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STATE OF NORTH CAROLINA

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

19C JUDICIAL DISTRICT

FILED

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IN RE:  
Adopting Arbitration Rules

ROWAN COUNTY, C.S.C.

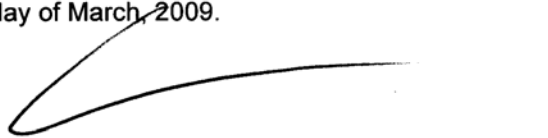
ORDER

BY     RB    

The attached Local Rules for Arbitration are hereby adopted effective March 9, 2009 pursuant to N.C. § 7A-37.1, and shall apply to all cases filed on or after that date, and insofar as practical to all pending cases.

These Rules supersede all pervious rules for arbitration in the District Court Division of the 19C Judicial District.

It is so ordered, this the 10 day of March, 2009.



Charlie Brown  
Chief District Court Judge  
19C Judicial District

# **COURT ORDERED ARBITRATION RULES**

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## **RULE 1. COURT ORDERED ARBITRATION**

**1.1 Rules Adopted.** By order of the Chief District Court Judge of Rowan County, we will implement court-ordered arbitration as an integral part of its civil procedure in accordance with § 7A-37.1 and the North Carolina Supreme Court Rules governing arbitration.

## **RULE 2. CASE SELECTION**

**2.1 District Court.** All cases are subject to court-ordered arbitration, except cases involving:

1. Summary Ejectments
2. Account Cases
3. Preliminary Injunction or Temporary Restraining Orders
4. Family Law
5. Title to Real Estate
6. Wills and Decedents' Estates
7. Claims exceeding \$15,000
8. Class Actions

## **RULE 3. NOTIFICATION OF CASE SELECTION**

**3.1 Notice.** Notice of case selection (form AOC-CV-800) for court ordered arbitration shall be provided by the Arbitration Coordinator to all counsel/unrepresented parties. This notice outlines legislated procedures and information pursuant to § 7A-37.1.

**3.2 Duty.** Any party noticed of selection for court ordered arbitration has the duty to notify the Arbitration Coordinator immediately if the action does not qualify and that the action should be removed from arbitration, prior to the commencement of the arbitration proceeding, subject to rule 5.1, contained herein.

**3.3 Conflicts.** Any party noticed for case selection has the duty to notify the Arbitration Coordinator in writing of any scheduling conflicts within 20 days of the date of the issued notice

## **RULE 4. SCHEDULING**

**4.1 Hearing.** Once a case is noticed for arbitration, the Arbitration Coordinator will make every effort to schedule a hearing date within 60 days. For good cause shown by either party, an expedited hearing may be requested and only at the consent of both parties. The Arbitration Coordinator reserves the right to request or deny any request, subject to availability of hearing dates and times.

**4.2 Compliance.** Once a case has been selected for arbitration by the Arbitration Coordinator, parties must comply with the scheduling rules contained herein, in addition to the N.C. Rules of Civil Procedure. In the event of a conflict between the N.C. Rules of Civil Procedure and the local court rules, the N.C. Rules of Civil Procedure will control.

## **RULE 5. CASE EXEMPTION**

**5.1 Motion.** Either party may move in writing within 15 days of issued notice of case selection to exempt a case from arbitration. Such written Motion to Exempt/Withdrawal from Arbitration shall state the grounds for the motion and shall be provided to the Arbitration Coordinator. Removal of a case from arbitration will only be considered for the following grounds:

- 1) The amounts of claim(s) exceed(s) \$15,000.
- 2) The action does not qualify for arbitration pursuant to Rule 2.1 herein.
- 3) There is a compelling reason to do so.

**5.2 Service.** Service of the motion on opposing counsel/unrepresented parties shall be attached to the motion. Objections to a motion by opposing counsel/unrepresented parties shall be in writing. Ruling on the motion shall be made without a hearing by the Arbitration Coordinator. A case may not be exempt or removed from arbitration by:

- a. The arbitrator
- b. Counsel/unrepresented parties by agreement among themselves.

## **RULE 6. SELECTION OF AN ARBITRATOR**

**6.1 Arbitrator by Agreement.** The parties may select an Arbitrator by agreement. The selection of an Arbitrator shall be made within 20 days from the date of notice of case selection for arbitration. A list of qualified Arbitrators may be obtained from the Arbitration Coordinator. The parties shall use form AOC-CV-912M. If the parties do not stipulate, the Court will appoint an Arbitrator and notify the parties.

**6.2 Arbitrator Eligibility.** An Arbitrator selected by agreement of the parties must meet the qualifications pursuant to Rule 2(b) of the Rules for Court Ordered Arbitration in North Carolina. Selection of an Arbitrator shall be provided to the Arbitration Coordinator in writing using form AOC-CV-912M. The content of the request shall be in agreement with Rule 2(a)(2) of the Rules for Court Ordered Arbitration in North Carolina and shall contain the names and addresses of all parties. Selection of an Arbitrator by agreement is subject to the approval of the Chief District Court Judge.

