

**COMPULSORY ARBITRATION CENTER
1880 JFK BOULEVARD, 5TH FLOOR**

All civil actions filed in the Court of Common Pleas of Philadelphia County with an amount in controversy of \$50,000 or less, excluding equitable actions and claims to real estate, must first proceed to a compulsory arbitration hearing before a panel of three attorneys who have been court certified to serve as arbitrators.

With more than 20,000 cases a year concluded at the arbitration level, the Compulsory Arbitration Program in Philadelphia County is one of the most successful programs of its kind in the nation. The current Director of the Arbitration Center is Joseph L. Hassett, Esquire. The Director is responsible for overseeing the day to day operations of the Center and is available to provide procedural and legal support to our arbitration panels, if necessary. In addition, the Director is charged with the critical function of ruling on continuance and rescheduling applications.

*Please note that all continuance requests are strictly governed by Phila. Civ. R. *1303(c). Moreover, emergency continuance applications will only be granted when the basis for the request could not have been previously anticipated.*

It is strongly advised that all counsel who practice at the Arbitration Center become thoroughly familiar with our arbitration practice and procedure so that the arbitration process will run smoothly. **Special attention should be given to Administrative Order No. 2005-02, which has become effective June 6, 2005. This Administrative Order establishes Standard Interrogatories and Production of Document Requests in certain Arbitration cases, which is briefly discussed in this section.**

ARBITRATION PROCEDURE

Compulsory Arbitration in the First Judicial District is controlled by the arbitration rules of the Pennsylvania Rules of Civil Procedure¹ and the Philadelphia Civil Rules.² Except as provided in those rules, the normal procedural and evidentiary rules control.

¹ Pa.R.C.P. 1301-1314.

² See Philadelphia Civil Rules *1301–*1305 and *1308. These Arbitration Rules in Philadelphia County were substantially revised in 1995, effective July 17, 1995, and in July 1998, effective January 1, 1999.

Commencing Litigation in Compulsory Arbitration

When a case is initially filed as an arbitration matter, the date and time for the arbitration hearing are assigned by the Prothonotary at the time of filing of the complaint or writ of summons,³ with hearing dates listed approximately eight (8) months thereafter. The initial filing in arbitration must include a three-inch space on the cover page, for the Prothonotary stamp which lists the date of the arbitration hearing. The cover sheet must also include, in upper case letters, in the upper, right-hand corner, the phrase, "This is an Arbitration Case" and a notation of whether or not an "Assessment of Damages is/is not required."⁴

Actions filed to preserve the subrogation rights of an uninsured motorist insurance carrier can be placed in deferred status, with no hearing date scheduled. The writ of summons or civil action complaint should include the notation "Uninsured Motorist Savings Action" or "Deferred" on the cover page, immediately below the request for arbitration. The case will then be placed in deferred status and no actual hearing date will be scheduled.⁵

As of January 1, 1999, the Prothonotary in Philadelphia will also stamp the initial summons or complaint with the following language:

"This matter will be heard by a board of arbitrators at the time, date, and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo from a decision entered by a judge." Philadelphia Civil Rule *1303(a)(1), as amended November 19, 1998, effective January 1, 1999.

This procedure was adopted in response to the amendment of Pennsylvania Rule of Civil Procedure 1303 on July 30, 1998, effective January 1, 1999. The explanatory comments⁶ to this amendment outline the rationale for its elimination of the right to a trial de novo on appeal from a decision entered by a judge where the parties were so advised in their notice of hearing. The comments also suggest the options available to parties seeking relief from a decision entered by a judge.

³ Philadelphia Civil Rule *1303(a).

⁴ Philadelphia Civil Rule *1303(a).

⁵ Philadelphia Civil Rule *1303(b)(1)(i).

⁶ The explanatory comments were prepared by the Civil Procedural Rules Committee.

Municipal Court Money Judgment Appeals

Effective January 2, 2002, Municipal Court cases involving Money Judgments which are appealed to the Court of Common Pleas must, thereafter, proceed to a Compulsory Arbitration Hearing.⁷ Notice of the hearing will be sent by the court in accordance with a Standing Case Management Order to be entered at the time of filing the appeal.

