.
2. Page forward and browse through all the reports until you locate report 216 “*DE NOVO TRIAL REQUEST.*”
3. Enter “P” (print) next to the report number and depress “ENTER.”
4. At the next screen select option “P” (system print) and enter the printer number.

5. Depress the “ENTER” key until you are at the next screen where you will request the number of copies.
6. Request the number of copies and depress the “ENTER” key.  
Your report will now begin to print at the assigned printer.

### **Trial *De Novo* Request Must Be Filed to Preserve Appeal**

According to *Grey v. Trump Castle Associates*, 367 N.J.Super. 443 (App. Div. 2004), when a matter has been arbitrated pursuant to R. 4:21A *et seq.*, a party may preserve the right to seek appellate review of the interlocutory order only by timely filing a trial *de novo* request. However, once the award has been confirmed and judgment has been entered, an appeal from the award or any interlocutory order is barred.

### **CONFIRMATION OF AWARD/DISMISSAL**

Within 50 days after filing of the arbitration award either party may move to confirm the arbitration award and file a motion to enter judgment. A uniform order (see the appendix) must be used. This form of order allows for a disposition of all claims as to each named party in the complaint, and includes the specific percentages of liability, amount of damages, interest and costs assessed.

### **MISCELLANEOUS MATTERS FOLLOWING ARBITRATION**

In *Ravelo v. Campbell*, 360 N.J.Super. 511 (App. Div. 2003), an attorney for a motorist’s insurer appeared at the arbitration of the claims of the other driver unaware that the passengers’ actions had been consolidated with those of the driver. The trial court directed the motorist’s insurer to pay the arbitration award for passengers in the other vehicle involved in the accident even though motorist and insurer were not parties to the passengers’ suit. On appeal, the Appellate Division held that because the motorist was not a party to the arbitration of the passengers’ claims, he did not have to file a notice of rejection of the arbitration award and a request for a trial *de novo* and the trial court had no basis to order that the insurer pay the award. However, the court ruled that the motorist was collaterally stopped from challenging a liability determination on the remand for arbitration of the passengers’ claims.

See also *Hernandez v. Stella*, 359 N.J. Super. 415 (App. Div. 2003), in which the trial judge, finding that the Automobile Insurance Cost Reduction Act, N.J.S.A. 39:6A-1.1 *et seq.*, (AICRA) applied to the case, granted the defendant’s motion for summary judgment and dismissed the plaintiff’s complaint. On appeal, the court held that AICRA did apply, but that defendants were stopped from relying on the plaintiff’s failure to provide a physician’s certification because they did not raise the issue until after the arbitration had been conducted

pursuant to R. 4:21A. See also *White v. Karlsson*, 354 N.J. Super. 284 (App. Div. 2002, *certif. denied*, 175 N.J. 170 (2002)).

## **50-DAY DISMISSALS FOLLOWING ARBITRATION**

For each month, arbitration staff should request report 267 from RMDS for the particular county. Once the list of cases is printed, the list must be reviewed to ensure that arbitration was completed for each case and no other proceeding, document or disposition (*e.g.*, motion or stipulation of dismissal) is pending. If nothing is pending, the particular case can be dismissed. To do this, go to PF2, designate the docket series (*i.e.*, L). From the scheduling menu, go to PF15 and list each eligible docket number and follow the prompts to schedule each case for dismissal after which it is closed. Mailers containing Orders can be generated from RMDS “ACMS Mailers” the following business day.

### **Effect of 50-day Dismissals**

According to *Accilien v. Consolidated Rail Corporation*, 323 N.J. Super. 595 (App. Div. 1999), if a motion is brought to vacate a 50-day dismissal and file a late trial *de novo* request, the dismissal order is considered to be “with prejudice” and the moving party must show “extraordinary circumstances.” Under *Allen v. Heritage Court Associates*, 325 N.J. Super. 112 (App. Div. 1999) if the motion to vacate the dismissal is brought to confirm the arbitration award and enter judgment, a more relaxed standard is applied. The court in *Allen* noted:

Although a motion to vacate a dismissal for failure to file a timely motion to confirm an arbitration award should be viewed with great liberality, litigants should be discouraged from adopting a cavalier attitude towards the requirement that a motion to confirm must be filed within fifty days. Therefore, some sanction should be imposed for plaintiff’s failure to comply with this requirement. Accordingly, although we reverse the order denying plaintiff’s motion to reinstate her complaint and remand for entry of an order confirming the arbitration award, we direct that prejudgment interest on that award shall be suspended for the period between the expiration of the fifty days allowed for a motion to confirm and the filing date of this opinion. See R. 4:42-11(b) (providing for suspension of prejudgment interest in “exceptional cases”) (325 N.J. Super. at 121.)

See also *Sprowl v. Kitselman*, 267 N.J. Super. 602 (App. Div. 1993), holding that the standards set forth in R. 4:50-1 apply to late requests to confirm an award and enter judgment filed after a 50-day dismissal.

At the January 13, 2000 meeting of the Conference of Civil Presiding Judges, it was agreed that 50-day dismissal orders must always be mailed to all parties and they should not specify “with” or “without prejudice.”

## **Automated Handling of 50-Day Dismissals**

ACMS can generate 50-day dismissal notices and mailers, and close arbitrated cases in which 50 days have passed since the arbitration award was entered (**not filed**) and no other entries were made on ACMS. ACMS does not serve as a “tickler” system by automatically counting the 50-day time period. Instead, arbitration staff must order Report 267 from RMDS to get a list of cases that may be dismissed. ACMS will then generate mailers.

## **EXTENDING THE TIME FOR CONFIRMATION OF ARBITRATOR'S AWARD**

Unlike the “extraordinary circumstances” standard applicable to requests for extending the 30-day period for filing a trial *de novo* request, there is ample justification for applying a more relaxed standard to applications to extend the time for confirmation of the award. See *Allen v. Heritage Court Association, supra*. Therefore, unlike requests to extend the time for filing a trial *de novo*, requests to vacate a dismissal and extend the time for confirming an award should be liberally granted.

## **TAXED COSTS UPON CONFIRMATION**

In *Greenfeld v. Caesar’s Atlantic City Hotel/Casino*, 334 N.J. Super. 149 (Law Division 2000), the court addressed whether R. 4:42-8, providing for the allowance of taxed costs to a prevailing party, applied to confirmation of an arbitration award and entry of judgment. The court held that the provisions of R. 4:42-8 should not be applied to permit or require an award of costs following confirmation of an arbitration award and entry of judgment unless the claim for costs is specifically preserved in the award itself.

## **BLOCK-SCHEDULING OF CASES FOR ARBITRATION**

Some counties have had great success in block-scheduling a group of cases involving a common insurance carrier for arbitration. Using RMDS Report 294, counties can identify cases involving a particular carrier and then schedule a group of the cases for a given day. Frequently, attendance of an adjustor with settlement authority is required. Moreover, immediately following the hearing, the case is sent on arbitration day to a settlement conference. Such initiatives have been shown to greatly reduce the trial *de novo* request rate.

## **AUTOMATED ARBITRATION PROGRAM STATISTICS**

In order to assist in achieving statewide uniformity, accuracy and reliability in statistical reporting for the civil arbitration programs, the following instructions apply.

Each month, arbitration staff should print from RMDS on the ACMS system, the following for the previous month:

- 266a Personal Injury Arbitration Report
- 266b Auto Arbitration Report (contains auto negligence and personal injury protection (PIP) arbitration data)
- 266c Commercial Arbitration Report
- 266x Arbitration Detail Report (This report provides details on what data elements went into each category in the above-noted 266 reports.)

The following categories are listed on each of the above-noted reports. To assist in attaining uniformity in data entry, each category is followed by a listing of the data elements constituting each category:

1. **Cases scheduled and noticed.** Includes all cases scheduled and noticed for hearings to occur during the report month (and appearing on calendars for the report month), but does not include cases scheduled in error or rescheduled.
2. **Cases removed after being scheduled and noticed.** ACMS looks through all calendars for the report month and totals up all “RM” (removed) codes.
3. **Cases adjourned.** ACMS looks for all “A” (adjourned) *codes, i.e.,* AA, AD, AE, AF, AJ, A1, A2, A3, A4, A5, A6, A7, A8 and A9 plus all CT (continued) and “CD” (continued for damages) codes. When a case is scheduled for arbitration during the report month and a judge adjourns it to enable the attorneys to take discovery, the “AF” code should be used rather than the “RS” code in order for ACMS to recognize the workload impact of the original scheduling of the case during the report month. If a case is put off due to an administrative or court initiated need (*e.g.,* the arbitration room becomes unavailable) “RS” (rescheduled) should be used. By contrast the “A” (adjourned) codes should be used when a case must be put off because of a party or attorney generated reason.
4. **Cases settled prior to or on the hearing day.** ACMS looks for all “SP” (settled) codes on all cases appearing on calendars during the report month.
5. **Cases in which award rendered.** ACMS count includes cases in the report month that were entered onto ACMS as CM (completed) and X88 (award filed). Therefore, if a case was arbitrated during the month of June but the award was not entered until July, the case will show up in the July count. Accordingly, if a case is arbitrated on June 30 and the award is filed on June 30, staff must do data entry on June 30 indicating both that the arbitration was completed (CM) and that an award was filed (X88).

6. **Cases otherwise disposed.** In order to come up with this category, ACMS counts all cases on the calendars that were scheduled for arbitration hearings to occur during the report month but which were **not** removed (RM) and adjourned (AA, AD AE, AF, AJ, A1, A2, A3, A4, A5, A6, A7, A8, A9, CT, or CD), settled (SP), or arbitrated and an award entered (X88).
7. **Cases in which judgment on the arbitration award was rendered.** Includes those cases in which OQ9 (order to confirm and enter judgment) was entered (**not filed**) during report month.
8. **Trials *de novo* requested.** ACMS searches for X18 documents entered (**not filed**) for plaintiffs and for defendants. **Note:** A report 216 (trial *de novo* report) can be ordered from RMDS. The cases listed in this report are picked up by the date that the *de novo* request is entered, **not** the filing date.
9. **Trials *de novo* completed.** ACMS looks for all cases tried in the particular calendar month that had an X88 (award filed) previously entered. **Note:** data entry staff should be instructed to enter both arbitration awards and the amounts of the verdict or judgment.

It should be noted that subsections one through six are counted by the ACMS proceeding status, while seven through nine are counted by the document entry (**not filing**) date.

