

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 finds good cause for the matter to be arbitrated or unless all parties request arbitration.

(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 therefrom 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.

(f) Arbitration in Family Part Matters. Arbitration in Family Part matters shall be governed by R. 5:1-5.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; caption amended and former paragraph (a) redesignated paragraph (a)(1) and new paragraph (a)(2) adopted, paragraphs (b) and (c)(1) and (2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1) and (2) and (c)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(2) and (c)(1) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (d) amended July 10, 1998 to be effective September 1, 1998; new text added to paragraph (a), paragraphs (a)(1) and (2) amended, new paragraph (a)(3) adopted, and paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (d) adopted October 10, 2000 to be effective immediately; caption to R. 4:21A amended, and text of paragraph (a) of R. 4:21A-1 amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (c)(1) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(2) amended July 27, 2006 to be effective September 1, 2006; new paragraph (f) caption and text adopted July 27, 2015 to be effective September 1, 2015.

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

(a) Inclusion on Roster

(1) Qualifications. An applicant for inclusion on a roster of arbitrators maintained by the Administrative Office of the Courts shall be either: (1) a retired judge of any court of this State who is not on recall; or (2) an attorney admitted to practice in this State having at least ten years of consistent and extensive experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules.

(2) Arbitrator Training Requirements. To be listed on the approved roster of arbitrators, the applicant must have completed the initial training and continuing education required by R. 1:40-12(c).

(3) Certified Civil Trial Attorneys. A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by R. 1:40-12(c), will be entitled to automatic inclusion on the roster.

(4) Local Arbitrator Selection Committee

(A) Generally. The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of at least: 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.

(B) Screening Process. The local arbitrator selection committee will submit recommendations for the roster to the Assignment Judge or designee for final approval. The committee shall review the roster of arbitrators annually and, when appropriate, shall make recommendations to the Assignment Judge to remove arbitrators from the roster.

(b) Assignment 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 or designee and may be approved whether or not they met the requirements of paragraph (a) of this rule if the Assignment Judge or designee is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

(c) Assignment 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. The Assignment Judge shall file the roster with the Administrative Director of the Courts. A motion to disqualify an assigned arbitrator shall be made to the Assignment Judge or designee on the date of the hearing.

(d) 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 or designee.

(e) Compensation of Arbitrators.

(1) Assigned 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.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (c) amended, and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (b) and (d)(1) amended, and former paragraph (d)(3) deleted July 12, 2002 to be effective September 3, 2002; paragraphs (b), (c), (d)(1), and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (b) amended July 27, 2018 to be effective September 1, 2018; new paragraph (a) adopted, former paragraph (a) amended caption and text redesignated as paragraph (b), former paragraph (b) caption and text amended and redesignated as paragraph (c), former paragraph (c) caption and text amended and redesignated as paragraph (d), former paragraph (d) amended and redesignated as paragraph (e), and subparagraph (e)(1) caption amended July 31, 2020 to be effective September 1, 2020.

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.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 10, 1998 to be effective September 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

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 nonappearing party shall be deemed to have waived the right to demand a trial de novo. A party obtaining the arbitration award against the non-appearing party shall serve a copy of the arbitration award within 10 days of receipt of the arbitration award from the court pursuant to R. 4:21A-5. Service shall be upon counsel of record, or, if not represented, upon such non-appearing party. Service shall be made as set forth in R. 4:21A- 9(c). Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause, which motion shall be filed within 20 days of the date of service on the non-appearing party by the appearing party. Relief shall be on such terms as the court may deem appropriate, including litigation expenses and attorney's fees incurred for services directly related to the non-appearance.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended, and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 23, 2010 to be effective September 1, 2010; paragraph (f) amended August 1, 2016 to be effective September 1, 2016.

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 the parties who appear at the hearing. 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.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c)(1) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption deleted and text amended, and paragraphs (b) and (c) deleted July 5, 2000 to be effective September 5, 2000; amended August 1, 2016 to be effective September 1, 2016.

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 scheduled to occur within 90 days after the filing and service of the request therefor. A party demanding a trial de novo must submit with the trial de novo request a fee 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.

(d) **Attorney Fees.** In all actions where by statute or otherwise an award of attorney fees is allowed, all such issues are reserved for court resolution unless the parties otherwise agree to submit a fee demand to the arbitrator. In all cases in which attorney fees are sought, the party seeking attorney fees must comply with the provisions of R. 4:42-9(b).

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b)(1) and (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (c)(5) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended May 3, 1994 to be effective July 1, 1994; paragraph (b)(1) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended June 7, 2005 to be effective immediately; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012; paragraph (c) amended May 30, 2017 to be effective immediately.

4:21A-7. Arbitration of Minor's and Mentally Incapacitated Person's Claims

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.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 13, 1994 to be effective September 1, 1994; caption and text amended July 12, 2002 to be effective September 3, 2002.

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 supervision of the arbitration programs in the vicinage, including the resolution of all issues arising therefrom. 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 program.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b) and (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000.

4:21A-9. Parties in Default

(a) If a party against whom an arbitration award is sought in a multiple party action (1) has had default entered against such party pursuant to R. 4:43-1 and the said default was entered less than six months prior to the date of the arbitration hearing, or (2) has had default judgment on liability pursuant to R. 4:43-2(b) entered against such party, the arbitration shall proceed against such party provided that the notice of hearing and proof of mailing as set forth in paragraph (b) of this rule has been complied with.

(b) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it as set forth in paragraph (a), notice of the arbitration proceeding shall be provided to that party in the form set forth in Appendix XXIX to these Rules no later than 30 days prior to the arbitration hearing by ordinary mail addressed to the same address at which that party was served with process if the process was originally served personally or by certified or ordinary mail, unless the party providing the notice has actual knowledge of a different current address of the defaulting defendant, in which case the notice shall be sent to that address. Proof of service of the notice of arbitration hearing herein shall be filed with the clerk prior to the arbitration hearing and shall certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or, if the party has such knowledge, the proof shall certify the underlying facts. A copy of the filed proof of service of the notice provided to the defaulting party shall be provided to the arbitrator at the time of the arbitration hearing and the arbitrator shall indicate same in the arbitration award. In the event the arbitration hearing is adjourned or cancelled, the party providing such notice shall promptly notify the defaulting party of the underlying facts and the new hearing date, if applicable.

(c) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it and did not appear at the arbitration hearing after notice has been provided in accordance with paragraph (b) of this rule, the party obtaining the arbitration award against such defaulting party shall serve a copy of the arbitration award upon such defaulting party within 10 days of the date of receipt of the arbitration award. Service shall be made by ordinary mail addressed to the same address at which that party was served with service of process if the process was originally served personally or by certified or ordinary mail unless the party serving the arbitration award has actual knowledge of a different current address of the party against whom the award was entered, in which case the copy of the award shall be sent to that address.

(d) If a party who has obtained an arbitration award against the defaulting party moves for confirmation of the arbitration award and entry of judgment pursuant to R. 4:21A-6(b)(3), that party shall comply with the provisions of R. 4:43-2 and R. 1:5-7 and shall provide sufficient proof of compliance to the court.

Note: Prior rule adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2006 to be effective September 1, 2006. New rule adopted July 19, 2012 to be effective September 4, 2012; paragraph (b) amended July 22, 2014 to be effective September 1, 2014.