In addition, regardless of the party filing the appeal, plaintiff must file and serve a complaint upon defendant(s) pursuant to the Standing Case Management Order and the Pennsylvania Rules of Civil Procedure.

Service of Process

Plaintiff must make a diligent effort to effectuate service of the complaint on the defendant. If initial service is unsuccessful, counsel must immediately begin a good faith search for the defendant and attempt a second actual service on any new address obtained. Thereafter, a Petition for Alternative Service⁸ can be filed, demonstrating counsel's diligent efforts to obtain service on the defendant and requesting permission for alternative service. Before substituted service will be permitted, the plaintiff must have demonstrated "a good faith effort to locate the defendant through more direct means."⁹ An application for a continuance due to service not being effected upon defendants must include facts establishing the plaintiff's contention that due diligence has been exercised, which shall include the dates of attempted service, a statement that substituted service could not have been obtained prior to the arbitration hearing date, and a certification that a Petition for Alternative Service has been filed.¹⁰

If service is not effectuated on the defendant prior to the scheduled arbitration hearing date, and no continuance has been obtained in accordance with Philadelphia Civil Rule *1303(c)(5)(i), an Award will be entered in favor of the defendant provided plaintiff is present at the scheduled arbitration hearing. Otherwise a non pros may be entered pursuant to Pennsylvania Rule of Civil Procedure 1303.¹¹

⁷ Order of Honorable John W. Herron, Administrative Docket No. 2001-12.

⁸ Pa.R.C.P. 430.

⁹ Romeo v. Looks, 369 Pa. Super. 608, 535 A.2d 1101, 1106 (1987).

¹⁰ Philadelphia Civil Rule *1303(c)(5)(i), as amended 1995.

¹¹ Philadelphia Civil Rule *1303(j), as amended 1996, effective January 13, 1997, and Philadelphia Civil Rule *1303(a)(1) as amended November 19, 1998, effective January 1, 1999.

Discovery

All of the discovery tools allowed under the Pennsylvania Rules of Civil Procedure are also available for arbitration cases. Counsel can utilize interrogatories, requests for production, requests for admissions, and depositions, as appropriate, for any case in arbitration.

Counsel must follow the discovery motion procedure outlined in Philadelphia Civil Rule *206.2. In addition, the moving party must obtain court approval to file a motion if it is within 45 days of the scheduled arbitration hearing.¹²

Effective June 6, 2005, pursuant to Administrative Order No. 2005-02, there will be “standard” discovery in motor vehicle liability and premises liability cases assigned to the Compulsory Arbitration Program, as follows. A copy of Administrative Order No. 2005-02 is included at the end of this section.

a) The following “standard” interrogatories are adopted by the court:

- i) Plaintiff’s Interrogatories Addressed to Defendant—Motor Vehicle Liability, Exhibit “A” (see First Judicial District website at <http://courts.phila.gov>).
- ii) Defendant’s Interrogatories Addressed to Plaintiff—Motor Vehicle Liability, Exhibit “B” (see First Judicial District website at <http://courts.phila.gov>).
- iii) Plaintiff’s Interrogatories Addressed to Defendant—Premises Liability, Exhibit “C” (see First Judicial District website at <http://courts.phila.gov>).
- iv) Defendant’s Interrogatories Addressed to Plaintiff—Premises Liability, Exhibit “D” (see First Judicial District website at <http://courts.phila.gov>).

b) The following requests for production of documents are adopted by the court:

- i) Plaintiff’s Request for Production of Documents, Exhibit “E” (see First Judicial District website at <http://courts.phila.gov>).
- ii) Defendant’s Request for Production of Documents, Exhibit “F” (see First Judicial District website at <http://courts.phila.gov>).

c) Objections. The court will not entertain objections to the standard interrogatories or document requests. Parties who serve objections may be subject to appropriate sanctions, including imposition of counsel fees.