## **COMPENSATION OF ARBITRATORS**

Because arbitrators are one of the most valuable resources to the arbitration program, care should be taken to ensure that they are promptly paid. Staff should be certain that every arbitrator serving in the program has properly executed a current federal W9 form and that it has been forwarded to the Vicinage Finance Manager. Staff should inquire whether the arbitrator wants payment to be made to the arbitrator as an individual or to the arbitrator's firm. If payment is to be made to the arbitrator individually, the completed W9 on the file must contain the arbitrator's social security number. If payment is to be made to the firm, the completed W9 on file should contain the firm's federal tax identification number. Arbitrators must submit a new completed W9 form any time the arbitrator's situation changes and resulting in a change in federal income tax reporting status. Examples of such situations include changes in employment or changes in ownership of a firm due to merger or partnership resulting in a new federal tax identification number.

The AOC Management Services Division has advised all counties that effective November 1, 2001, all arbitrators are also required to comply with the provisions of P.L. 2001, C.134 which requires all vendors doing business with the State of New Jersey to register with the Department of the Treasury, Division of Revenue. Arbitrators can register on-line at [www.state.nj.us/treasury/revenue/pdf/forms/reg\\_a.pdf](http://www.state.nj.us/treasury/revenue/pdf/forms/reg_a.pdf).



**Instructions for the Completion of Payment Vouchers**

On the hearing day each arbitrator is given a payment voucher on which to record his or her cases. The vouchers are collected at the end of the day and are to be processed as follows:

**Space A:** the Payee Identification Number should be either the arbitrator's firm's federal reporting number for tax purposes (if the firm is to receive reimbursement) or the arbitrator's Social Security Number (if the arbitrator is to be reimbursed as an individual).

**Space C:** if a single arbitrator is used, the Total Amount should be \$350 unless the arbitrator specifically requested to sit for a half a day in which case he or she should be paid \$175. Retired judges not on recall service serving as arbitrators receive \$350 per day. If a two-person panel is used, the total amount should be \$225 for a full day unless the arbitrator specifically requests to sit a half a day, in which case the total amount should be \$112.50.

**Space D:** if the arbitrator's firm is to receive the reimbursement, print the complete name of the arbitrator's law firm first, then the firm's address. If the arbitrator is to be reimbursed individually, use his or her name first, followed by the address to which the check should be sent.

**Space E:** all State invoices are forwarded to the Vicinage Finance Manager.

**Space F:** the arbitrator must sign the Payee Declaration, and his or her name must be printed or typed below the signature.

The Arbitration Administrator should sign in the block denominated Certification by Receiving Agency (lower left hand corner). The arbitrator seeking payment must sign in the Declaration section.

Invoices should be submitted on a daily basis. They should not be accumulated over a prolonged period.

The codes below are specific for each program:

**AUTOMOBILE AND PERSONAL INJURY PROTECTION (PIP)**

| FUND                   | AGCY | ORIG. CODE | SUB. ORG | APPR UNIT | ACT. CD              | OBJ. CD | SUB. OBJ. | REV SRCE | SUB-REV | PROJ/ JOB NO. |
|------------------------|------|------------|----------|-----------|----------------------|---------|-----------|----------|---------|---------------|
| 100                    | 098  | Y510       | BLANK    | 052       | county specific code | 3630    | 05        | BLANK    | BLANK   | BLANK         |
| <b>PERSONAL INJURY</b> |      |            |          |           |                      |         |           |          |         |               |
| 100                    | 098  | Y512       | BLANK    | 052       | county specific code | 3630    | 05        | BLANK    | BLANK   | BLANK         |

| <b>COMMERCIAL</b> |     |      |       |     |                         |      |    |       |       |       |
|-------------------|-----|------|-------|-----|-------------------------|------|----|-------|-------|-------|
| 100               | 098 | Y511 | BLANK | 052 | county<br>specific code | 3630 | 05 | BLANK | BLANK | BLANK |

**Commodity Code/Description of Item**

To be completed by arbitrator. The arbitrator will list the docket numbers of each case for which he or she has rendered a decision.

Checks will be issued after the invoices have been processed through the Vicinage Finance Manager. The check will be sent directly to the payee name and address listed in space D.

**PAYMENT OF ARBITRATION - RELATED INTERPRETING EXPENSES**

Foreign language interpreters are used from time to time in the civil arbitration programs. In this regard, it is the responsibility of arbitration staff to maintain time sheets specifying the dates and specific amounts of time that each interpreter spends at arbitration proceedings.

**PURCHASE OF ARBITRATION PROGRAM EQUIPMENT**

The appendix contains guidelines to assist counties in the purchase of equipment to be used in the arbitration program.

**VOLUNTARY BINDING ARBITRATION PROGRAM**

The Supreme Court has approved implementation of voluntary binding arbitration programs (VBA) to handle verbal threshold and lemon law cases. It also adopted guidelines permitting counties to use VBA for other case types with advance notice to the AOC. A copy of the program guidelines and sample forms appear in the appendix.

The substance of the program's operation is as follows. The parties file a written consent form, signed by all attorneys and the parties themselves, submitting the case to binding arbitration. The parties must also submit a consent order of dismissal with prejudice. The case is then presented, in abbreviated form, to a panel of two arbitrators whom the parties have selected. A sitting Superior Court judge, also selected by the parties, is present but becomes involved in the process only if (and to the extent that) the arbitrators do not agree. The proceedings are held in the courtroom, and the judge explains to the parties at the outset and on the record that the determination of the panel will be final and not appealable. All parties must then agree, on the record, that they understand the final and binding nature of the program. The hearing, however, proceeds off the record. Frequently, the parties use a high/low agreement which normally is not revealed to the arbitrators. The high/low provision seems to be an incentive for some attorneys trying to avoid the uncertainty of a trial. For the plaintiffs, that's a guarantee that at least they get something. The incentive for the defense is that it can set a cap and limit its exposure. The high/low provision helps to insulate and protect the client -- whether the client is the plaintiff or the defendant.

This program requires little court involvement other than making a courtroom and the selected judge available. Court staff should not be involved in the scheduling or compensation of the attorney arbitrators used in this program. It is the responsibility of the attorneys using

voluntary binding arbitration to privately coordinate the arbitrators, provide for their compensation and ensure attendance when the selected judge is available.

## **PROVISIONS RELATING TO ARBITRATION STAFF COORDINATION & LIAISON RESPONSIBILITIES**

One of the critical roles of arbitration staff, is that of a liaison to all customers of the arbitration program. To effectuate this role, staff must maintain a variety of internal and external relationships with customers, including, but not limited to the local bar association, judges, arbitration selection committee, attorneys, litigants, insurance representatives, other court staff and the public at large.

This role includes, but is not limited to:

- coordinating the training and development of staff, judges and arbitrators;
- coordinating the annual review of arbitrators and appreciation programs;
- troubleshooting;
- coordinating all arbitration related efforts;
- analyzing and reporting arbitration program data;
- coordinating the recruitment and selection of arbitrators;
- preparing arbitration budget projections; and
- serving as liaison to the Committee of Arbitration Administrators and Supreme Court Arbitration Advisory Committee.

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## **AUTOMOBILE ARBITRATION STATUTE**

### **39:6A-24. Purpose and intent of act**

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 burden and congestion of the State's courts.

### **39:6A-25. Actions to be submitted to arbitration**

- 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 controversy 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.

### **39:6A-26. Tolling statute of limitations**

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.

### **39:6A-27. Selection of arbitrators**

- 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.

### **39:6A-28. Compensation and fees; rules governing offers of judgment**

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.

### **39:6A-29. Subpoenas**

The arbitrators may, at their initiative or at the request of any party to the arbitration, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpoenas shall be served and shall be enforceable in the manner provided by law.

### **39:6A-30. Award; decision of arbitrator**

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.

### **39:6A-31. Confirming arbitration decision**

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.

### **39:6A-32. Arbitrators fee; payment**

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 a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

### **39:6A-33. Admissibility of evidence at trial de novo**

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.



### **39:6A-34. Assessment of costs for trial de novo**

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.

### **39:6A-35. Rules; report**

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.

## **PERSONAL INJURY ARBITRATION STATUTE**

### **2A:23A-20. Personal injury actions; submission to arbitration; amount; consent of parties**

- a. Any civil action brought for personal injury, except for actions brought pursuant to the provisions of P.L.1972, c. 70 (C. 39:6A-1 et seq.), 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 \$20,000.00 or less, exclusive of costs.
- b. Notwithstanding that the amount in controversy is in excess of \$20,000.00, 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 controversy does not involve novel legal or unduly complex factual issues.
- c. 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.

### **2A:23A-21. Tolling of statute of limitations**

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 6 of this act.

### **2A:23A-22. Arbitrators number or selection; mutual consent of parties; judicial selection**

- 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 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.

### **2A:23A-23. Compensation for arbitrators**

Compensation for arbitrators shall be set by the rules adopted by 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 subject to the provisions of N.J.S.A. 59:9-5. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the Rules Governing The Courts of the State of New Jersey for the purpose of determining a reasonable fee in 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.

### **2A:23A-24. Subpoenas**

The arbitrators may, at their initiative or at the request of any party to the arbitrators, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpoenas shall be served and shall be enforceable in the manner provided by law.

### **2A:23A-25. Amount of award; written decision**

Notwithstanding that a controversy was submitted pursuant to subsection a. of section 1 of this act, the arbitration award may exceed \$20,000.00. 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.

**2A:23A-26. Confirmation by court of arbitration decision; trial de novo; modification or vacation**

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; unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial de novo or for 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.

**2A:23A-27. Payment of arbitrators fees by trial de novo petitioner**

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 a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

**2A:23A-28. Evidence at trial de novo; exception for reduction of assessment**

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 10 of this act.

**2A:23A-29. Costs of trial de novo; exception; waiver**

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 attorneys' 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.

**2A:23A-30. Rules of court; impact statement**

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 insurance settlement practices and costs, and on court calendars and workload.

## COURT RULES

### *RULE 1:40-2. MODES AND DEFINITIONS OF COMPLEMENTARY DISPUTE RESOLUTION*

Complementary Dispute Resolution Programs (CDR) conducted under judicial supervision in accordance with these rules, as well as guidelines and directives of the Supreme Court, and the persons who provide the services to these programs are as follows:

(a) "Adjudicative Processes" means and includes the following:

(1) Arbitration: A process by which each party and/or its counsel presents its case to a neutral third party, who then renders a specific award. The parties may stipulate in advance of the arbitration that the award shall be binding. If not so stipulated, the provisions of Rule 4:21A-6 (Entry of Judgment; Trial De Novo) shall be applicable.

(2) Settlement Proceedings: A process by which the parties appear before a neutral third party or panel of such neutrals, who assists them in attempting to resolve their dispute by voluntary agreement.