- a. Requests to select an arbitrator pursuant to this rule shall also contain the consent of the requested arbitrator.

- 6.3**    **Selection of Arbitrator.** If the parties cannot agree own an Arbitrator, the Arbitration Coordinator will select one for the parties.
- a.     Court selection of an Arbitrator shall be made at random from the list of qualified arbitrators.
- 6.4**    **Disqualification.** Any party may move for disqualification of the appointed arbitrator for good cause shown. The Motion to Disqualify an Arbitrator shall be in written form, and provided to the Arbitration Coordinator no later than 10 days after issuance of Notice of Hearing.
- a.     Disqualification of an arbitrator shall not be a basis for delay of the hearing date and time already established. Upon the disqualification of the arbitrator, another arbitrator shall be selected by the Arbitration Coordinator pursuant to Rule 6.3 (a) herein.

## **RULE 7.    CONTINUANCES**

- 7.1**    **Motion.** Cases will not be continued except for good cause shown. All requests for continuance shall be directed to the Arbitration Coordinator by a written motion. A Motion for Continuance shall set forth the reason for continuance, and consent if given by opposing party(ies).
- a.     Motions shall be presented as soon as counsel/unrepresented parties become aware of the need for the motion to continue.
- 7.2**    **Service.** Opposing counsel/unrepresented parties shall be noticed of the motion to continue prior to the delivery of the request to the Arbitration Coordinator. The manner and date of notice to opposing counsel/unrepresented parties shall be indicated on the motion.
- 7.3**    **Objections.** Opposing counsel/unrepresented parties shall file a written objection within 5 days of issued motion, with the Arbitration Coordinator. All objections shall set forth any reasons for objection and shall be served on all opposing parties. Failure to object to a motion to continue by the opposing party will constitute a waiver, and the continuance may be granted for good cause shown.
- 7.4**    **Consideration.** Motions to continue will be considered only if all provisions herein are followed.
- 7.5**    **Delay.** The continuance of an arbitration hearing shall not be used to circumvent the provisions of N.C. Gen, Stat. § 7A-37.1 (a).
- 7.6**    **Tardiness.** Any party to hearing that anticipates a late arrival shall contact the Arbitration Coordinator immediately. Additional time shall not be awarded by the Arbitrator for delayed start times. However, the hearing shall begin as scheduled, whether or not both parties are in attendance.

## **RULE 8. DIRECT CONTACT WITH ARBITRATOR**

- 8.1 Contact.** Pursuant to Rule 3(i) of the North Carolina Rules for Arbitration, neither attorneys nor parties involved with the arbitration shall contact the arbitrator about the case or any matter connected with the case prior to the hearing.

## **RULE 9. ARBITRATION HEARINGS**

- 9.1 Authority.** Arbitrators shall have the authority of a trial judge to govern the conduct of hearing, except for the powers to punish for contempt.
- 9.2 Hearing Date.** The arbitration hearing shall be held on the date, time and place designated by the Arbitration Coordinator. Hearing time shall be limited to one hour in length and will begin promptly at the assigned time. If both parties are absent at the appointed time, it shall be within the discretion of the Arbitrator whether or not to delay the hearing.
- 9.3 Pre-Arbitration Submission.** At least ten (10) days prior to the hearing, parties shall exchange any pre-hearing information as defined in Rule 3 of the Rules For Court-Ordered Arbitration in North Carolina.
- a. Any document exchanged may be received in the hearing without further authentication. However, the party against whom it is offered may call/subpoena and examine as an adverse witnesses anyone who is the author, custodian or witness through whom the document otherwise have been introduced.
  - b. Documents not so exchanged may not be received, if to do so would, in the arbitrator's opinion, constitute unfair, prejudicial surprise. Copies of exchanged documents or exhibits are admissible in arbitration hearings.
  - c. The parties are required to state their contentions regarding pending motions deferred by the court to the arbitrator, in the pre-hearing information exchange.
  - d. A list of witnesses expected to testify shall be provided to all parties ten (10) days prior to the hearing.
- 9.4 Evidence.** Witnesses shall testify under oath or affirmation and produce evidence by the same authority and the same extent as if the hearing were a trial. The North Carolina Rules of Evidence do not apply in an arbitration hearing, except as to privilege or protection, but shall be considered as a guide toward full and fair development of the facts. The Arbitrator shall consider all evidence presented and give it the weight and effect the Arbitrator determines appropriate.
- 9.5 Conclusion of Hearing.** When the parties state they have no further evidence to offer or have exhausted amount of time allotted, the Arbitrator shall declare the hearing closed. Upon completion of the arbitration hearing, an Arbitration Award shall be filed with the

court by the Arbitrator pursuant to Rule 12 herein. All assessment fees are to be paid before the arbitration award is announced to the parties.

