

NEW JERSEY STATE BAR ASSOCIATION



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Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Proposal to Require Submission of Arbitration
Statements to the Arbitrators Before the Hearing
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposal to Require Submission of Arbitration
Statements to the Arbitrators Before the Hearing

Dear Judge Grant:

On behalf of the New Jersey State Bar Association (NJSBA), thank you for the opportunity to provide comments on proposed amendments to Rule 4:21A-4(a), which would require the parties to a civil arbitration to submit their arbitration statements to the arbitrator before the scheduled date of the hearing. The NJSBA welcomes the review of the civil arbitration system and urges the Judiciary to consider an even broader review of the system to provide flexibility to the parties and ensure the system's effectiveness.

The NJSBA fully supports a requirement that arbitration statements be submitted in advance of the arbitration hearing to allow the arbitrator and all parties sufficient time to review and prepare for the hearing. We believe that three days before the hearing would provide sufficient time and recommend that the requirement apply to both virtual and in-person hearings. Since there may be privacy and HIPAA concerns associated with the information contained in the statements, we recommend the establishment of a separate, secure, online portal through which the statements can be submitted. Finally, we do not recommend that any penalty should apply if a party fails to submit the arbitration statement by the established deadline.

Consideration of this proposal led to a larger analysis of the civil arbitration system within the NJSBA, and further recommendations for changes. We urge the Judiciary to consider the following:

1. Page/index limits: Arbitration submissions should be limited to five pages, with an index not to exceed 35 pages. Indices should be required to include portions of the record specifically referenced in the party's statement, and the statements should highlight relevant portions of documents not included in the indices.

2. In-person "opt-in": While there is broad support for ongoing virtual arbitrations in most matters, there are some complex cases that involve unique types of evidence, are very sensitive in nature, or involve witnesses who should appear live. The parties to such matters should have a mechanism by which they can elect to "opt-in" for an in-person arbitration. This could occur by consent order or, without consent, by motion. The same time standards and page limits for arbitration statements should apply to in-person arbitrations, but the parties could request leave to deviate by consent order or motion.

3. Fees paid to arbitrators/limits on number of cases: Consideration should be given to a new fee structure that would more fairly and equitably compensate arbitrators, especially in light of increased responsibilities associated with virtual arbitrations. Arbitrators are now responsible for contacting the parties, coordinating the date, time and virtual platform and soliciting arbitration statements. NJSBA members report that some arbitrators are assigned to solely arbitrate up to 12 cases in a single day, while others are paired up with a second arbitrator and assigned on average only three matters a day. The NJSBA recommends that arbitrators not be assigned more than eight cases in a single day. Further, fees should be provided to reflect the level of responsibility. The NJSBA recommends that single arbitrators be compensated \$500 for up to five cases, or \$750 in the event an arbitrator handles six to eight cases. For two-arbitrator panels, the NJSBA recommends that compensation be set at \$800 to be shared for up to five cases, and \$1000 shared for six to eight cases. The NJSBA suggests that the fee for *de novo* review could be reasonably increased to cover the increased compensation for arbitrators.

4. Virtual platform for arbitrations/telephonic arbitrations prohibited: Arbitrators and parties should have the flexibility to utilize the virtual platform that works best for them and their case, rather than being mandated to utilize a particular platform they may not be familiar with or that does not offer the tools needed to effectively present or analyze the case. Telephonic arbitrations should not be permitted. Without the ability to see the documents presented and the individuals testifying, the integrity of the process is at serious risk.

5. *De novo* timeline: Consideration should be given to extending the time to file for *de novo* review be extended from 30 days to 60 days. NJSBA members have expressed difficulty in coordinating a review of the case and the arbitration award with clients and carriers within the current 30-day period to provide for a thorough and realistic analysis of settlement possibilities. The result is that *de novo* review is requested before a full analysis can be undertaken because of the potential harsh consequences of not doing so, only to have many cases ultimately settle for close to the amount of the arbitration award anyway. A longer time period may result in increased settlement opportunities.

6. Notice of arbitration and removal: Rule 4:21A-1(c) and (d) should be amended to allow for 60 days' notice that a matter is being scheduled for arbitration to provide the parties with adequate time to prepare or raise appropriate requests for removal. Any request for removal or motion for additional discovery should be required to be filed 30 days before the arbitration.

7. Distribution of awards/clarification of timing: Rule 4:21A-5 should be amended to require the arbitration award be transmitted to the civil division manager on the day of the hearing with a copy sent via email that day to the attorneys for the litigants or by email for the *pro se*. That step should be confirmed by the arbitrators at the hearing. The rule should also clarify when the time to file for *de novo* review begins to run -- from the time attorneys receive the award from the arbitrators or when the award is uploaded, and a notice is sent out by eCourts. This is particularly important given the harsh consequences for missing a *de novo* deadline.

Again, the NJSBA appreciates the opportunity to comment on the proposed amendments to Rule 4:21A-4(a) and participate in this important process. We believe there are many issues with the civil arbitration system deserving of further analysis and consideration, including the additional recommendations offered above. We may submit further comments as discussion about the civil arbitration system among our members continue. As always, the NJSBA stands ready to assist in implementing these recommendations in any way it can.

Respectfully,



Jeralyn L. Lawrence, Esq.
President

cc: Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director