(3) Summary Jury Trial: A process by which the parties present summaries of their respective positions to a panel of jurors, which may then issue a non-binding advisory opinion as to liability, damages, or both.

(b) "Evaluative Processes" means and includes the following:

(1) Early Neutral Evaluation (ENE): A pre-discovery process by which the attorneys, in the presence of their respective clients, present their factual and legal contentions to a neutral evaluator, who then provides an assessment of the strengths and weaknesses of each position and, if settlement does not ensue, assists in narrowing the dispute and proposing discovery guidelines.

(2) Neutral Fact Finding: A process by which a neutral, agreed upon by the parties, investigates and analyzes a dispute involving complex or technical issues, and who then makes non-binding findings and recommendations.

(c) "Facilitative Process" means and includes mediation, which is a process by which a mediator facilitates communication between parties in an effort to promote settlement without imposition of the mediator's own judgment regarding the issues in dispute.

(d) "Hybrid Process" means and includes:

(1) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.

(2) Mini-trial: A process by which the parties present their legal and factual conditions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to define the issues in dispute and to assist settlement negotiations. A neutral third party may issue an advisory opinion, which shall not, however, be binding, unless the parties have so stipulated in writing in advance.

(e) "Other CDR Programs" means and includes any other method or technique of complementary dispute resolution permitted by guideline or directive of the Supreme Court.

(f) "Neutral": A "neutral" is an individual who provides a CDR process. A "qualified neutral" is an individual included on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge. Neutral evaluators, neutral fact finders, and settlement program panelists are not required to comply with the training requirements of Rule 1:40-12 or to be on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge.

## **RULE 4:21A. ARBITRATION OF CERTAIN CIVIL ACTIONS**

### **4:21A-1. Actions Subject to Arbitration; Notice and Scheduling of Arbitration**

(a) Mandatory Arbitration. Arbitration pursuant to this rule is mandatory for applicable cases on Tracks I, II, and III, as set forth in paragraphs (1), (2), and (3) below, and only as required by the managing judge for cases on Track IV, except that cases having undergone a prior, unsuccessful court-ordered mediation shall not be scheduled for arbitration unless the court on its own or a party's motion finds good cause for the matter to be arbitrated or unless all parties request arbitration in writing.

(1) Automobile Negligence Actions. All tort actions arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(2) Other Personal Injury Actions. Except for professional malpractice and products liability actions, all actions for personal injury not arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(3) Other Non-Personal Injury Actions. All actions on a book account or instrument of obligation, all personal injury protection claims against plaintiff's insurer, and all other contract and commercial actions that have been screened and identified as appropriate for arbitration shall be submitted to arbitration in accordance with these rules.

(b) Voluntary Arbitration. Any action not subject to mandatory arbitration pursuant to subsections (1), (2), or (3) of paragraph (a) of this rule may be submitted to arbitration on written stipulation of all parties filed with the civil division manager.

(c) Removal From Arbitration. An action assigned to arbitration may be removed there from as follows:

- (1) Prior to the notice of the scheduling of the case for arbitration or within 15 days thereafter, the case may be removed from arbitration upon submission to the arbitration administrator of a certification stating with specificity that



the controversy involves novel legal or unusually complex factual issues or is otherwise ineligible for arbitration pursuant to paragraph (a). A copy of this certification must be provided to all other parties. A party who objects to removal shall so notify the arbitration administrator within ten days after the receipt of the certification, and the matter will then be referred to a judge for determination. The arbitration administrator shall, however, remove the case from arbitration if no objection is made and the reasons for removal certified to are sufficient.

- (2) If either party seeks to remove a case from arbitration subsequent to 15 days after the notice of hearing, a formal motion must be made to the Civil Presiding Judge or designee.

(d) Notice of Arbitration; Scheduling; Adjournment. The notice to the parties that the action has been assigned to arbitration shall also specify the time and place of the arbitration hearing and its date, which shall not be earlier than 45 days following the date of the notice. Unless the parties otherwise consent in writing, the hearing shall not be scheduled for a date prior to the end of the applicable discovery period, including any extension thereof. The hearing shall take place, however, no later than 60 days following the expiration of that period, including any extension. Adjournments of the scheduled date shall be permitted only as provided by R. 4:36-3(b).

(e) Pretrial Discovery. The assignment of an action for arbitration shall not affect a party's opportunity to engage in pretrial discovery nor an attorney's professional obligation to do so.

#### 4:21A-2. Qualification, Selection, Assignment and Compensation of Arbitrators

- (a) By Stipulation. All parties to the action may stipulate in writing to the number and names of the arbitrators. The stipulation shall be filed with the civil division manager within 14 days after the date of the notice of arbitration. The stipulated arbitrators shall be subject to the approval of the Assignment Judge and may be approved whether or not they met the requirements of paragraph (b) of this rule if the Assignment Judge is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

(b) Appointment From Roster. If the parties fail to stipulate to the arbitrators pursuant to paragraph (a) of this rule, the arbitrator shall be designated by the civil division manager from the roster of arbitrators maintained by the Assignment Judge on recommendation of the arbitrator selection committee of the county bar association. Inclusion on the roster shall be limited to retired judges of any court of this State who are not on recall and attorneys admitted to practice in this State having at least 7 years of experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules, and who have completed the training and continuing education required by R 1:40-12(c). The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators. The Assignment Judge shall file the roster with the Administrative Director of the Courts. A motion to disqualify a designated arbitrator shall be made to the Assignment Judge on the date of the hearing.

(c) Number of Arbitrators. All arbitration proceedings in each vicinage in which the number and names of the arbitrators are not stipulated by the parties pursuant to paragraph (a) of this rule shall be conducted by either a single arbitrator or by a two-arbitrator panel, as determined by the Assignment Judge.

(d) Compensation of Arbitrators.

(1) Designated Arbitrators. Except as provided by subparagraph (2) hereof, a single arbitrator designated by the civil division manager, including a retired judge not on recall, shall be paid a per diem fee of \$350. Two-arbitrator panels shall be paid a total per diem fee of \$450, to be divided evenly between the panel members.

(2) Stipulated Arbitrators. Arbitrators stipulated to by the parties pursuant to R. 4:21A-2(a) shall be compensated at the rate of \$70 per hour but not exceeding a maximum of

\$350 per day. If more than one stipulated arbitrator hears the matter, the fee shall be \$70 per hour but not exceeding \$450 per day, to be divided equally between or among them. The parties may, however, stipulate in writing to the payment of additional fees, such stipulation to specify the amount of the additional fees and the party or parties paying the additional fees.

(3) Retired Judges. Retired judges who are not on recall shall be paid at the rate in effect for judges on recall service.

4:21A-3. Settlements; Offer of Judgment

If an action is settled prior to the arbitration hearing, the attorneys shall so report to the civil division manager and an order dismissing the action shall be entered. The provisions of R. 4:58 shall not apply to arbitration proceedings.

4:21A-4. Conduct of Hearing

(a) Prehearing Submissions. At least 10 days prior to the scheduled hearing each party shall exchange a concise statement of the factual and legal issues, in the form set forth in Appendix XXII-A or XXII-B to these rules, and may exchange relevant documentary evidence. A copy of all documents exchanged shall be submitted to the arbitrator for review on the day of the hearing.

(b) Powers of Arbitrator. The arbitrator shall have the power to issue subpoenas to compel the appearance of witnesses before the panel, to compel production of relevant documentary evidence, to administer oaths and affirmations, to determine the law and facts of the case, and generally to exercise the powers of a court in the management and conduct of the hearing.

(c) Evidence. The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence. In lieu of oral testimony, the arbitrator may accept affidavits of witnesses; interrogatories or deposition transcripts; and bills and reports of hospitals, treating medical personnel and other experts provided the party offering the documents shall have made them available to all other parties at least one week prior to the hearing. In the discretion of the arbitrator, police reports, weather reports, wage loss certifications and other documents of generally accepted reliability may be accepted without formal proof.

(d) General Provisions for Hearing. Arbitration hearings shall be conducted in court facilities and no verbatim record shall be made thereof. Witness fees shall be paid as provided for trials in the Superior Court.

(e) Subsequent Use of Proceedings. The arbitrator's findings of fact and conclusions of law shall not be evidential in any subsequent trial de novo, nor shall any testimony given at the arbitration hearing be used for any purpose at such subsequent trial. Nor may the arbitrator be called as a witness in any such subsequent trial.

(f) Failure to Appear. An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the non-appearing party shall be deemed to have waived the right to demand a trial de novo. Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause and on such terms as the court may deem appropriate, including litigation expenses and counsel fees incurred for services directly related to the non-appearance.

#### 4:21A-5. Arbitration Award

No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall provide a copy thereof to each of the parties. The award shall include a notice of the right to request a trial de novo and the consequences of such a request as provided by R. 4:21A-6.

#### 4:21A-6. Entry of Judgment; Trial De Novo

(a) Appealability. The decision and award of the arbitrator shall not be subject to appeal.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

- (1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to *R. 4:42-11(b)*.

(c) Trial De Novo. An action in which a timely trial de novo has been demanded by any party shall be returned, as to all parties, to the trial calendar for disposition. A trial de novo shall be held within 90 days after the filing and service of the request therefore. A party demanding a trial de novo must tender with the trial de novo request a check payable to the "Treasurer, State of New Jersey" in the amount of \$200 towards the arbitrator's fee and may be liable to pay the reasonable costs, including attorney's fees, incurred after rejection of the award by those parties not demanding a trial de novo. Reasonable costs shall be awarded on motion supported by detailed certifications subject to the following limitations:

(1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict at least 20 percent more favorable than the award.

(2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict of at least \$250.

(3) The award of attorney's fees shall not exceed \$750 in total, nor \$250 per day.

(4) Compensation for witness costs, including expert witnesses, shall not exceed \$500.

(5) If the court in its discretion is satisfied that an award of reasonable costs will result in substantial economic hardship, it may deny an application for costs or award reduced costs.

4:21A-7.  
Claims

Arbitration of Minor's and Mentally Incapacitated Person's

If all parties to the action accept the arbitration award disposing of the claim of a minor or mentally incapacitated person, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

4:21A-8. Administration

(a) Assignment Judge. The Assignment Judge or other judge designated by order of the Supreme Court shall be responsible for the vision of the arbitration programs in the vicinage, including the resolution of all issues arising there from. The Assignment Judge may delegate all or any of those powers to any Superior Court judge in the vicinage.

(b) Administrative Director of the Courts. The Administrative Director of the Courts shall promulgate such guidelines and forms as required for the implementation of the programs.

