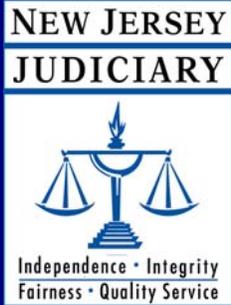


Volume 10, Issue 2

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# *Volume 10, Issue 2*

## *Civil Complementary*

### *Dispute Resolution Newsletter*

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## **Try Voluntary Binding Arbitration**

At its June 20, 1995 Administrative Conference, the Supreme Court approved implementation of voluntary binding arbitration programs to handle verbal threshold cases in any vicinage that chooses to establish such a program. It also adopted guidelines permitting counties to use voluntary binding arbitration for other case types with advance notice to the AOC. A copy of the program forms and guidelines follow.

The program requires the parties to file a written consent form, signed by all attorneys and the parties themselves, and submit 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.

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. Anyone interested in using this technique should contact the Civil Division manager in the county where their case is pending.

## **PROGRAM GUIDELINES**

Voluntary Binding Arbitration of Verbal Threshold Cases

Approved by the Supreme Court and Promulgated by the Administrative Director of the Courts  
(June 20, 1995)

1. The program is for verbal threshold 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.
-

## **PROGRAM GUIDELINES – Cont.**

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 or as set by the court, and shall be made directly by the parties on the day of arbitration.
  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 the arbitrators cannot agree.
  9. No award by the panel 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.
-

# 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: JUDGE

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

**CIVIL ACTION CONSENT ORDER OF DISMISSAL**

Attorney:

\_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
\_\_\_\_\_ County

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

**CIVIL ACTION CONSENT  
ORDER OF DISMISSAL**

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

\_\_\_\_\_

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 \_\_\_\_\_, 1995;

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;