¹² Philadelphia Civil Rule *1303(h). Court approval is obtained by filing a Miscellaneous Arbitration Application form, accompanied by a copy of the motion or petition along with stamped envelopes addressed to all counsel and unrepresented parties.

d) Service of standard interrogatories and requests for production of documents.

At any time after the filing of an answer to the complaint, a party may request any other party to answer standard interrogatories and/or respond to standard document requests by serving on all other parties a notice to answer or respond to standard written discovery, substantially in the form of Exhibit “G” (see First Judicial District website at <http://courts.phila.gov>). Answers and responses shall be provided to all parties within 30 days of the service of the notice, but shall not be filed with the court or Prothonotary unless relevant to a motion or other pretrial proceeding, ordered by the court, or required by statute. Once the notice is served on any party, all other parties, including the parties serving the notice, shall answer the standard interrogatories applicable to them within 30 days of the service of the original notice. Only the standard interrogatories and document requests approved in the order shall be served and answered by the parties, except as provided in paragraph (f) below.

e) A copy of the standard interrogatories or document requests need not be attached to the notice served on attorneys, but must be provided to unrepresented parties. Copies of the above documents may be obtained on the court’s Website at <http://courts.phila.gov>.

f) Additional Written Discovery

i) General Rule. No additional interrogatories or document requests will be permitted as to motor vehicle and premises liability cases filed in the Compulsory Arbitration Program unless the answering or responding party agrees, or as further provided under Administrative Order 2005-02.

ii) Limited Supplementation. Any party may serve up to five additional interrogatories or document requests that are specifically tailored to the case and are not duplicative of the standard interrogatories or document requests. Each subpart shall be considered a separate interrogatory or request for purposes of this limitation.

iii) Arbitration Appeals. Any party may serve up to 10 additional interrogatories within 30 days of the filing of an appeal from an arbitration award. Each subpart shall be considered a separate interrogatory for purposes of this limitation.

iv) Leave of Court. Upon receipt of answers to standard interrogatories or responses to standard document requests, any party may file an appropriate discovery motion under Phila.Civ.R. *208.3, seeking leave of court to serve additional interrogatories or document requests. The moving party must allege and show good cause why the additional standard interrogatories or document requests are reasonably necessary to prepare its case for trial.

g) Dead Man’s Rule. In the event that any party wishes to invoke the Dead Man’s Rule, that party shall notify the opposing party, in writing, of its intention to invoke the rule, within 20 days of the time the notice to answer or respond to standard written discovery was served. In such a case, the party who is invoking the Dead Man’s Rule

shall have no obligation to answer the standard interrogatories or produce the documents requested, until otherwise ordered by the court.

h) Effective Date. The administrative order becomes effective on May 2, 2005.

Pre-Hearing Procedure and Continuances

The Philadelphia Arbitration Center is run on a day to day basis by the Director of the Arbitration Program. All requests for continuances, rescheduling or other relief must be submitted on the designated form, a **Continuance Arbitration Application**. A copy of the application **must** be mailed, delivered, or faxed to opposing counsel and unrepresented parties contemporaneously with its filing with the Arbitration Center, and delivered to the other parties in the same manner as the original filing.¹³ All continuance applications must include stamped envelopes pre-addressed to all counsel or unrepresented parties.¹⁴ The Director of the Arbitration Program shall rule on the request for continuance. Oral argument is not authorized and the ruling is not subject to judicial review.¹⁵ Counsel are cautioned not to call or write the Arbitration Center for status of the application, or to request ‘reconsideration’ in the event the Continuance Application is denied.¹⁶

Counsel are forewarned that there is no automatic right to obtain a continuance of an arbitration even if all counsel agree. Philadelphia Civil Rule *1303(c) must be followed by attorneys requesting a continuance and the guidelines in this rule must be followed.¹⁷ In general, there is a strict rule against continuances.