(c) Civil Division Manager. The civil division manager or designee for the vicinage shall perform all of the functions specified by these rules and shall serve as arbitration administrator to perform all required non-judicial functions implementing the arbitration programs.

**APPENDIX XXII-A (R. 4:21A-4)**  
**UNIFORM ARBITRATION STATEMENT OF FACTS**  
(Use for all but Commercial Cases)

Caption: \_\_\_\_\_  
(Please include Consolidated Case Docket No. if applicable) (Verbal Threshold) Yes \_\_\_\_\_  
No \_\_\_\_\_

Docket No: \_\_\_\_\_ Arbitration Date/Time: \_\_\_\_\_ Auto: \_\_\_\_\_  
P.I.: \_\_\_\_\_

Party Represented: \_\_\_\_\_

I. Briefly describe the accident/incident occurred. (Please attach police report or expert liability reports):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

II. Liability (Please attach expert reports)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

III. Damages

A. Non-Economic Losses

1. List injuries (Please attach only hospital discharge summary and/or narrative reports/IME)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. List objective testing and dates.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. List current treatments and complaints.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Economic Losses (List all out of pocket expenses)

1. Itemized list of all medical bills

| <u>Treating Doctor/Hospital/Other</u> | <u>Amount</u> | <u>Total Amount Unpaid Bills</u> |
|---------------------------------------|---------------|----------------------------------|
|---------------------------------------|---------------|----------------------------------|

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX XXII-B (R. 4:21A-4)**  
UNIFORM COMMERCIAL ARBITRATION MEMORANDUM  
(All Information Must Be Legibly Printed Or Typed)

PLEASE RETURN TO:

Number of Witnesses you are offering at Arbitration: \_\_\_\_\_

Anticipated length of time for your presentation: \_\_\_\_\_

1. Brief factual outline as to your position:

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2. Set forth disputed facts and issues by any party in outline form:

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3. Provide facts that you anticipate will be undisputed:

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4. Set forth legal issues to be addressed by arbitrator:

---

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---

5. Please quantify elements of your alleged damages:

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---

6. Set forth issues addressed in expert reports (attach copies):

---

---

---

7. Discuss mitigation of damages (if applicable):

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---

---



8. Describe the basis for the defenses you assert to the complaint and/or counterclaim:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Have all parties been served: Yes \_\_\_\_\_ No \_\_\_\_\_

10. Are any parties in default? Yes \_\_\_\_\_ No \_\_\_\_\_

11. List any unserved and/or defaulted parties:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Should any special expertise be required by the arbitrator, e.g., should the arbitrator be familiar with a particular discipline and/or industry? If yes, please specify:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I certify this information to be complete and accurate and that copies of this statement have been timely served on all adversaries pursuant to R. 4:21A-4.**

\_\_\_\_\_  
Signature of Attorney or *Pro Se* Litigant

Date: \_\_\_\_\_

\_\_\_\_\_  
(Please print or type name)

Attorney for: \_\_\_\_\_

**NOTE: Information provided on this form can not be used for evidentiary purposes in any trial of this matter.**

**PROCEDURES MANUAL  
FOR ARBITRATORS IN THE  
CIVIL ARBITRATION  
PROGRAMS**



**Prepared by:**

**THE ARBITRATION ADVISORY COMMITTEE AND  
APPROVED BY THE JUDICIAL COUNCIL**

*Revised September 2006*

This manual is intended to provide procedural and operational guidance for New Jersey Judiciary staff in the management of cases within their area of responsibility. The Manual was prepared under the supervision of the Conference of Civil Presiding Judges, along with the Conference of Civil Division Managers and the Civil Practice Division of the Administrative Office of the Courts (AOC). It is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Civil Presiding Judges, in order to promote uniform case management statewide and, as such, court staff are required to adhere to its provisions.

While the Manual reflects court policies existing as of the date of its preparation, in the event there is a conflict between the Manual and any statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, the statement of policy, rather than the Manual, will be controlling. Other than in those circumstances, however, this manual is binding on court staff.

## **I. INTRODUCTION**

One of the more interesting experiences available to members of the bar is service as arbitrators in the court-annexed civil arbitration programs. Every year, hundreds of attorneys preside over arbitration hearings adjudicating cases involving a variety of civil cases. In so doing, they render an important service to the parties involved as well as to the public in general in making prompt and economical determinations. This helps relieve the crowded court dockets, as well as provides litigants with an adjudication of their cases. This manual is intended as a guide to supplement arbitrators' fundamental qualifications.

## **II. PURPOSE OF ARBITRATION**

The purpose of arbitration is to provide an informal process for resolving civil cases in an economic and expeditious manner. Arbitration requires arbitrators to make just determinations on the issues, based on the facts and law presented. Although arbitrators may conference a case prior to or during the courts of the arbitration hearing in an effort to expedite or simplify the proceeding, arbitration is distinct from other forms of Complementary Dispute Resolution because it results in an adjudication that may result in a final judgment. Arbitration should be conducted with dignity and decorum.

## **III. ARBITRATOR STANDARDS OF CONDUCT**

Attached and appearing in the appendix are the Standards of Conduct for Arbitrators in the Court-Annexed Arbitration Program. These standards were approved by the Supreme Court on May 20, 2003 and apply to all individuals serving as arbitrators in all court-annexed arbitration programs.

## **IV. PRELIMINARY OBLIGATIONS OF ARBITRATORS**

The following precepts should guide the conduct of arbitrators prior to the commencement of the arbitration hearing.

## **1. Familiarity with Pertinent Statutory Provisions, Rules, Arbitrator Standards of Conduct, and the Arbitrators' Manual**

It is expected that arbitrators will be familiar with the pertinent statutory provisions (*N.J.S.A. 2A:23A-20 et seq.* and *N.J.S.A. 39:6a-23 ET SEQ.*) and Rules of Court (*R. 1:40-2*, *R. 1:40-12* and *R. 4:21A-1 et seq.*) concerning arbitration and with the provisions of this manual. See Appendix for the statutory provisions, court rules and standards of conduct governing statutory arbitration.

## **2. Notify Arbitration Administrator as to Unavailability**

It is the arbitrator's responsibility to notify the arbitration administrator as soon as possible in the event an arbitrator becomes unavailable to sit on the scheduled date. Such prompt notification will enable the arbitration administrator to make alternate arrangements.

## **3. Disqualification**

An arbitrator must be impartial both in fact and in appearance. If, on being assigned to hear a particular case, an arbitrator discovers that he or she has an existing relationship with one of the parties, or anticipates that such a relationship may exist in the future, he or she must disclose that relationship immediately. Many business or professional relationships are not disqualifying; for example, lawyers with a negligence practice usually become acquainted with other lawyers practicing in that area, and it is not unusual for an arbitrator to recognize a colleague or acquaintance at a hearing. In many instances, prompt disclosure will result in waiver by the parties of any objection to the arbitrator. If there is an objection, the arbitrator should direct the matter to the arbitration administrator for reassignment to a different arbitrator.

## **4. Direct Communication with Parties**

Arbitrators should avoid any communication with the parties or their attorneys about the case, except at the hearing. Arbitrators must avoid the appearance of partiality. In many communities, members of the bar have bonds of personal friendship and engage in social and civil functions together. Despite this, arbitrators should avoid unnecessary displays of cordiality with the parties or their attorneys during the course of the hearing and before or after the hearing.

## **5. Settlement Negotiations**

The Supreme Court at its June 2006 Administrative Conference, approved the following settlement protocol for use by arbitrators:

## **Disclosures by the Parties at Arbitration**

With the consent of all counsel and *pro se* litigants, any previous or current offers or demands in the case may be disclosed to the arbitrator(s). Said disclosures shall not result in that arbitrator's disqualification. The arbitrator shall not be bound by these disclosures, unless the respective litigants have entered into a binding high/low agreement.

## **Settlement Conferences at Arbitration**

Upon the consent of all counsel and *pro se* litigants, given prior to the commencement of the hearing, the arbitrator(s) may conduct a settlement conference. In the event that the conference does not result in settlement of the case, the arbitration shall be conducted by a different arbitrator or panel. Nothing herein shall preclude the arbitrator or panel from conducting a settlement conference, upon the request of all parties after the determination by the arbitrator or panel.

### **6. Requests for Adjournment**

Requests for adjournment shall be handled in accordance with AOC Directive #6-04, a copy of which is attached and appears in the appendix.

## **V. CONDUCT OF PROCEEDINGS**

Arbitrators have various effective styles and techniques of conducting hearings. This manual is not intended to inhibit the arbitrator's individual style. The following guidelines, however, should assist the arbitrator in conducting hearings. Please note that before any hearings begin, the arbitrator should obtain from every side in a case a completed uniform statement of facts in the form as required by *Rule* 4:21A-4(a) and as set forth in Appendix XXII-A or B to the Rules of Court. If any party does not bring that completed form, the arbitrator shall require the party to complete the required form before the hearing can begin.

### **1. Introduction of Persons Present**

It is the arbitrator's responsibility to introduce all persons present and to explain briefly the purpose and nature of the proceeding.

## **2. Order of Proceedings**

Arbitration hearings should parallel trial procedures: opening statements; marking of exhibits and introduction of documents; examination and cross-examination of witnesses; sequestration of witnesses, if requested and on a finding of good cause; presentation of exhibits; and final summations. Opening and closing statements should be brief and may be waived. The order of procedure may be varied at the discretion of the arbitrator. For example, in the event the primary dispute is between codefendants as to liability, such liability issues may be heard and determined first.

### **a. Stipulations**

Arbitrator should encourage stipulations as to facts, liability, and/or damages, and should determine which matters remain in dispute in an effort to narrow the issues and to limit proofs.

### **b. Swearing in Witnesses**

All witnesses who testify at an arbitration hearing shall be sworn. The oath or affirmation to be given to each witness is as follows: “Do you solemnly swear [affirm] to tell the truth, the whole truth and nothing but the truth?”

In the event an interpreter is needed, the interpreter also shall be sworn. The oath or affirmation for interpreters is as follows: “Do you solemnly swear [affirm] that throughout your service in this matter you will interpret accurately, impartially and to the best of your ability?”

### **c. Absent Parties**

When the attorney for a party does not appear or a *pro se* litigant does not appear, the matter should be referred to the arbitration administrator for appropriate action. However, when a party is absent but is represented by counsel at the hearing, and the arbitrator determines that no other party is thus prejudiced, the matter may proceed.