## **RULE 10. AUTHORITY AND DUTIES OF ARBITRATOR**

### **10.1 Duties.** The arbitrator shall;

- a. Have the same authority as a trial judge to govern the conduct of hearings, except the power to punish for contempt.
- b. Be empowered and authorized to administer oaths and affirmation in arbitration hearings.
- c. Consider all evidence presented at the hearing and give it the weight and effect as determined appropriate. An arbitrator is not required, however, to receive repetitive or cumulative evidence.
- d. Not have any ex parte communications between the parties or their counsel.
- e. Declare the hearing concluded when all evidence is in and any arguments that have been permitted within the allotted time are concluded.
- Df. Determine the amount of judgment to be entered in an action in default pursuant to N.C. Rules of Civ. Pro. 55(b).

## **RULE 11. PARTICIPATION OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS**

### **11.1 Attendance.** All parties shall be present at the hearing in person or through representatives authorized to make binding decisions on their behalf in all matters.

- a. All parties may be represented by counsel.

### **11.2 Failure to Appear.** If a party fails to appear, the hearing shall proceed and an award may be made by the Arbitrator against the absent party.

## **RULE 12. AWARD**

### **12.1 Time Frame.** The arbitrator shall prepare, sign and file the Arbitration Award (AOC-CV-802) with the Clerk of Superior Court.

- a. No later than three (3) days after the arbitration hearing is concluded.
- b. A copy of the Award shall be mailed to all parties to the action by the Arbitrator.

### **12.2 Issues.** The award must resolve all pending issues raised by the pleadings and all parties in the action.

### **12.3 Dismissals.** Once a hearing is scheduled, any dismissals to be taken by either party shall be completed prior to the party being excused by the Arbitrator.

## **RULE 13. TRIAL DE NOVO**

- 13.1 Statue of Limitations.** An appeal of the award from the Arbitrator must be made within thirty (30) days from the date the award is entered. The appealing party shall use form AOC-CV-803 and file it with the Clerk of Superior Court.
- 13.2 Fee.** The filing fee for a request for trial de novo in District Court shall be determined pursuant to Rule 5(b) of the North Carolina Rules for Arbitration

## **RULE 14. JUDGMENT**

- 14.1 Agreements.** The parties may file a stipulation of dismissal or consent of judgment at any time before the entry of judgment on the award.
- 14.2 Judgment.** Absent an appeal of the arbitration award, dismissal or consent judgment filed by the parties during the thirty (30) day period to appeal, the Clerk of Superior Court shall enter a judgment on the award.

## **RULE 15. NOTICE OF SETTLEMENT OR DISMISSAL**

- 15.1 Notice.** Notice of settlement or dismissal of the case shall be provided at least one (1) day prior to the scheduled hearing.

## **RULE 16. SANCTIONS AND CONTEMPT**

- 16.1 Failure to Attend.** Any party failing to attend or refusing to participate in good faith and in a meaningful manner at the arbitration hearing shall be subject to such sanctions as are deemed appropriate and allowed by law.
- The Arbitrator or opposing party may present to the Arbitration Coordinator a motion, with specificity, the grounds for sanctions.
  - The Arbitration Coordinator shall thereafter schedule and notice the matter for hearing before the Chief District Court Judge.
- 16.2 Contempt.** Any party in found contempt shall be subject to punishment for criminal contempt by the court.
- The Arbitrator shall present to the Arbitration Coordinator a motion, with specifically, the grounds for contempt.
  - The Arbitration Coordinator shall thereafter notice and schedule the matter for hearing before the Chief District Court Judge.



**16.3 Failure to Notify.** Any party who fails to notify the Arbitration Coordinator of a scheduling conflict before the arbitration hearing is scheduled shall not receive a continuance, absent extraordinary circumstances. Any party who fails to notify the Arbitration Coordinator of a settlement or dismissal of the claim prior to the arbitration hearing shall be responsible for the costs of the hearing.

## **RULE 17. COMPENSATION OF THE ARBITRATOR**

**17.1 Payment.** Upon the filing of an award with the court, the arbitrator shall complete an application for payment to be signed by the Chief District Court Judge. An Arbitrator shall be paid a fee by the court for each arbitration hearing as set by Rule 2 (c) of the Rules for Court-Ordered Arbitration in North Carolina.

## **RULE 18. FORMS**

**18.1 Forms.** Forms are for use by counsel/unrepresented parties, Arbitrators, and Court personnel in accordance with the rules governing court ordered arbitration are produced and distributed by the Administrative Office of the Courts and Arbitration Coordinator, and are subject to change as legislation and/or policy dictates.

## **RULE 19 AUTHORITY**

**19.1 Authority.** Hearings shall be continued only by the Arbitration Coordinator or the Chief District Court Judge, if the Arbitration Coordinator is unavailable. The Arbitration Coordinator, under the supervision of the Chief District Court Judge, has sole authority to continue arbitration hearings and consider any motions relating to arbitration. .

Adopted this the \_\_\_\_\_ day of March, 2009.

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Charlie Brown  
Chief District Court Judge  
19C Judicial District