

Civ. RULE 201.1 ARBITRATION

Table of Contents

Certification of Arbitrators.....(a)
Designation of Compliance Judge (b)
Compensation and Expenses of Arbitrators..... (c)
Civil Cases Eligible for Compulsory Arbitration (d)
Referral of Arbitration (e)
Arbitration Hearing..... (f)
Arbitration Award and Judgment(g)
Trial *De Novo*..... (h)
Guidelines for Arbitration(i)

(a) Certification of Arbitrators

(1) The Chief Judge shall certify as many arbitrators as determined to be necessary under this Rule. Arbitrators shall be designated for terms of service up to three years, subject to extension at the discretion of the Chief Judge, and all such terms shall be staggered to provide orderly rotation of a portion of the membership of the panel of arbitrators.

(2) An individual may be designated to serve as an arbitrator if he or she: (a) has been for at least five years a member of the bar of the highest court of a State or the District of Columbia, (b) is admitted to practice before this Court, (c) is determined by the Chief Judge to be competent to perform the duties of an arbitrator, and (d) has participated in a training program (or the equivalent thereof) to the satisfaction of the Chief Judge.

(3) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as an arbitrator.

(4) A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

(5) Each arbitrator shall, for the purpose of performing his or her duties, be deemed a judicial officer of the Court.

(b) Designation of Compliance Judge

The Board of Judges shall designate a Judge or Magistrate Judge to serve as the compliance judge for arbitration. This compliance judge shall be responsible to the Board of Judges for administration of the arbitration program established by this Rule and shall be responsible for monitoring the arbitration processes; provided, however that the compliance judge shall not be responsible for individual case management.

(c) Compensation and Expenses of Arbitrators

An arbitrator shall be compensated \$250 for service in each case assigned for arbitration. In the event that the arbitration hearing is protracted, the Court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to an order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this Rule.

(d) Civil Cases Eligible for Compulsory Arbitration

(1) Compulsory Arbitration. Subject to the exceptions set forth in L.Civ.R. 201.1(d)(2), the Clerk shall designate and process for compulsory arbitration any civil action pending before the Court where the relief sought consists only of money damages not in excess of \$150,000 exclusive of interest and costs and any claim for punitive damages.

(2) Exclusion from Compulsory Arbitration. No civil action shall be designated or processed for compulsory arbitration if the claim therein is

(A) based on an alleged violation of a right secured by the Constitution of the United States; or

(B) jurisdictionally based, on whole or in part, on (i) 28 U.S.C. §1346(a)(1) (tax refund actions) or (ii) 42 U.S.C. §405(g) (Social Security actions).

(3) Presumption of Damages. For the sole purpose of making the determination as to whether the damages are in excess of \$150,000 as provided in L. Civ. R. 201.1(d)(1), damages shall be presumed in all cases to be \$150,000 or less, exclusive of interest and costs and any claim for punitive damages, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for any other party at the time of filing that party's first pleading, or any counsel within 30 days of the filing of a notice of removal, files with the Court a document signed by said counsel which certifies that the damages recoverable exceed the sum of \$150,000 exclusive of interest and costs and any claim for punitive damages. The Court may disregard any certification or other document complying with 28 U.S.C. § 1746 filed under this Rule and require arbitration if satisfied that recoverable damages do not exceed \$150,000. No provision of this Rule shall preclude an arbitrator from entering an award exceeding \$150,000 based upon the proofs presented at the arbitration hearing; and an arbitrator's award may also include interest, costs, statutory attorney's fees and punitive damages, if appropriate.

Upon filing its initial pleading a party may request that an otherwise eligible case not be designated or processed for compulsory arbitration if either circumstances encompassed within L.Civ.R. 201.1(e)(6) are present or other specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate.

(3) Presumption of Damages. For the sole purpose of making the determination as to whether the damages are in excess of \$150,000 as provided in L.Civ.R. 201.1(d)(1), damages shall be presumed in all cases to be \$150,000 or less, exclusive of interest and costs and any claim for punitive damages, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for any other party at the time of filing that party's first pleading, or any counsel within 30 days of the filing of a notice of removal, files with the Court a document

signed by said counsel which certifies that the damages recoverable exceed the sum of \$150,000 exclusive of interest and costs and any claim for punitive damages. The Court may disregard any certification filed under this Rule and require arbitration if satisfied that recoverable damages do not exceed \$150,000. No provision of this Rule shall preclude an arbitrator from entering an award exceeding \$150,000 based upon the proofs presented at the arbitration hearing; and an arbitrator's award may also include interest, costs, statutory attorneys' fees and punitive damages, if appropriate.

(e) Referral for Arbitration

(1) After an answer is filed in a case determined eligible for arbitration, the Clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing consistent with the scheduling order entered in the case and L.Civ.R. 201.1(e)(3). The notice shall also advise counsel that they may agree to an earlier date for the arbitration hearing provided the Clerk is notified within 30 days of the date of the notice. In the event additional parties have been joined in the action, this notice shall not be sent until an answer has been filed by all such parties who have been served with process and are not in default.

(2) The arbitration hearing shall be held before a single arbitrator. The arbitrator shall be chosen by the Clerk from among the lawyers who have been certified as arbitrators by the Chief Judge. The arbitrator shall be scheduled to hear not more than three cases on a date or dates which shall be scheduled several months in advance.