### **d. Noncompliance with Subpoena or Demand for Production**

When a party refuses to honor a subpoena or a demand for the production of documents, the arbitrator shall recess the hearing and promptly bring the matter to the attention of the Assignment Judge or Civil Presiding Judge for enforcement.

**e. Length of Proceedings/Curtailing Examination of Witnesses**

Arbitrators are responsible to conduct the hearing expeditiously. Parties should be permitted to develop testimony on the issues in controversy, but arbitrators should guide the hearing so that it proceeds without undue delay. Direct and cross examination may be limited at the reasonable discretion of the arbitrators.

**f. Rules of Evidence**

The arbitration process is not bound by the Rules of Evidence. Arbitrators should, consistent with *R. 4:21A-4(c)*, consider all evidence that will aid in a just determination of the case.

**g. Closing the Hearing**

At the conclusion of the hearing, arbitrators shall specifically require of all parties whether they have any further evidence. If they do not, the arbitrator shall declare the hearing to be closed.

**VI. DETERMINATION**

The arbitration award should be based on the evidence presented. In making the determination, the arbitrator shall be guided by his or her knowledge, expertise and integrity. The award should reflect the experience and legal culture of the county of venue. Absent exceptional circumstances, the award shall be rendered orally in the presence of the participants as soon as practicable upon the close of the arbitration proceedings or after a short recess. A brief and tactful explanation of the reasons for the award is appropriate. This oral award must be followed by written completion of the form entitled "Report and Award of Arbitrator". A decision may be reserved for up to ten days.

**a. Unanimity Required; Procedure When Lacking**

When more than one arbitrator hears the case, the decision must be unanimous. If the arbitrators cannot agree, they must immediately advise the parties and the arbitration administrator of the conflict. Within 10 days of being so advised, the parties may request either the designation of a new panel to conduct a second hearing or a trial in Superior Court without further arbitration. In the event that a trial is requested, the provisions of *R. :21-6(c)*,



providing for the payment of a trial *do novo* fee and for the award of costs following a trial *de novo* do not apply.

## **VII. CONCLUSION**

An arbitrator must be ever mindful that the arbitration proceeding is in fact an adjudication. Those who participate in an arbitration proceeding are entitled to leave the proceeding satisfied that they have been dealt with fairly, impartially, and with dignity.



# APPLICATION FOR ADMISSION TO ROSTER OF CIVIL ARBITRATORS

A separate form must be sent to the Arbitration Administrator of each County in which you wish to serve

|           |            |             |
|-----------|------------|-------------|
| LAST NAME | FIRST NAME | MIDDLE NAME |
|-----------|------------|-------------|

FIRM/BUSINESS

FIRM/BUSINESS ADDRESS

|      |       |          |                  |
|------|-------|----------|------------------|
| CITY | STATE | ZIP CODE | TELEPHONE NUMBER |
|------|-------|----------|------------------|

|                                      |  |
|--------------------------------------|--|
| Number of years of legal experience: | Name of Group/Organization in which you served as an arbitrator: |
|--------------------------------------|--|

Bar Admission Year: New Jersey: \_\_\_\_\_ Other States: \_\_\_\_\_

Counties in which you appear and are willing to arbitrate:

I have at least seven years' experience in the following areas and request to arbitrate them (check all that apply):

|   |   |  |
|---|---|--|
| <input type="checkbox"/> 502 Book Account           | <input type="checkbox"/> 599 Contract – Other             | <input type="checkbox"/> 610 Auto Neg - Prop |
| <input type="checkbox"/> 503 Commercial Transaction | <input type="checkbox"/> 602 Assault/Battery              |  |
| <input type="checkbox"/> 506 PIP Coverage           | <input type="checkbox"/> 603 Auto Neglect-Personal Injury |  |
| <input type="checkbox"/> 512 Lemon Law              | <input type="checkbox"/> 605 Personal Injury              |  |

I certify that the foregoing statements made by me are true and that I am in good standing in my profession.

\_\_\_\_\_ Signature \_\_\_\_\_ Date

**Return this form with a copy of your resume to:**

Arbitration Administrator of the County

See Page 2 for Names and Addresses of Arbitration Administrators

|   |   |  |
|---|---|--|
| <p><b>Atlantic County Arbitration</b><br/> Louise Pelosi<br/> Atlantic County Superior Court.<br/> 1201 Bacharach Boulevard<br/> Atlantic City, NJ 08401<br/> 609-345-6700 Ext. 3201</p>                    | <p><b>Bergen County Arbitration</b><br/> Christine Cordasco<br/> Bergen County Superior Court<br/> 10 Main Street, Suite 415<br/> Hackensack, NJ 07601<br/> 201-527-2735</p>  | <p><b>Burlington County Arbitration</b><br/> Patricia A. Spiehs<br/> Burlington County Superior Court<br/> 49 Rancocas Road<br/> P.O. Box 6555<br/> Mt. Holly, NJ 08060<br/> 609-518-2816</p>  |
| <p><b>Camden County Arbitration</b><br/> Stephen Gladden<br/> Camden County Hall of Justice<br/> Suite 150<br/> 101 South Fifth Street<br/> Camden, NJ 08103<br/> 856-379-2200 Ext. 3039</p>                | <p><b>Cape May County Arbitration</b><br/> Arlette Y. Anderson<br/> Cape May County Superior Court<br/> 4 Moore Road, DN 203<br/> Cape May Court House, NJ 08210<br/> 609-463-6515</p>                                | <p><b>Cumberland County Arbitration</b><br/> Kathleen Graham<br/> Cumberland County Courthouse<br/> Civil Division, Rooms 162-185<br/> Broad and Fayette Streets<br/> Bridgeton, NJ 08302<br/> 856-453-5531</p>                          |
| <p><b>Essex County Arbitration</b><br/> Crystal Page<br/> Essex County Superior Court<br/> Hall of Records, Room 233<br/> 465 Dr. Martin Luther King, Jr. Blvd.<br/> Newark, NJ 07102<br/> 973-693-6447</p> | <p><b>Gloucester County Arbitration</b><br/> Rebecca Bertino<br/> Gloucester County Courthouse<br/> Civil Case Management<br/> P.O. Box 750<br/> Woodbury, NJ 08096<br/> 856-853-3228</p>                             | <p><b>Hudson County Arbitration</b><br/> Cheryl D'Anna<br/> Hudson County Superior Court<br/> Civil Division - Arbitration<br/> 583 Newark Avenue<br/> Jersey City, NJ 07306<br/> 201-795-6372</p>                                       |
| <p><b>Hunterdon/Somerset/Warren County Arbitration</b><br/> Ellen Reaves<br/> Somerset County Courthouse<br/> P. O. Box 3000<br/> Somerville, NJ 08876<br/> 908-231-7000 Ext. 7659</p>                      | <p><b>Mercer County Arbitration</b><br/> Cindy Leslie-Post<br/> Mercer County Civil Case Management<br/> 175 South Broad Street<br/> P. O. Box 8068<br/> Trenton, NJ 08650<br/> 609-571-4454</p>                      | <p><b>Middlesex County Arbitration</b><br/> Fee O'Brien<br/> Middlesex County Courthouse<br/> One John F. Kennedy Square<br/> P. O. Box 964<br/> New Brunswick, N.J. 08903<br/> 732-981-3330</p>   |
| <p><b>Monmouth County Arbitration</b><br/> Laura Larkin<br/> Civil Assignment Office<br/> Monmouth County Courthouse<br/> Monument and Court Streets<br/> Freehold, NJ 07728<br/> 732-677-4246</p>          | <p><b>Morris/Sussex County Arbitration</b><br/> Elizabeth Erb<br/> Civil Division Manager's Office<br/> P.O. Box 910<br/> Morristown, NJ 07963-0910<br/> 973-656-4103</p>   | <p><b>Ocean County Arbitration</b><br/> Pattie Imbesi<br/> Ocean County Courthouse<br/> 206 Courthouse Lane, 2<sup>nd</sup> Floor<br/> Toms River, NJ 08754<br/> 732-929-4771</p>  |
| <p><b>Passaic County Arbitration</b><br/> Joan Neubert<br/> Passaic County<br/> 77 Hamilton Street, 3<sup>rd</sup> Floor<br/> Paterson, NJ 07505<br/> 973-247-8198</p>                                      | <p><b>Salem County Arbitration</b><br/> Jeanne Evangelisti<br/> Salem County Courthouse<br/> Civil Case Management Office<br/> 92 Market Street<br/> P.O. Box 29<br/> Salem, NJ 08079<br/> 856-935-7510 Ext. 8207</p> | <p><b>Union County Arbitration</b><br/> Doris Tarquinio<br/> Union County Superior Court<br/> Civil Arbitration<br/> Albender Building, 2<sup>nd</sup> Floor<br/> 1143 East Jersey Street<br/> Elizabeth, NJ 07201<br/> 908-659-3625</p> |



## New Jersey Judiciary Civil Practice Division

(To be completed by Counsel)

There is room for comments on the next page. If your response to a specific question is "less than adequate" or "poor," please explain in the comments section. Additional sheets may be attached if necessary.

Which side did you represent?  Plaintiff  Defendant

Name of Arbitrator \_\_\_\_\_ County \_\_\_\_\_

| <b>Please assess the arbitrator's:</b>                   | Excellent                | More Than Adequate       | Adequate                 | Less Than Adequate       | Poor                     | Not Applicable           |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. Knowledge of relevant substantive law                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Sufficient experience for deciding case               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Adequacy of explanation of rulings                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Adequacy of findings of facts                         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Narrowing the issues in dispute                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Moving the proceeding expeditiously                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Maintaining control of proceeding                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Allowing adequate time for presentation of the case   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Common sense in resolving problems                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Ensuring that participants understand the proceeding | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Attentiveness  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Courtesy   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Patience   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Decisiveness   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Fostering a general sense of fairness                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

16. Was the arbitrator bias and if so, how.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17. If applicable, please comment on aspects of the arbitrator's performance that need improvement.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

18. If a party or parties were present, was the award rendered in the presence of the parties?

Yes  No

19. If the arbitrator engaged in settlement negotiations, did he or she do so with the consent of all participants?  
 Yes       No       Not Applicable

20. At how many court-annexed arbitration hearings have you appeared in the past six months?  
 One       Two to three       Four to five       More than five

21. Name of case (optional)? \_\_\_\_\_

22. Name of attorney completing the questionnaire (optional)? \_\_\_\_\_

PLEASE RETURN COMPLETED FORM TO:

Thank you for your time and comments.



