NOTICE TO THE BAR

RECOMMENDATIONS OF THE SUPREME COURT JOINT WORKING GROUP ON ARBITRATION RULES AND PROCEDURES – REQUEST FOR PUBLIC COMMENT

The Supreme Court requests public comment on the attached Report and Recommendations of the Joint Working Group on Arbitration Rules and Procedures.

Overview

The Joint Working Group was established in 2024, with Appellate Division Judge Lisa Perez Friscia as Chair and Civil Presiding Judge Douglas Hurd as Vice-Chair, and with members drawn from the Civil Practice Committee and the Committee on Complementary Dispute Resolution. The attached report sets out the Working Group's recommendations, including a proposed page limit on arbitration statements, changes to the compensation paid to court-appointed arbitrators and the trial de novo fee, and other potential amendments to the Court Rules, as well as other issues that the group considered without reaching consensus.

Request for Comments

Please send any comments on the attached Report and Recommendations by **February 28, 2025** to:

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Arbitration Rules and Procedures
Hughes Justice Complex, P.O. Box. 037
Trenton, NJ 08625-0037

Comments may also be submitted via email at the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address, and those submitting comments by email should include their name and email address. Comments are subject to disclosure upon receipt.

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: January 21, 2025

NEW JERSEY SUPREME COURT

JOINT WORKING GROUP ON ARBITRATION RULES AND PROCEDURES

REPORT AND RECOMMENDATIONS

November 22, 2024

INTRODUCTION

The Joint Working Group on Arbitration Rules and Procedures (Working Group) was charged by the Acting Administrative Director of the Courts to consider proposals by the New Jersey State Bar Association (NJSBA) to modify certain court rules and practices of the court-annexed civil arbitration program. The Working Group is comprised of judges, court managers and administrators, and designated attorneys from the New Jersey State Bar Association and the Supreme Court Committee on Complementary Dispute Resolution.

The NJSBA proposals were set forth in two letters, dated November 21, 2022, and September 4, 2024. The NJSBA proposals and recommendations of the Working Group are set forth with specificity herein.

A. ARBITRATION STATEMEMTS

1. Advance Submission of the Arbitration Statement

The Working Group considered the NJSBA proposal that each party's arbitration statements be provided to the arbitrator(s) at least 3 days in advance of the arbitration hearing to allow the arbitrator(s) ample time to become familiar with the case. Vicinages have been granted the discretion to hold arbitrations either in-person or remote per the October 27, 2022 Supreme Court Order on the Future of Court Operations Notice and Order - The Future of Court Operations - Updates to In-Person and Virtual Court Events | NJ Courts. Currently, all vicinages with the exception of one are conducting arbitrations in a remote format. Vicinages holding remote arbitrations have the ability to grant requests for in person courthouse arbitrations to ensure reasonable accommodations when needed. Vicinages with arbitrations taking place remotely assign the arbitrator(s) to particular cases in advance of the hearing date. Most require arbitration submissions to be provided by the parties to the arbitrator in advance of the hearing date, usually 3 to10 days. Some vicinages do not mandate a timeframe. The vicinage that is in person matches a case with an arbitrator on the day of court; parties provide their arbitration statements to the arbitrator on the day of the hearing. Therefore, mandating that arbitration statements be provided to the arbitrator(s) in advance is not feasible for this vicinage. The Working Group was in

agreement that vicinages should have discretion to manage arbitration submissions as suitable to their respective formats and was in agreement that a court rule amendment mandating a timeframe is not necessary.

The Working Group makes no recommendation as to this proposal.

2. Page Limitations for Arbitration Statements

The Working Group considered the NJSBA proposal to limit the length of arbitration statements to 5 pages, with an index not to exceed 35 pages. Page limitations would require the parties to be concise and focus on important records that go to the issues in dispute. A streamlined approach should save arbitrators time in preparing for hearings as they would not have to sort through volumes of superfluous records. The Working Group supports this proposal.

Proposed amendments to R. 4:21-A-4 (Prehearing Submissions) follow:

Rule 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. Arbitration statements shall not exceed 5 pages, with exhibits not to exceed 35 pages. A copy of all documents exchanged shall be submitted to the arbitrator for review on the day of the hearing.

(b) Powers of Arbitrator. … no change.

(c) Evidence. …no change.

(d) General Provisions for Hearing. … no change

(e) Subsequent Use of Proceedings. … no change

(f) Failure to Appear. … no change.

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 (d); 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; paragraph (a) amended , 2025 to be effective , 2025.