It should be noted, however, that the local rules do provide for a right to advance an arbitration date, on agreement of all parties.¹⁸ As the explanatory note to Philadelphia Civil Rule 1303(d) notes, “a conflict with a scheduled Arbitration Hearing date may be resolved by agreeing to an earlier Arbitration Hearing.”¹⁹ Further, since January 25, 1996, an arbitration hearing may be rescheduled by agreement of all parties, to a new date within two weeks of the original scheduled date.²⁰ A hearing can be rescheduled

¹³ Philadelphia Civil Rule *1303(c)(3).

¹⁴ Philadelphia Civil Rule *1303(c)(2).

¹⁵ Philadelphia Civil Rule *1303(c)(3).

¹⁶ Explanatory Note to Philadelphia Civil Rule *1303(c)(3).

¹⁷ Philadelphia Civil Rule *1303(c).

¹⁸ Philadelphia Civil Rule *1303(c)(7) and (d).

¹⁹ Philadelphia Civil Rule *1303(d).

²⁰ Philadelphia Civil Rule *1303(c)(7).

only one time and all counsel and unrepresented parties must agree on a specific date and sign the Compulsory Arbitration One-Time-Only Rescheduling Agreement.

Consolidation

Generally, if two arbitration cases are consolidated prior to the hearing date of either, the actions shall be heard on the date assigned to the last-filed consolidated case.²¹ Cases cannot be consolidated by stipulation and Motions for Consolidations must be formally presented.²² If a Motion for Consolidation is filed within 45 days of the arbitration hearing date, counsel must obtain consent of the court for filing the motion by also filing a Miscellaneous Arbitration Application.

Settlement

Immediate written notification of settlement of an arbitration case should be sent to the Director of the Arbitration Program.²³ When a case is settled just prior to a hearing, prompt notice is still required. This is important so that the Arbitration Center can plan properly and schedule an appropriate number of arbitrators for the center for each day of its operation. If there is not time to send notification by mail, please fax a letter to the Arbitration Center at 215-686-9594, informing them of the settlement of any case listed for a hearing.

THE ARBITRATION HEARING

The Arbitration Center

All Compulsory Arbitration hearings are held in the Court of Common Pleas Arbitration Center, located on the 5th Floor at 1880 JFK Blvd., Philadelphia PA. Counsel, clients, and, witnesses should be present in the Assembly Room prior to the assigned time for the hearing.

On arrival at the Arbitration Center, counsel should check in with the clerk at the front of the room. Have the Court Term and Number (case identification number) of the case ready to speed the process along for all concerned.

After all parties are present, a case is placed in ready status for a hearing. Cases that are ready will be assigned out by name to available arbitration panels in the sequence that they were ready.

²¹ Philadelphia Civil Rule *1303(e).

²² Order of Honorable John W. Herron, Administrative Docket No. 1996-03.

²³ Philadelphia Civil Rule *1303(i).

Assignment to a Hearing Room

There are usually eight to twelve panels of arbitrators sitting simultaneously in the various hearing rooms available at the Arbitration Center. As cases are ready and hearing rooms are available, the cases will be assigned to a hearing room for disposition in the order that they were marked ready. One of the attorneys will be asked to carry the court file to the Chairperson of the panel in the assigned room. When a panel of arbitrators concludes a case, notification is given to the clerk in the Assembly Room and another ready case is then assigned to that panel.

Arbitration panels consist of three attorneys engaged in the active practice of law, with principal offices in Philadelphia.²⁴ Arbitrators must have a least one year (five years for the chairperson) of legal experience in Pennsylvania, and must have attended a court-approved arbitration training seminar.²⁵

Arbitrators should identify themselves and the firms with whom they are employed on a board in the hearing room. If there is a potential ground for disqualification of a panel member from hearing that case, counsel should point this out to other counsel and the arbitration panel. Any arbitrator who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct has an obligation to withdraw as an arbitrator.²⁶

After delivery of the court file to the Chairperson of the panel in the assigned hearing room, the arbitrators will begin to review the pleadings. Each counsel/unrepresented party should write his or her name and address on one of the envelopes provided in each hearing room. These envelopes will be used to mail the decision of the arbitrators to the counsel/unrepresented party.