**How are we doing? Please tell us.**  
 (Please check one box on each line)

County \_\_\_\_\_

|   | Strongly<br>Agree<br><b>1</b> | Somewhat<br>Agree<br><b>2</b> | Neither<br>Agree nor<br>Disagree<br><b>3</b> | Somewhat<br>Disagree<br><b>4</b> | Strongly<br>Disagree<br><b>5</b> | No<br>Opinion            |
|---|-------------------------------|-------------------------------|--|----------------------------------|----------------------------------|--------------------------|
| 1. The arbitrator(s) treated me with respect.   | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 2. The hearing was conducted fairly.  | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 3. I was satisfied with the outcome.  | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 4. The hearing was conducted in a professional manner.  | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 5. Staff were courteous.  | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 6. The facilities were clean.   | <input type="checkbox"/>      | <input type="checkbox"/>      | <input type="checkbox"/>                     | <input type="checkbox"/>         | <input type="checkbox"/>         | <input type="checkbox"/> |
| 7. The decision was given in my presence. (check one): <input type="checkbox"/> Yes <input type="checkbox"/> No                                     |                               |                               |  |                                  |                                  |                          |
| 8. The arbitrator explained why he or she decided the case as it was decided. (check one): <input type="checkbox"/> Yes <input type="checkbox"/> No |                               |                               |  |                                  |                                  |                          |
| 9. Date of hearing? _____   |                               |                               |  |                                  |                                  |                          |
| 10. Were you a (check one) <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant?   |                               |                               |  |                                  |                                  |                          |
| 11. Any other suggestions for how we can improve?<br>_____<br>_____<br>_____  |                               |                               |  |                                  |                                  |                          |
| 12. Additional comments?<br>_____<br>_____<br>_____   |                               |                               |  |                                  |                                  |                          |

PLEASE RETURN COMPLETED FORM TO:

Thank you for your time and comments.

## **STANDARDS OF CONDUCT FOR ARBITRATORS IN THE COURT- ANNEXED ARBITRATION PROGRAM**

The following Standards of Conduct shall be applicable to arbitrators in any arbitration proceedings conducted in the New Jersey court system pursuant to *Rule 4:21A*.

### **STANDARD I - IMPARTIALITY**

An arbitrator must conduct arbitrations in an impartial manner. An arbitrator should avoid any conduct that might give the appearance of partiality towards any party. An arbitrator should withdraw from a matter if he or she becomes unable to remain impartial in that matter.

An arbitrator should make all determinations based solely on the relevant objective facts and merits of the case, impartially and without prejudice because of a party's background or personal characteristics, social or economic status, actions at the arbitration hearing, or any other factors not directly relevant to the facts or merits of the matter.

### **STANDARD II - CONFLICTS OF INTEREST**

An arbitrator, upon being assigned to arbitrate a particular matter, shall make reasonable inquiry to ascertain whether there are any facts or circumstances regarding the matter that might impair or be seen to impair the arbitrator's impartiality in the matter, including any financial or personal interest in the outcome of the arbitration, or any existing or past relationship with a party, counsel, or any other participant or foreseeable participant in the arbitration. The arbitrator shall disclose any such facts or circumstances to the parties as soon as practicable after becoming aware of them. If any such conflict of interest would cast doubt on the integrity of the process or the program, the arbitrator should decline or withdraw from the assignment. However, if the conflict of interest is of a less substantial magnitude, after consultation with the parties and after consultation also with a judge to whom the matter has been referred by the Civil Division Manager, the parties, judge, and arbitrator may agree that the arbitrator nonetheless may serve or continue to serve as arbitrator in the matter.

An arbitrator should not ordinarily recommend the services of particular professionals to assist the parties or counsel in any arbitration proceeding. However, the arbitrator may suggest the names of professionals if a request for a

recommendation is made jointly by all parties and provided that in so recommending the arbitrator does not create or engage in a conflict of interest.

### **STANDARD III - COMPETENCE**

In order to serve as an arbitrator, an individual must have a sufficient level of experience and competence to handle arbitrations of the type of matter in dispute. If an arbitrator believes that he or she does not possess the level of competence or experience necessary to handle a particular matter, he or she should not serve as an arbitrator in that matter and thus should decline the assignment or withdraw from the case.

### **STANDARD IV - CONFIDENTIALITY**

An arbitrator serves in a quasi-judicial capacity and, as such, shall treat all information obtained during the course of an arbitration proceeding consistent with *Rule* 1:38 of the Rules of Court. An arbitrator should never use information acquired during an arbitration proceeding to gain a personal advantage or benefit, to gain an advantage or benefit for others, or to adversely affect the interests of another.

### **STANDARD V - QUALITY OF THE PROCESS**

Arbitrators shall conduct arbitration proceedings fairly, diligently, judiciously, and in a manner respectful of all parties and participants. This requires a commitment by the arbitrator to fairness, high standards, due process, diligence, sensitivity toward the parties, and maintenance of an atmosphere of respect among the parties. An arbitrator should explain to all participants at the outset of the process the procedures that will be followed in the process.

An arbitrator should accept an assignment to serve as an arbitrator only if able to commit the time and attention necessary for to the fair and effective handling and resolution of the matter. The arbitrator should conform to any time deadlines required by the Rules of Court.

An arbitrator should treat parties and counsel with sensitivity, with civility and with respect, and should encourage the parties and counsel to treat each other in the same way.



The arbitrator should provide each party or counsel with an adequate and fair opportunity to make their presentation in the matter and to challenge the presentation of their adversaries. The arbitrator should determine the matter based solely on the parties' presentations on the merits.

Since the role of an arbitrator in a particular matter is to make a quasi-judicial determination, an arbitrator should refrain from providing professional advice in that matter and should at all times distinguish between the role of arbitrator and that of adviser. Arbitrators should refrain from conducting settlement conferences in a matter unless specifically requested to do so by all parties.

The arbitrator shall not engage in *ex parte* communications with participants in a case. The arbitrator may, however, discuss the merits of a case with those parties present at a hearing if another party fails to appear at the hearing after having received due notice.

If the arbitrator discovers an intentional abuse of the arbitration process by a party or counsel, the arbitrator may discontinue the arbitration and advise the Civil Division Manager or Arbitration Administrator of that discontinuation and the reason therefore.

## CHECKLIST FOR ARBITRATORS

This checklist has been prepared to ensure that all arbitrations are conducted in accordance with the Rules of Court and procedures approved by the Conference of Civil Presiding Judges and Judicial Council.

- 1) Introduce all participants.
- 2) Explain the adjudicatory nature of the proceeding and his/her background as an unbiased attorney approved by the court and local bar.
- 3) Take stipulations.
- 4) Swear in witnesses.
- 5) Allow all sides to present relevant information.
- 6) Make a determination based solely on the evidence presented and either call a “no cause” or award full value.
- 7) Complete the written award ensuring that brief findings of fact and conclusions of law are included and that the absence of parties, or relevant evidence, or of items of incomplete discovery is noted.
- 8) Absent exceptional circumstances, deliver the award in the presence of the parties.
- 9) If the arbitrator conducts a settlement conference prior to rendering a decision on the merits of the case, he or she should not continue the arbitration process, but should instead turn the arbitration over to another arbitrator. Otherwise, the arbitrator should not engage in settlement negotiations until after the award form is completed and only with the parties’ consent.

## **Statewide Adjournment Procedure for Civil Trials and Arbitrations**

Directive 6-04  
Issued by:

May 14, 2004  
Richard J. Williams  
Administrative Director

At its April 27, 2004 Administrative Conference, the Supreme Court considered and approved the attached Statewide Adjournment Procedure developed by the Conference of Civil Presiding Judges for Civil trials and arbitration hearings. The procedure, which is effective immediately, should be implemented uniformly in every vicinage. Accordingly, please ensure that all Civil judges and staff in your vicinage are made aware of this approved procedure.

# STATEWIDE ADJOURNMENT PROCEDURE FOR CIVIL TRIALS AND ARBITRATIONS

[AS APPROVED BY THE SUPREME COURT  
AND PROMULGATED BY DIRECTIVE #6-04]

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1. All requests to adjourn a civil trial or an arbitration are governed by *Rule 4:36-3(b)*.
2. A good faith effort shall be made to discuss any request for an adjournment with all other parties before the request is presented to the court.
3. All adjournment requests must be made in writing, submitted to the Civil Division Manager. Faxed submissions are acceptable. Telephone requests will not be accepted absent exceptional circumstances. Requests must be copied to all other parties.
4. Any request for an adjournment must be presented as soon as the need for an adjournment is known. Absent exceptional circumstances, the request must be presented no later than the close of business on the Wednesday preceding the Monday of the week the matter is scheduled for trial or arbitration.
5. The written request must indicate the reason or reasons the adjournment has been requested, and whether the other parties have consented to the proposed adjournment. The written request should also include a new proposed date for trial or arbitration, consented to by all parties. If consent cannot be obtained, the court will determine the matter by conference call with all parties.
6. If the adjournment request is based upon a conflict with another court proceeding, the party requesting the adjournment must indicate whether he or she is designated trial counsel and supply the name of the other matter, the court and county in which it is pending, and the docket number assigned to the matter.
7. No adjournments will be granted to accommodate dispositive motions returnable on or after the scheduled trial date.
8. A matter should not be considered adjourned until court staff has confirmed that the request for an adjournment has been granted. Timely response will be given to

the party requesting the adjournment, who will then be responsible for communicating the decision to all other parties.

9. To the extent any party is dissatisfied with the decision made by the Civil Case Management Office, the following procedure should be followed:
  - in master calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the Civil Presiding Judge;
  - in individual/team calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the pretrial or managing judge.
  
10. Requests for adjournment of a civil trial based on expert unavailability are governed by *R. 4:36-3(c)*.



**SUPERIOR COURT OF NEW JERSEY**

**REPORT AND AWARD OF  
ARBITRATION**

ARBITRATION  
TYPE (Check one)  
Auto  
Personal Injury  
Other Civil

|           |                 |
|-----------|-----------------|
| Plaintiff | Docket No.      |
| V         | Arbitration No. |
| Defendant | Today's Date    |

The undersigned made the following awards for the reasons set forth:

|     | Party | Liability | Damages*                           |
|-----|-------|-----------|------------------------------------|
| DEF |       | %         | Exclusive of prejudgment interest. |
| DEF |       | %         |                                    |
| DEF |       | %         |                                    |
| PL  |       | %         | \$                                 |
| PL  |       | %         |                                    |

**ARBITRATORS: Please sign below and print name under signature.**

|              |              |
|--------------|--------------|
| _____        | _____        |
| (print name) | (print name) |

Parties desiring to reject this award and obtain a trial de novo must file with the division manager a trial de novo request together with a \$200 fee within thirty (3) days of today. Parties requesting a trial de novo may be subject to payment of counsel fees and costs as provided by R. 4:21A-6(c). Note that unless otherwise expressly indicated, this award will be filed today.

