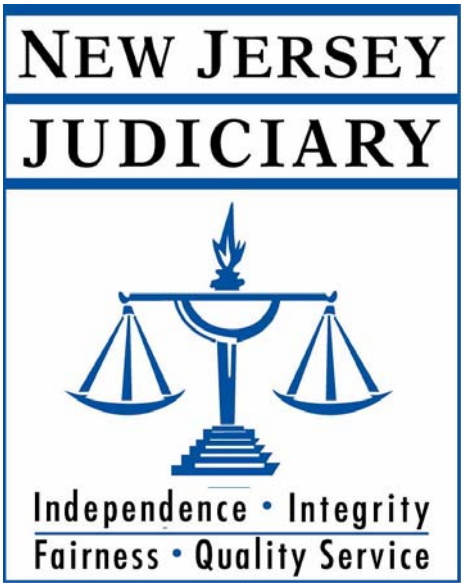
PROCEDURES MANUAL FOR ARBITRATORS IN THE CIVIL ARBITRATION PROGRAMS



Prepared by:

THE ARBITRATION ADVISORY COMMITTEE
AND
APPROVED BY THE JUDICIAL COUNCIL

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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 is 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 course 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. a. Settlement Negotiations

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

b. 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.

c. 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.

1. 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.* 4:21A-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.

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TABLE OF APPENDICES

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