3. Creation of an On-Line Portal

The Working Group considered the NJSBA proposal for creation of an on-line portal for the submission of arbitration statements. The NJSBA cites privacy concerns regarding the information contained in arbitration statements. Currently, arbitration statements are exchanged between the parties and provided to the arbitrator(s) directly. They are not made public and not reviewed by a judge. The Judiciary's "on-line portal" is the eCourts electronic filing system. It is not feasible for the Judiciary to create a separate electronic filing system for arbitration statements. eCourts filings into the Civil case jacket are accessible and viewable by the public. Although functionality currently exists in eCourts to allow medical documents contained in arbitration statements to be uploaded as "confidential" pursuant to R. 1:38-3(a)(2), the arbitration statements would still be visible to court staff and the judge.

The Working Group determined that changing current practice to file arbitration statements into eCourts was not necessary or workable for the stated reason of protecting privacy. The direct exchange outside of eCourts already serves to protect the privacy of these records from public access.

The Working Group makes no recommendation as to this proposal.

B. ARBITRATION HEARINGS

1. Remote vs. In-Person

The Working Group considered a proposal to establish a process for parties to convert a case scheduled for virtual arbitration to one that takes place in-person at the courthouse. The Working Group believes that the October 27, 2022 Supreme Court Order on the Future of Court Operations giving vicinage discretion on the arbitration format also give the vicinage discretion to convert the format of a particular case upon request and that no formalization of this process is necessary. Parties seeking to change the format of a particular arbitration should contact Civil Division staff and make that request. Civil Division members of the Working Group indicated these requests would be liberally granted.

The Working Group makes no recommendation as to this proposal.

2. Arbitrations by Telephone

The Working Group considered a proposal prohibiting telephonic arbitrations. The stated reason for the proposal is that without the ability to see the documents presented and the individuals testifying, the integrity of the process is at risk. The April 16, 2020 Notice to Bar Notice - Civil Arbitration – COVID-19 – Conducting Arbitration by Video or Telephone | NJ Courts issued during the COVID-19 pandemic provided guidance on conducting remote arbitrations and expressly permits arbitrations by video or telephone, "using technology as agreed

upon by the participants and the arbitrator(s).” The Working Group was concerned that expressly prohibiting the use of a telephone during an arbitration might impact access for certain individuals, primarily self-represented litigants, who lack video capabilities.

The Working Group makes no recommendation as to this proposal.

3. Settlement Conferences

The Working Group considered a proposal to mandate that the parties immediately be referred to a settlement conference with a judge following the arbitration. This practice occurs in some vicinages that do not have issues regarding judicial resources and availability. While the Working Group recognized that this might be a useful settlement tool and should be considered as a best practice, members felt mandating this practice would present challenges in some vicinages.

The Working Group makes no recommendation as to this proposal.

C. COMPENSATION OF ARBITRATORS AND TRIAL DE NOVO FILING FEES

The Working Group considered a proposal to increase compensation of arbitrators. Currently, assigned arbitrators are compensated at a rate of $350 per day for a single arbitrator and $450 per day for a two-arbitrator panel, split evenly. R. 4:21A-2(e)(1). Stipulated arbitrators that the parties select themselves are compensated at $70 per hour, capped at $350 per day for a single arbitrator and

$450 per day for more than one stipulated arbitrator divided equally. R. 4:21A-2(e)(2). These compensation rates have remained the same since arbitration was incorporated into the Rules of Court in 1986. The proposal, supported by the Working Group, is to increase these rates of compensation to $500 per day for a single arbitrator and $800 per day for a two-arbitrator panel, split evenly, with caps for stipulated arbitrators to increase accordingly.

Prior to the COVID-19 pandemic, arbitration hearings were held on site at the courthouse. Vicinage staff was responsible for scheduling the hearing, noticing the arbitrator(s) and parties, distributing the parties' arbitration statements to the arbitrators on the day of the hearing, and collecting the arbitrators' award decisions after the hearing. Arbitrators reviewed arbitration statements on the scheduled day, conducted the hearing, and completed the award form, which was provided to staff and parties. When arbitrations transitioned to offsite proceedings using the remote technology, responsibilities increased for the arbitrators. Although vicinage staff still schedule and notice parties for the arbitration date, arbitrators are now responsible for using their own technology to hold the arbitration and coordinating the parties for the hearing. This may involve gathering email addresses, sending out links to join the remote event and then completing and emailing the arbitration award to vicinage staff. Most arbitrators now read arbitration statements ahead of the hearing date. Sometimes this results in unnecessary work because the

arbitration gets cancelled. Depending on the arbitration calendar, some arbitrators hold 3 to 10 arbitration hearings in a given day.