Counsel acknowledge receipt of this award by signing now. Please print name under signature.

|              |              |
|--------------|--------------|
| _____        | _____        |
| (print name) | (print name) |

**FOR INTERNAL PUPROSES. PLEASE COMPLETE THE FOLLOWING.**  
Amount of medical expenses claimed at the hearing for each party making a bodily injury claim.

|       |        |
|-------|--------|
| Party | Amount |
| _____ | _____  |
| _____ | _____  |

# TRIAL *DE NOVO* REQUEST FORM

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART

\_\_\_\_\_ COUNTY  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ NJ \_\_\_\_\_

## NOTICE OF DEMAND FOR TRIAL *DE NOVO*

If trial *de novo* is sought this form must be filed with the Arbitration Administrator within 30 days of the filing of the arbitration award and served on all parties within that time.

\_\_\_\_\_  
Plaintiff

VS.

\_\_\_\_\_  
Defendant

Docket No. \_\_\_\_\_

Arbitration Date: \_\_\_\_\_

The arbitration hearing in the above-captioned matter was held on \_\_\_\_\_.

Payment in the amount of \$200.00 being tendered herewith, and this notice having been served on all parties, trial *de novo* is hereby requested in the above captioned matter, pursuant to *RULES* 4:21A-6(b) (1) and 4:21A-6(c).

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature (*Pro Se* Party or Attorney for Filer)

THIS NOTICE, WHEN TIMELY FILED AND SERVED ON ALL ADVERSE PARTIES, SHALL BE SUFFICIENT TO RESTORE THE CASE TO THE TRIAL CALENDAR.

Makes checks or money orders payable to: TREASURER, STATE OF NEW JERSEY  
*Pro se* litigants must use certified check or money order.

**ORDER OF DISMISSAL/SUPPRESSION**

PREPARED AND FILED BY THE COURT

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

\_\_\_\_\_  
PLAINTIFF(s)

\_\_\_\_\_ COUNTY

DOCKET NO. \_\_\_\_\_

ARBITRATION DATE: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT(s)

THIS MATTER WAS LISTED FOR A MANDATORY ARBITRATION HEARING ON THE ABOVE INDICATED DATE. FOR GOOD CAUSE SHOWN, IT IS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_ ORDERED THAT:

\_\_\_\_\_ THE COMPLAINT OF THE PLAINTIFF(S) (SEE \* BELOW) IS DISMISSED:

\_\_\_\_\_ for failure to timely serve the ARBITRATION STATEMENT OF FACTS/ ISSUES upon other counsel/parties.

\_\_\_\_\_ for failure to furnish the ARBITRATION STATEMENT OF FACTS/ ISSUES to the arbitrator at the arbitration hearing.

\_\_\_\_\_ for failure to appear for the ARBITRATION HEARING as scheduled (late appearance is treated the same as non-appearance)

\_\_\_\_\_ THE CLAIMS ASSERTED AGAINST THE NON-SERVED PARTIES (SEE \*\* BELOW) ARE SUPRESSED:

\_\_\_\_\_ for failure to timely serve the ARBITRATION STATEMENT OF FACTS/ ISSUES upon other counsel/parties.

\_\_\_\_\_ for failure to furnish the ARBITRATION STATEMENT OF FACTS/ ISSUES to the arbitrator at the arbitration hearing.

\_\_\_\_\_ for failure to appear for the ARBITRATION HEARING as scheduled (late appearance is treated the same as non-appearance)

\_\_\_\_\_ ALL CLAIMS ASSERTED AGAINST THE NON-SERVED PARTIES (SEE \*\*\* BELOW) ARE DISMISSED FOR LACK OF PROSECUTION, SERVICE OF PROCESS NOT YET HAVING BEEN EFFECTED.



\_\_\_\_\_ ALL CLAIMS/DEFENSES ARE DISMISSED SUPRESSED FOR FAILURE OF THE PARTIES TO TIMELY MOVE TO EITHER REJECT OR CONFIRM THE ARBITRATION AWARD [SEE R. 4:21A-6(b)]

RELIEF FROM THE TERMS OF THIS ORDER SHALL ONLY BE GRANTED ON FORMAL APPLICATION TO THE PRESIDING JUDGE ON NOTICE TO ALL COUNSEL/ PARTIES.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Name of Presiding Judge), P.J. Cv.

**ALL COUNSEL (\*\*ASTERISKS INDICATE TO WHOM ORDER APPLIES)**

# NOTICE OF SETTLEMENT/ORDER OF DISMISSAL

DOCKET NO. L- \_\_\_\_\_

ARBITRATION NO. \_\_\_\_\_

CAPTION: \_\_\_\_\_

\_\_\_\_\_

V.

\_\_\_\_\_

\_\_\_\_\_

The Civil Division Manager has been notified that the above-captioned case has been settled as follows:

Please select and check one:

- (1) Prior to date of Arbitration Hearing ( )
- (2) During Arbitration Hearing ( )
- (3) After Arbitration Award Rendered ( )

Amount of Settlement: \$ \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Counsel

Scheduled Arbitration Date: \_\_\_\_\_

Return to Arbitration Administrator at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Arbitration Administrator)

## ORDER OF DISMISSAL

THE ABOVE MATTER HAVING BEEN SETTLED IS HEREBY DISMISSED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Name of Presiding Judge), P.J. Cv.

ATTORNEY NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 TELEPHONE NO.: \_\_\_\_\_  
 ATTORNEY FOR: \_\_\_\_\_

**SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION - CIVIL**

\_\_\_\_\_  
 PLAINTIFF(S)

\_\_\_\_\_ County  
 Docket No. \_\_\_\_\_

VS.

\_\_\_\_\_  
 DEFENDANT(S)

**UNIFORM ORDER CONFIRMING  
 ARBITRATION AWARD AND  
 ENTERING JUDGEMENT**

This matter was presented to the court on \_\_\_\_\_ on motion of  
 (plaintiff(s)/ defendant(s)) \_\_\_\_\_, pursuant to R. 4:21a-6(b)(3),  
 for an Order confirming the arbitration award made on \_\_\_\_\_ and entering judgment  
 thereon. For good cause shown, it is on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
 ORDERED that the motion to confirm the arbitration award is hereby granted and judgment is  
 hereby entered as follows:

In favor of/against the plaintiff \_\_\_\_\_, in the amount  
 of \$ \_\_\_\_\_ (Put in total amount of judgment against all defendants, plus pre-judgment  
 interest), and against/in favor of the below named defendant(s) as follows:

|           | <b>AMOUNT OF<br/>AWARD – IF NON,<br/>ENTER “NO<br/>CAUSE”</b> | <b>PRE-JUDGMENT<br/>INTEREST, IF<br/>ANY; COUNSEL<br/>MUST COMPUTE</b> | <b>TOTAL OF<br/>AMOUNT OF<br/>JUDGMENT</b> |
|-----------|---|--|--|
| (a) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (b) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (c) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (d) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (e) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (f) _____ | \$ _____  | \$ _____   | \$ _____                                   |
| (g) _____ | _____   | _____  | _____                                      |

ADD MORE LINES ABOVE IF NECESSARY BECAUSE OF MULTIPLE DEFENDANTS

It is **FURTHER ORDERED** judgment of “NO CAUSE FOR ACTION” is hereby entered against \_\_\_\_\_ and in favor of defendant (s) \_\_\_\_\_, dismissing all pending claims with and (with/without) costs.

\*\*\*\*\*

**NOTE**

**THIS PARAGRAPH IS AN “INSTRUCTION” ONLY. DO NOT INCLUDE IT IN THE FORM OF ORDER THAT YOU SUBMIT TO THE COURT.**

**YOU CANNOT CONFIRM AN ARBITRATION AWARD MADE AGAINST A PARTY WHO WAS IN DEFAULT AT THE TIME THE ARBITRATION HEARING TOOK PLACE AND WHO DID NOT RECEIVE NOTICE OF THE ARBITRATION. WITH REGARD TO ANY SUCH DEFENDANT, YOU MUST SCHEDULE A PROOF HEARING WITH THE CIVIL CASE MANAGER’S OFFICE TO OBTAIN ENTRY OF JUDGMENT. UNLESS SUCH A PROOF HEARING IS PROMPTLY SCHEDULED, YOUR CLAIM AGAINST SUCH DEFENDANT IS SUBJECT TO A R.1:13-7 DISMISSAL FOR LACK OF PROSECUTION.**

**PLEASE BE ADVISED THAT, UNLESS YOU COMPUTE PRE-JUDGMENT INTEREST, IT WILL NOT BE INCLUDED IN THE JUDGMENT ENTERED. THE COURT WILL NOT COMPUTE ANY PRE-JUDGMENT INTEREST THAT MAY BE DUE.**

**THIS ORDER IS INTENDED TO EFFECT ENTRY OF A COMPLETE, SEPARATE AND FINAL JUDGMENT AS TO THE CLAIMS OF EACH PLAINTIFF/CLAIMANT. ACCORDINGLY, THE TWO PARAGRAPHS IMMEDIATELY ABOVE AND THE “BOX” CHART MUST BE USED AND/OR REPEATED FOR EACH PLAINTIFF’S CLAIM, AS NECESSARY AND/OR APPLICABLE.**

**CONTINUATION OF SAMPLE ORDER BELOW**

\*\*\*\*\*

It is **FINALLY ORDERED** that, with regard to any “open” claims not reduced to judgment by the terms of this Order, those claims shall be subject to dismissal pursuant to R.1:13-7 unless same have been/are actively prosecuted.

A copy of this Order shall be served upon all parties within 7 days of the date of this Order.

Dated: \_\_\_\_\_ J.S.C.

## **GUIDELINES FOR PURCHASE OF EQUIPMENT FOR THE CIVIL ARBITRATION PROGRAM**

1. A vicinage needing equipment to be used in the New Jersey Civil Arbitration Program must forward a request in writing to the following:

Michelle V. Perone, Esq.  
Administrative Office of the Courts  
Civil Practice Division  
P.O. Box 981  
Trenton, NJ 08625  
609-292-8471  
609-777-0844 (fax)

The request should itemize each piece of equipment requested, contain a justification of the need for the equipment to primarily benefit the civil arbitration program, list the lowest competitive price and include a written quote from a State vendor.

