

#003



NEW JERSEY STATE BAR ASSOCIATION

THOMAS HOFF PROL, PRESIDENT
Ladley Clark & Ryan, LLP
60 Blue Heron Road, Suite 300
Sparta, NJ 07871-2608
973-729-1880 • FAX: 973-729-1224
tprol@lclaw.com

August 25, 2016

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: Arbitrator Qualifications and Training
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Report of the Supreme Court Arbitration Advisory Committee

Dear Judge Grant:

Thank you for the opportunity to review and comment on the report and recommendations of the Supreme Court Arbitration Advisory Committee in connection with arbitrator qualifications and training. The New Jersey State Bar Association (NJSBA) applauds the work performed by the Committee in its efforts to improve the current civil arbitration program, but offers some alternative proposals for consideration.

The NJSBA believes raising the level of competency of arbitrators is laudable and should be encouraged. To that end, the NJSBA agrees wholeheartedly with the recommendations to establish stricter requirements concerning the requisite background, expertise and training for arbitrators. These recommendations include:

- Requiring 10 years of "consistent and extensive" experience to be considered to be an arbitrator;
- Automatically qualifying Certified Civil Trial Attorneys as arbitrators;
- Requiring new arbitrators to submit the names of three attorneys with whom they have had a substantive matter within the last three years;
- Requiring training two years after the initial training, and every four years thereafter; and
- Improving the training offered to arbitrators, both in methodology and substance.

The NJSBA is concerned, though, about the proposed increases in fees associated with the arbitration program, both to increase the compensation of arbitrators, and to file a trial *de novo*. A litigant's right to a jury trial is at the heart of our system of justice. The cost to exercise that right is already significant, and we do not see a need for any additional increases. Furthermore, the NJSBA questions whether the Supreme Court has the authority to change the trial *de novo* fees without legislative approval.

The NJSBA notes that statistics in the report show that of the 30,367 cases arbitrated in 2013 and 2014, approximately 78% of them resulted in a demand for a trial *de novo*. While the Report noted that the *de novo* collected fees exceeded the amount paid to the arbitrators, the NJSBA also recognizes that there are additional costs related to the program, such as court staff time and resources dedicated to the program. In light of this, the NJSBA urges the Court to undertake a full examination of the true cost and benefits associated with the arbitration program, and consider other options before fees are increased.

In particular, the NJSBA urges the Court to reconsider the mandatory nature of the arbitration program. Currently, under R. 4:21A-1(c)(1), the removal of any case from arbitration is only permissible if there is a novel legal issue, the facts are unusually complex, or if the case "is otherwise ineligible for arbitration." See, Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 597 (2013). Eliminating the mandatory requirement and providing a mechanism to opt-out of the program would dramatically improve the success rate and commensurately reduce the *de novo* rate from the current 80%.

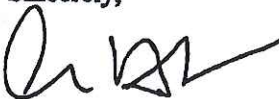
One potential way to implement an opt-out provision is to amend the Court Rules to require that the designated trial attorneys in each case, upon receipt of an arbitration notice, confer to determine if they reasonably believe there can be a meaningful hearing which would assist the parties in resolving the matter. The case would be removed from the arbitration program upon the filing of a certification by any of the attorneys indicating the designated trial attorneys have conferred and have failed to agree that an arbitration hearing would be productive. This would compel the designated trial attorneys to review their files closely and confer with opposing counsel early in a matter, and would save costs where there appears to be no reasonable prospect of a successful arbitration.

In summary, the NJSBA applauds the Committee for its efforts to make recommendations to improve the existing arbitration system. We urge the Court to adopt the proposed increased background and training requirements, but also to refrain from increasing the fees associated with the program. Instead, the NJSBA suggests that the Court examine the costs of the program more carefully as compared to the current benefits. In particular, the NJSBA urges the Court to consider instituting an opt-out provision that allows litigants to save and time and money by proceeding directly to trial when there is no reasonable prospect of success in arbitration. The NJSBA believes this would better serve litigants, their attorneys and the judicial system generally.

Thank you for your courtesies in considering these comments. The NJSBA looks forward to continuing to work with the Court to improve the civil arbitration program, and ensure that litigants are provided with every opportunity to have their disputes resolved in a timely, cost-effective and just manner.

Please do not hesitate to contact me if any additional information is necessary.

Sincerely,



Thomas H. Prol, Esq.
President

/sab

cc: Robert B. Hille, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director