The Chairperson of the arbitration panel will administer the oath or affirmation to all witnesses.²⁷ Any party may elect to have a stenographic record made of the hearing at that party's expense, with any other party being given an opportunity to obtain a copy on payment of a proportionate share of the total cost.²⁸ The hearing itself should be conducted as a non-jury trial, in conformity with Rule 1038(a) of the Rules of Civil Procedure, except as otherwise provided in the arbitration rules.²⁹

²⁴ Philadelphia Civil Rule *1302(b).

²⁵ Philadelphia Civil Rule *1302(b). The court-approved seminar is run by the Philadelphia Bar Education Center.

²⁶ Pa. R.C.P. 1302.

²⁷ Pa. R.C.P. 1304(b).

²⁸ Pa. R.C.P. 1304(c).

²⁹ Pa. R.C.P. 1304(a).

Failure to Appear at Arbitration

Under recent amendments to the Pennsylvania Rules of Civil Procedure, the court, with the consent of the parties present, may take action not available to the arbitrators if a party fails to appear for an arbitration hearing and the Complaint, Writ of Summons, or Scheduling Notice contains the following statement:

“This matter will be heard by a Board of Arbitrators at the time, date, and place specified, but if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the Court without the absent party or parties. There is no right to a trial de novo or appeal from a decision entered by a judge.”³⁰

Specifically, the court may take action not available to the arbitrators, including entry of a nonsuit if the plaintiff is not ready, or a non pros if neither party is ready. If the defendant is not ready, the court may hear the matter and enter a decision.³¹

Under the current procedure, the Arbitration Center shall certify for the record when a party fails to appear and immediately assign the case for a non jury trial at the Complex Litigation Center to be held the same day. If all parties fail to appear, the Arbitration Center will certify for the record that all parties failed to appear and the appropriate disposition will thereafter be entered by the Motions Program Judge.³²

Relief from the decision of the court will be by motion for post trial relief following the entry of a nonsuit or assessment, or by Petition to Open a Judgment of Non Pros.³³

Conduct of Hearing

- (i) **Opening Statements**—Each counsel has the right to present an opening statement, but they should be brief, to the point, and non-argumentative.
- (ii) **Witnesses**—Each party has the right to present whatever witnesses are necessary to prove the elements of the claim or defense. With the exception of specific

³⁰ See Pa.R.C.P. 1303, amended July 30, 1998, effective January 1, 1999, and Phila. Civil. R. *1303, amended November 19, 1998, effective January 1, 1999.

³¹ If all parties present do not consent to being heard by a judge, the case will be assigned to an arbitration panel for disposition.

³² Pa.R.C.P. 1303 notes that a party is present if the party or an attorney who has entered an appearance on behalf of the party attends the hearing.

³³ See explanatory notes following Pa.R.C.P. 1303.

arbitration rules on documentary evidence,³⁴ the rules of evidence shall be followed in all compulsory arbitration hearings.³⁵ All evidentiary rulings are made by the arbitration panel³⁶ with such rulings by majority decision.³⁷ The local rule in Philadelphia provides that the established rules of evidence shall be “liberally construed to promote justice.”³⁸

- (iii) **Documentary Evidence**—The most significant procedural rule is the relaxation of normal rules of evidence with regard to certain types of documentary evidence, which may be introduced, without authentication, subject to objections as to relevance or to any other objection to admissibility other than authenticity. A copy of any such document must be provided to the adverse party twenty days before the hearing, together with written notice of the intention to offer such documents into evidence.³⁹

Rule 1305 of the Pennsylvania Rules of Civil Procedure was amended, effective January 1, 1998. This amendment has blurred the distinctions that used to exist between the Philadelphia Civil Rules and the statewide rule on documentary evidence at arbitrations. The Philadelphia rule is still broader than the statewide rule as Rule *1305 provides that “attorney’s certifications as to time and hourly rates in claims where counsel fees are involved” shall be received in evidence without further proof, provided at least 20 days written notice of the intention to offer the documents was given to the adverse party.⁴⁰

- (iv) **Official Records**—The rules also provide a party with the right to offer into evidence, without the certification normally required by Sections 5328 and 6103 of the Judicial Code, official weather reports, traffic signal reports, or United States Government life tables.⁴¹ No advance notice to the adverse party is required prior to the introduction of these records. Other official records kept within the Commonwealth may also be “offered in evidence” if twenty days written notice is provided to every other party, accompanied by a copy of the record.⁴²

³⁴ Pa.R.C.P. 1305(b) and Philadelphia Civil Rule *1305(b).