The Working Group expressed concerns that the current rates do not adequately compensate arbitrators for their time and expertise. It was noted that in some vicinages, attorneys volunteering to serve as arbitrators has decreased. Attracting qualified and experienced attorneys to arbitrate cases is vital to the strengths of this program. A good arbitration award is important as a driver for settlements, whereas a bad award only serves to drive the parties further apart. The Working Group believes increases in compensation rates are reasonable and necessary at this time.

The court annexed civil arbitration program is self-funded, in that the fees that are charged to the party filing a trial de novo funds the arbitration budget which, in turn, pays the arbitrators. The fee for filing a trial de novo is $200. See R. 4:21A-6(c). The Working Group is aware that by recommending an increase in the fees arbitrators are paid, an increase in the trial de novo fee would be necessary. The Financial Services Unit of the Office of Management and Administrative Services Unit of the Administrative Office of Courts conducted a financial analysis at the request of the Working Group to determine how great of an increase to the trial de novo fee would be needed to support the proposed fee increases for arbitrators' fees. The Working Group was advised that a $65 increase would be

necessary. The Working Group therefore recommends the trial de novo fee be increased from $200 to $265. This increase might also have an ancillary benefit in that a party might be more inclined to accept an arbitration award if the financial cost to reject it is more significant.

The proposed amendments to R. 4:21-A-2 (Qualification, Selection, Assignment and Compensation of Arbitrators) and R. 4:21A-6 (Entry of Judgment; Trial De Novo) follow:

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

(a) Inclusion on Roster. …no change.

(1) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(b) Assignment by Stipulation. …no change.

(c) Assignment from Roster. …no change

(d) Number of Arbitrators. …no change.

(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] $500. Two-arbitrator panels shall be paid a total per diem fee of [$450] $800, 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] $500 per day. If more than one stipulated arbitrator hears the matter, the fee shall be $70 per hour but not exceeding [$450] $800 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) caption and text; amended and 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) redesignated as paragraph (e), and subparagraph (e)(1) caption; amended July 31, 2020 to be effective September 1, 2020; subparagraphs (e) (1) and (2) amended to be effective .

Rule 4:21A-6. Entry of Judgment; Trial De Novo.

(a) Appealability. … no change.

(b) Dismissal. …no change.

(2) … no change.

(3) … no change.

(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] $265 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) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(d) Attorney Fees. … no change.

Note: 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; paragraph (b) amended July 15, 2024 to be effective September 1, 2024; paragraph (c) amended_____ to be effective _____.

D. EXTENDING THE 30-DATE TIME LIMIT TO FILE A TRIAL DE NOVO

The Working Group considered two proposals impacting the 30-day time limit for filing a demand for trial de novo as follows: (1) to increase the time limit from 30 to 60 days, and (2) to establish a "good cause" standard for allowing a demand for trial de novo to be filed out of time.

Rule 4:21-A-6(b)(1) - (3) and (c) provides timeframes for actions following filing of the arbitration award. These dates ensure that an arbitrated case will resolve or receive a trial date in specified time frames. An order dismissing the action will be entered unless, within 30 days a party files a demand for trial de novo; within 50 days the parties file a consent order for dismissal or judgment; or within 50 days a party moves for confirmation of the award. If a timely demand trial de novo has been filed, the case will be scheduled for trial within 90 days of the demand.

It should also be noted that the 30-day time frame is based in law. The statute does not set a standard for relaxation of the 30 days. N.J.S.A. 39:6A-31 (Confirming Arbitration Decision) provides:

> Unless one of the parties to the arbitration petitions the court, within 30 days of the filing of the arbitration decision with the court, a. for a trial de novo, or b. for the modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings, the court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action.

1. Extending Time from 30 to 60 Days.

The Working Group considered the proposal that the timeframe for filing a demand for trial de novo be extended from 30 to 60 days. NJSBA's justification for the proposal is that 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, and that these difficulties are especially present in complex cases. A longer time period may result in increased settlement opportunities. Some members of the Working Group expressed concerns that extending the timeframe by 30 days would have to result in all of the other timeframes set out in R. 4:21A-6 being extended, thereby delaying resolution or trial of every case that goes through arbitration. Also of concern is the rule needs to comport with the statute. The

Working Group discussed R. 1:21A-1(c) that provides a mechanism for a party to request removal from arbitration, suggesting invocation of that rule would be more appropriate in complex cases. Although a couple members of the Working Group favored the proposal to extend the de novo period, the majority of the Working Group were not in favor of the proposal and therefore could not reach a consensus.