2. Upon approval by the AOC of the purchase request, the vicinage will receive a written allocation letter from the Civil Practice Division.
3. After receiving the written allocation letter, equipment can be ordered in accordance with the approval letter through the vicinage finance officer.
4. In order to begin the purchase process, a Purchase & Property Requisition Form, (PP1) must be completed. The sample PP1 form is attached and must be completed in its entirety. In completing the PP1 form, the arbitration program cost center is Y510.
5. The most important information to be entered on the PP1 is the description of items requested. It is here that you can request the exact item(s) requested. For instance, if using a catalog, please specify the catalog item number as well as the name and date of the catalog. It is often helpful if you are able to attach a copy of the catalog page. Note that the catalog item number should be entered in the description area.
6. It can not be emphasized strongly enough that the last copy (goldenrod) of the PP1 forms should be retained. This copy will be invaluable throughout the processing of the request. The PP1 number, located in the upper right hand corner, is the reference number that will be assigned to the request.
7. There are certain exceptions to this process. Books, dictionaries, subscriptions and memberships are requested via a Library Services Requisition (form #ADO094). Requests for telephones should be made via a Facilities Management Service Request (form #ADO239). Stockroom requests should be handled via a Stockroom Requisition (form #ADO021). Requests for in-house printing should be handled via a Judiciary Printing Request (form #ADO016). Each of these types of requests should be submitted directly to the appropriate issuing office.

8. Data processing software and hardware requests should be made directly to the AOC's Information Technology Office (ITO). This does not include the purchase of consumable supplies (*i.e.*, diskettes, printer ribbons), which may be requested directly from the stockroom from AOC Purchase and Property Unit. Hardware and software requests must be sufficiently justified. Completed PP1 form, signed by the appropriate department head should be forwarded to the Assistant Director of ITO. Once the request is approved, ITO will forward the PP1 to the AOC Purchase and Property Unit for processing.
9. All equipment purchased with arbitration program funds shall remain part of the Judiciary fixed asset system. It is mandated by the Department of Treasury that we conduct an annual physical inventory of all State owned Judiciary fixed assets. This includes furniture, office equipment and computer equipment.

To facilitate this process, the AOC has instituted a numeric tagging system to identify all State owned fixed assets. Whenever a vicinage receives a fixed asset, it must be tagged. In many cases where the asset is delivered to a field location (away from the Justice Complex), the AOC may send the tag to affix to the item. All Civil Division Managers should periodically examine all State owned arbitration program fixed assets to be sure that the tags have not been removed.

10. Arbitration program equipment shall remain in the Civil Division. AOC staff may randomly audit arbitration facilities to ensure that equipment purchased with arbitration funds is being used in the arbitration program.



## **VOLUNTARY BINDING ARBITRATION PROGRAM GUIDELINES**

### Voluntary Binding Arbitration of Verbal Threshold & Lemon Law Cases

1. This program is for verbal threshold and lemon law cases only. If a vicinage wishes to include other case types in the program, it must obtain the prior authorization of the Administrative Director and if necessary, the Supreme Court.
2. A consent order dismissing the matter with prejudice must be filed before the case can be submitted to the program.
3. A consent form signed by all parties and their attorneys, acknowledging their understanding of the binding and non-appealable nature of the program, must be submitted before arbitration can be scheduled.
4. The attorneys involved will choose one plaintiff's arbitrator, one defense arbitrator, and the judge, who will form the arbitration panel.
5. Payment to the non-judge arbitrators shall be as agreed on by the parties and the arbitrators and shall be made directly by the parties on the day of arbitration, unless otherwise agreed by the parties and arbitrators.
6. At the hearing, the designated judge should review the binding, non-appealable nature of the hearing on the record, and obtain the oral consent to the hearing of every attorney and party.
7. The hearing shall be conducted off the record.
8. The judge is to become involved only if, and to the extent that, the arbitrators cannot agree.
9. No award by the panel in verbal threshold cases may exceed available policy limits.
10. At the conclusion of the hearing, the judge may sign an Order for Judgment at the prevailing party's request.

NOTE: In lemon law cases only, if the parties fail to submit the completed VBA materials to the court within 30 days, the case will be referred to mediation.



# VOLUNTARY BINDING ARBITRATION PROGRAM APPLICATION

County

Case Caption: vs.

Docket No: Type of case:

Attorneys:  
Plaintiff: Phone:

Defendant: Phone:

Other: Phone:

Panel selected to decide case:

Plaintiff: Phone:

Defendant: Phone:

Estimated time to present the case: hours

Issue(s) to be submitted for decision:

Have you agreed on a high/low range? Yes  No

If so, state: the high limit \$ the low limit \$

Is the panel to be advised of the high/low limits? Yes  No

Is testimony to be presented? Yes  No

Will cross examination be permitted? Yes  No

Will prejudgment interest be calculated on the award? Yes  No

State any stipulations of facts or other agreements on attached sheet.

Date of Application:

We agree to submit the foregoing case to a binding, non-appealable decision by the above named panel and have the authorization of our clients to do so. We hereby certify that all discovery is complete and this matter is ready to be submitted to arbitration. Attached is a consent order of dismissal with prejudice.

Attorney for plaintiff:

Attorney for defendant(s):

*(submit completed form to the arbitration administrator and a hearing will be scheduled)*

**BINDING ARBITRATION PROGRAM CONSENT FORM**

COUNTY

CAPTION OF THE CASE:

V.

DOCKET NO:

\_\_\_\_\_

- 1. I acknowledge receipt of a copy of the Voluntary Binding Arbitration Program Guidelines which I have read and understand.
- 2. I consent to having the above captioned case submitted to the panel of and I agree to accept and to be bound irrevocably by the panel's decision.
- 3. I understand that the panel's decision is binding and that my case is being dismissed with prejudice as soon as I execute this form.
- 4. I understand that I waive my rights to trial by jury and to all appeals.
- 5. Check one:

I understand that the award of the panel will not be less than \$ \_\_\_\_\_ nor more than \$ \_\_\_\_\_ without interest.

I understand that there is no "high/low" range and that the award, if any, is in the panel's sole discretion, without interest, unless agreed to in the application and includes the possibility of "no cause for action".

Dated:

\_\_\_\_\_  
Plaintiff's Attorney

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant's Attorney

\_\_\_\_\_  
Defendant

Attorney:

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
COUNTY:

DOCKET NO.:

**CIVIL ACTION CONSENT  
ORDER OF DISMISSAL**

, Plaintiff

v.

, Defendant

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---

THIS MATTER having been placed before the Court by the Law Office of  
, attorney for the defendant(s); and it being agreed to by all parties as  
evidenced by the attached duly executed consent form, it is on this      day of      , 20      ;

ORDERED, that the above-mentioned lawsuit be DISMISSED WITH PREJUDICE;

IT IS FURTHER ORDERED, that the underlying cause of action be submitted to a  
Binding Arbitration Program where each party agrees to an arbitrator and then agrees to a sitting  
Superior Court Judge to serve as a tie-breaker;

IT IS FURTHER ORDERED, that said Arbitration will take place in the Courthouse and  
the decision of any two arbitrators will be binding and unappealable by either party;

IT IS FURTHER ORDERED, that the award of the arbitrators cannot exceed the available policy limit;

IT IS FURTHER ORDERED, that all medical and expert testimony can be presented at the arbitration on the papers without the requirement of live testimony;

IT IS FURTHER ORDERED, that a copy of the within Order be served upon all parties of record within        days of the date hereof.

J.S.C.

The undersigned hereby consents to the form and entry of the foregoing Order.

Attorney for Plaintiff(s):

Date:

Attorney for Defendant(s):

Date:

**VOLUNTARY BINDING ARBITRATION  
ATTORNEY EVALUATION FORM  
COUNTY**

|                    |   |
|--------------------|---|
| (Please Check One) | Case Type:                                |
|                    | <input type="checkbox"/> Lemon Law        |
|                    | <input type="checkbox"/> Verbal Threshold |
|                    | <input type="checkbox"/> Other – Specify  |

1. Which party did you represent?

Plaintiff

Defendant

2. Panel's decision:

(a) Liability

(b) Damages

3. Indicate your level of satisfaction with the following features of the program.

|                                   | Very Satisfied | Satisfied | Somewhat Satisfied | Very Dissatisfied | Dissatisfied | Somewhat Dissatisfied |
|-----------------------------------|----------------|-----------|--------------------|-------------------|--------------|-----------------------|
| Panel's knowledge of relevant law |                |           |                    |                   |              |                       |
| Rules and procedures              |                |           |                    |                   |              |                       |
| Parties' rights preserved         |                |           |                    |                   |              |                       |
| Fairness of hearing               |                |           |                    |                   |              |                       |
| Level of participation            |                |           |                    |                   |              |                       |
| Opportunity to present case       |                |           |                    |                   |              |                       |
| Neutrality of panel               |                |           |                    |                   |              |                       |
| Panel's consideration of evidence |                |           |                    |                   |              |                       |
| Panel's understanding of issues   |                |           |                    |                   |              |                       |
| Length of hearing                 |                |           |                    |                   |              |                       |
| Panel's decision                  |                |           |                    |                   |              |                       |
| Client's reaction                 |                |           |                    |                   |              |                       |
| Timeliness of scheduling          |                |           |                    |                   |              |                       |

4. Would you use the Voluntary Binding Arbitration forum for other cases? Yes  No
5. Did participation in this program save time? Yes  No
6. Did participation in this program to save money? Yes  No
7. Did this case previously participate in another dispute resolution process? Yes  No
- If yes, please indicate the type.  Arbitration  Mediation  
 Other (please specify)
8. Do you have suggestions for the improvement of this program?

**VOLUNTARY BINDING ARBITRATION  
LITIGANT EVALUATION FORM**

COUNTY

|                    |   |
|--------------------|---|
| (Please Check One) | Case Type:<br><input type="checkbox"/> Lemon Law<br><input type="checkbox"/> Verbal Threshold<br><input type="checkbox"/> Other – Specify |
|--------------------|---|

1. Are you the Plaintiff  or Defendant
2. Have you ever participated in an arbitration process before?  
Yes  No
3. Were you satisfied with your opportunity to present your case?  
Yes  No

If not, please explain

4. Do you think the hearing was conducted fairly and impartially?  
Yes  No

If not, please explain

5. Was the decision acceptable to you?  
Yes  No

If not, please explain

6. Would you use the Voluntary Binding Arbitration forum again? Yes  No
7. Did your participation in this program save time? Yes  No
8. Did your participation in this program to save money? Yes  No
9. Did you previously participate in another dispute resolution process? Yes  No
- If yes, please indicate the type.  Arbitration  Mediation  
 Other - please specify
10. Do you have suggestions for the improvement of this program?