(3) The Judge to whom the case has been assigned shall, at least 30 days prior to the date scheduled for the arbitration hearing, sign an order setting forth the date and time of the arbitration hearing and the name of the arbitrator designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, for judgment on the pleadings, summary judgment or to join necessary parties, or proceedings are initiated under L.Civ.R. 201.1(e)(6), the Judge shall not sign the order required herein until the Court has ruled on the motion or order to show cause, but the filing of such a motion on or after the date of said order shall not stay arbitration unless the Judge so orders.

(4) The Plaintiff shall within 14 days upon receipt of the order appointing arbitrator send to the arbitrator a copies of any complaint, amended complaint and answers to counterclaim; counsel for each defendant shall, within 14 days upon receipt of this order, send to the arbitrator any answer, amended answer, counterclaim, cross-claim and answer hereto, any third-party complaint. Upon receipt of these materials, the arbitrator shall forthwith inform all parties, in writing, as to whether the arbitrator, or any firm or member of any firm with which he or she is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such a party.

(5)(A) Statutory Disqualification. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall disqualify themselves in any action in which they would be required under 28 U.S.C. §455 to disqualify themselves if they were a justice, judge, or magistrate judge.

(B) Impartiality. An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(C) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

i. An arbitrator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the arbitration.

ii. An arbitrator must disclose to the parties any close personal relationship or other circumstance which might reasonably raise a question as to the arbitrator's impartiality.

iii. The burden of disclosure rests on the arbitrator. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship. After appropriate disclosure, the arbitrator may serve if all parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator shall withdraw irrespective of the expressed desires of the parties.

iv. In no circumstance may an arbitrator represent any party in any matter during the arbitration.

v. An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with any party.

(6) Either *sua sponte*, or upon a recommendation received from the arbitrator, or upon the application of a party, the Judge to whom the case is assigned may exempt from arbitration any action that would otherwise be arbitrable under this Rule if (a) it involves complex or novel legal issues, or (b) the legal issues predominate over the factual issues, or (c) other good cause is shown. When initiating such a review either *sua sponte* or upon recommendation of the arbitrator, the Judge may proceed pursuant to an order to show cause providing not less than 14 days notice to all parties of the opportunity to be heard. Any application by a party to exempt an action from arbitration shall be by formal motion pursuant to these Rules.

(f) Arbitration Hearing

(1) The arbitration hearing shall take place on the date and at the time set forth in the order of the Court. The arbitrator is authorized to change the date and time of the hearing, provided the hearing is commenced within 30 days of the hearing date set forth in the Court's order. Any continuance beyond this 30-day period must be approved by the Judge to whom the action is assigned. The Clerk must be notified immediately of any continuance.

(2) Counsel for the parties shall report settlement of the action to the Clerk and to the arbitrator assigned to that action.

(3) The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event that a party fails to participate in the arbitration process in a meaningful

manner, the arbitrator shall make that determination and shall support it with specific written findings filed with the Clerk. Thereupon, the Judge to whom the action is assigned shall conduct a hearing upon notice to all counsel and personal notice to any party adversely affected by the arbitrator's determination and may thereupon impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial *de novo* filed by that party.

(4) Fed. R. Civ. P. 45 shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this Rule. Testimony at an arbitration hearing shall be under oath or affirmation.

(5) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 14 days prior to the hearing and the arbitrator shall receive exhibits into evidence without formal proof unless counsel has been notified at least seven days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit a copy or photograph of which has not been delivered to the adverse party, as provided herein.

(6) A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for same and shall bear all expenses so incurred.

(g) Arbitration Award and Judgment

Within 30 days after the hearing is concluded, the arbitrator shall file under seal with the Clerk a written award, accompanied by a written statement or summary setting forth the basis for the award which shall also be filed under seal by the Clerk. Neither the Clerk nor any party or attorney shall disclose to any Judge to whom the action is or may be assigned the contents of the arbitration award except as permitted by 28 U.S.C. §657(b). The arbitration award shall be unsealed and entered as the judgment of the Court after the time period for demanding a trial *de novo*, pursuant to L.Civ.R. 201.1(h), has expired, unless a party demands a trial *de novo* before the Court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial *de novo* if the aggrieved party makes a demand for same pursuant to L.Civ.R. 201.1(h) before the expiration of the applicable time period. If the aggrieved party fails to make a timely demand pursuant to L.Civ.R. 201.1(h), that part of the arbitration award shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal.

(h) Trial *De Novo*

(1) Any party may demand a trial *de novo* in the District Court by filing with the Clerk a written demand, containing a short and plain statement of each ground in support thereof, and serving a copy upon all counsel of record or other parties. Such a demand must be filed and served within

30 days after the arbitration award is filed and service is accomplished by a party pursuant to 28 U.S.C. §657(a), or by the Clerk (whichever occurs first), except that in any action in which the United States or any employee or agency thereof is a party the time period within which any party therein may file and serve such a demand shall be 60 days.

(2) Upon the filing of a demand for a trial *de novo*, the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of Court, for good cause shown. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) The Magistrate Judge shall conduct a pretrial conference within 60 days of filing of a demand for a trial *de novo*.

(i) Guidelines for Arbitration

The Court, the Clerk, the parties, attorneys and arbitrators are hereby referred to the Guidelines for Arbitration (Appendix M to these Rules) for their information and guidance in civil actions arbitrated pursuant to this Rule.

Amended: March 31, 1999, April 19, 2000, July 5, 2001, Amended March 9, 2007, Amd June 2013

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