The Working Group makes no recommendation as to this proposal.

2. Good Cause vs. Extraordinary Circumstances

The Working Group considered a proposal having to do with a party's failure to file a timely demand for trial de novo. The current legal standard for a judge considering a motion to allow a trial de novo to be filed out of time requires the movant to demonstrate the higher standard "extraordinary circumstances" rather than a lower standard of "good cause." The extraordinary circumstances standard is established by case law. The Rules of Court do not address the standard. In Mazakas v. Wray, 205 N.J. Super. 367 (App. Div. 1985), the arbitrator awarded plaintiff damages and neither party rejected the decision within 30 days. Plaintiff filed a motion requesting a trial de novo and defendants filed a motion seeking confirmation of the award. The trial court granted plaintiff's motion, which was reversed on appeal. The appeals court held that while trial courts have the express and inherent power to enlarge the time to grant equitable relief, such power must be exercised only in extraordinary circumstances. Id. at 371. The Working Group

recognizes the potentially grave result attorneys face from the exposure to a legal malpractice claim for negligent failing to timely file a demand for trial de novo. However, by lowering the legal standard to "good cause," the intended finality of imposing the deadline in the first place would be significantly diluted. Additionally, the ramification of a likely high increase in motion practice was noted if the standard to file a de novo out of time was reduced to good cause. Working Group members did not reach a consensus on this proposal.

3. Alternate Proposal

The Working Group debated an alternate proposal which sought to bridge the gap between the concepts of proposals #1 and #2 above. Under this alternate proposal, a party who misses the 30-day window to file the demand for trial de novo would receive an additional 7 days to file a motion on notice as within time upon a demonstration of good cause. The motion would be accompanied by a motion fee and the trial de novo fee. The movant would be required to establish good cause for the extension to be permitted after the 30 days but within the seven-day window. If timely filed and granted, all other timelines set forth in the rule and the trial date, would remain the same. Motions filed beyond the 7-day time frame would be subject to a showing of exceptional circumstances to be entitled to relief. Some Working Group members were in favor of this compromised approach. It was discussed that at present few motions are generally filed seeking a late de novo

under the exceptional circumstances standard and that there would likely not be a swell of motions within the 7-day window. Additionally, the movant filing within the 7-day window will still be required to establish good cause. Other members expressed concerns from a case management standpoint. These members thought that the proposed rule amendments will increase motion practice, and that delays in deciding these motions will have a direct impact on case flow and eventually backlog. Additionally, the Working Group discussed doubling the de novo fee for any granted motion permitting a late de novo filing as a substantial economic disincentive for either sloppy practice or gamesmanship.

Having contemplated these concerns, the Working Group puts forth these proposed amendments to R. 4:21A-6 (Entry of Judgment; Trial De Novo) for the Supreme Court's consideration or alternatively, for referral to the Supreme Court Civil Practice Committee for additional consideration.

Rule 4:21A-6. Entry of Judgment; Trial De Novo.

(a) Appealability. … no change.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award in the court's electronic filing system 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) a motion to file a rejection of an arbitration award and demand for a trial de novo as within time is filed within 7 days of the date that the notice of rejection of the award was due. A motion shall be accompanied by the filing fee for the motion plus the trial de novo fee. The movant shall be required to establish good cause to be entitled to such relief. Motions filed beyond the 7-day time frame shall be subject to a showing of extraordinary circumstances to be entitled to relief; or

(~~2~~ 3) 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~~ 4) 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, or where relief to file a notice of rejection of the award and demand for a trial de novo as within time has been granted, 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 of the date the trial de novo is deemed filed [after the filing and service of the request therefor]. The filing of a motion as set forth in subparagraph (b)(2) shall not delay the trial date. 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) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(d) Attorney Fees. … no change.

Note: 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; paragraph (b) amended July 15, 2024 to be effective September 1, 2024; new subparagraph (b)(2) added, former subparagraphs (b)(2) and (3) redesignated, and paragraph (c) amended _____ to be effective _____.

E. DISCOVERY EXTENSIONS INPACTING ARBITRATION

The Working Group considered proposals to amend R. 4:21A-1(c) and (d) to address issues related removal of cases from arbitration requests due to discovery extensions. The Working Group did not consider these proposals as discovery issues are more appropriately addressed by the Supreme Court on Civil Practice. Committee

The Working Group thanks the Supreme Court for this opportunity to serve.

Respectfully submitted,

Joint Working Group on Arbitration Rules and Procedures

SUPREME COURT JOINT WORKING GROUP ON ARBITRATION RULES AND PROCEDURES - MEMBERS

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