³⁵ Pa.R.C.P. 1305(a).

³⁶ Philadelphia Civil Rule *1305(a).

³⁷ Pa. R.C.P. 1305(a).

³⁸ Philadelphia Civil Rule *1305(a).

³⁹ Pa.R.C.P. 1305(b) and Philadelphia Civil Rule *1305(b).

⁴⁰ Philadelphia Civil Rule *1305(b).

⁴¹ Pa.R.C.P. 1305(d).

⁴² Pa. R.C.P. 1305(d).

- (v) **Closing Argument**—At the conclusion of the testimony by all witnesses, and after the introduction of all documentary evidence, each party has the right to make a closing argument to the panel of arbitrators. Parties should be present in the hearing room to hear the arguments and any questioning by the arbitrators.
- (vi) **Delay Damages**—Any party seeking delay damages under Rule 238 should send a statement to opposing counsel prior the hearing, setting forth the request for delay damages, and at the conclusion of the hearing the statement is submitted in a sealed envelope to the panel.⁴³ Because of the prompt hearing—eight months after the filing of the complaint—delay damages are rarely applicable in arbitration hearings.

THE REPORT AND AWARD OF ARBITRATORS

At the conclusion of the hearing, the parties, attorneys, and witnesses leave the hearing room, allowing the arbitrators to deliberate and reach a decision. The arbitrators shall make an award promptly upon termination of the hearing.⁴⁴ The arbitrators' award must dispose of all claims for relief and it must be entered on a Report and Award of Arbitrators form.⁴⁵

When the Report and Award is completed and signed by all three arbitrators, the chairperson of the panel returns the file and award form to the assignment desk. The chairperson is required to make a copy of the Report and Award to be left in a bin in front of the bench in the Assembly Room, where the parties or counsel will be able to review the award to learn the result of the arbitration on the day of the hearing. Obvious mathematical errors or other obvious errors in the award can be brought to the attention of the panel for correction, while the panel is still assembled on the day of the hearing. It is also hoped that the immediate availability of the result will enable the parties to discuss possible settlement that day, while the pre-arbitration settlement discussions are still current and fresh. By use of this procedure, it is hoped that the appeal rate will decrease.

The Report and Award is docketed by the staff of the Arbitration Center. Copies of the award are then mailed to the parties (or their counsel) in the envelopes which were addressed by counsel on entry into the hearing room.

The court may mold an award to correct “obvious and unambiguous errors in the award, in mathematics or language,” on application of a party within the thirty (30) day period allowed for appeal.⁴⁶ This applies only to obvious and unambiguous errors and not to

⁴³ Pa. R.C.P. 238.

⁴⁴ Pa. R.C.P. 1306.

⁴⁵ Pa. R.C.P. 1312.

⁴⁶ Pa.R.C.P. 1307(d). See Maize v. Atlantic Refining Co., 352 Pa. 51, 41 A.2d 850 (1945) for the standard by which a court may mold the verdict of a jury.

any other type of attempted reformation of the award.⁴⁷ The court's power to mold an award is specifically limited to correction of patent errors and is aimed at correcting formal errors that do not go to the substance and merits of the award.⁴⁸ After the thirty (30) day period, the court no longer has jurisdiction to mold an award and any such petition must be denied.⁴⁹

⁴⁷ Albert v. Denito, 336 Pa. Super. 284, 485 A.2d 806 (1984).

⁴⁸ Lough v. Spring, 383 Pa. Super. 85, 556 A.2d 441 (1989).

⁴⁹ Id.