RULES FOR COURT-ORDERED ARBITRATION IN NORTH CAROLINA

Adopted August 28, 1986. Effective January 1, 1987,
with amendments received effective through January 1, 2005,
Renumbered, reorganized and amended by order of the Supreme Court
adopted on October 6, 2011 and effective January 1, 2012.

Rule 1. Definitions.

(a) *"Court"* as used in these rules means:

(1) The chief district court judge or the delegate of such judge; or

(2) Any assigned judge exercising the court's jurisdiction and authority in an action.

(b) *"Living Human Being"* for purposes of these Rules is defined as a natural person, not to include any legally created person(s), as identified in N.C.G.S. §12-3(6).

Administrative History: Authority – Order of the North Carolina Supreme Court, August 28, 1986, pilot rules adopted; pilot rule amended effective March 4, 1987; permanent rule adopted, by order of the North Carolina Supreme Court, September 14, 1989; Arb. Rule 1(a), formerly Arb. Rule 8(f), amended March 8, 1990, and amended December 19, 2002 and renumbered as Arb. Rule 1(a), effective _____, 2011; New Arb. Rule 1(b) adopted _____, 2011, effective immediately as to all cases filed on or after _____, 2012.

Rule 2. Actions Subject To Arbitration.

(a) *By Order of the Court.*

(1) All civil actions filed in the district court division are subject to court-ordered arbitration under these rules in accordance with the authority set forth in N.C.G.S. §7A-37.1(c), except actions:

(i) Which are assigned to a magistrate, provided that appeals from judgments of magistrates are subject to court-ordered arbitration under these rules except appeals from summary ejectment actions and actions in which the sole claim is an action on an account;

(ii) In which class certification is sought;

(iii) In which a request has been made for a preliminary injunction or a

temporary restraining order including claims filed under N.C.G.S. Chapter 50C;

(iv) Involving family law matters including claims filed under N.C.G.S. chapters 50, 50A, 50B, 51, 52, 52B and 52C;

(v) Involving title to real estate;

(vi) Which are special proceedings; or

(vii) In which the sole claim is an action on an account.

(2) *Requests for jury trial.* Cases otherwise eligible for arbitration shall be arbitrated regardless of whether a party made a request for a jury trial.

(3) *Identification of Actions for Arbitration*. The clerk shall identify actions eligible for arbitration upon the filing of the complaint or docketing of an appeal from a magistrate's judgment, in accordance with Arb. Rule 2(a)(1) and notify the court that the case has been identified for arbitration.

(4) *Notice to Parties.* The court shall serve notice upon the parties or their counsel as soon as practicable after the filing of the last required responsive pleading or the expiration of time for the last required responsive pleading or the docketing of an appeal from a magistrate's judgment.

(5) *Arbitration by Agreement.* The parties in any other civil action pending in the district court division may, upon joint written motion, request to submit the action to arbitration under these rules. The court may approve the motion if it finds that arbitration under these rules is appropriate. The consent of the parties shall not be presumed, but shall be stated by the parties expressly in writing.

(b) *Exemption and Withdrawal From Arbitration*. The court may exempt or withdraw any action from arbitration on its own motion, or on the motion of a party, made not less than 10 days before the arbitration hearing and a showing that:

(1) the action is excepted from arbitration under Arb. Rule 2(a)(1) or

(2) there is a compelling reason to do so.

Administrative History: Authority – Order of the North Carolina Supreme Court, August 28, 1986, pilot rules adopted; pilot rule amended effective March 4, 1987; permanent rule adopted, by order of the North Carolina Supreme Court, September 14, 1989; Arb. Rule 2(a)(1)and Arb. Rule 2(a)(2), formerly Arb. Rule 1(a) were amended March 8, 1990 and December 19, 2002 and renumbered _____, 2011; (d) was amended March 8, 1990 and December 19, 2002; Arb. Rule 2(a)(3), formerly Arb. Rule 8(a), was amended March 8, 1990 and December 19, 2002, and renumbered as Arb. Rule 2(a)(3), _____, 2011.

COMMENT

The purpose of these rules is to create an efficient, economical alternative to traditional litigation for prompt resolution of disputes in district court. The rules provide for court-ordered arbitration of district court actions because district court actions are typically suitable for consideration in the manner provided in these rules.

An arbitrator may award damages in any amount which a party is entitled to recover. These rules do not affect the jurisdiction or functions of the magistrates where they have been assigned such jurisdiction.

In a case involving multiple defendants when there is an appeal from a magistrate's judgment, and one or more defendants have been dismissed, an appeal by a remaining defendant does not operate to rejoin the dismissed defendant(s) in the action absent properly filed pleadings in accordance with N.C.R.Civ.P. 13.

"Family law matters" in Arb.Rule 2(a)(1)(iv) includes all family law cases such as divorce, guardianship, adoptions, juvenile matters, child support, custody, and visitation. "Summary ejectments", referred to in Arb.Rule 2(a)(1)(i) and "special proceedings", referred to in Arb.Rule 2(a)(1)(vi), are actions so designated by the North Carolina General Statutes.

Arb. Rule 2(a)(3) contemplates that the clerk or designee shall determine whether an action is eligible for arbitration after reviewing the pleadings. The rule further contemplates that the clerk or designee will look beyond the cover sheet and filing codes to make this determination. The purpose of these rules is to be inclusive of the cases eligible for arbitration.

"An action on an account" as referenced and excluded in Arb. Rule 2(a)(1)(i) and 2(a)(1)(vii) includes all cases involving an account wherein the account holder is authorized to complete multiple transactions. These actions should only include accounts in which the account holder has the ability to make more than one purchase during different periods. This exemption should not include cases wherein there was one transaction, even if multiple payments are included in the agreement. The accrual of interest does not constitute multiple transactions. Action on an account, as excluded by Arb. Rule 2(a)(1)(i) and Arb. Rule 2(a)(1)(vii), does not include the exclusion of monies owed claims. Cases in which attorneys' fees are requested are not "actions in which the sole claim is an action on an account" and are therefore not excluded under Arb. Rule 2(a)(1)(vii).

No case should be excluded from the mandatory arbitration process pursuant to Arb.Rule 2(a)(1)(vii) for the action on account exception unless the original petition is accompanied by a verified itemized statement which evidences multiple transactions. All other cases shall be treated as a claim for monies owed and should be arbitrated. The court or their designee shall review any petition alleging it is an action on an account and verify that the verified itemized statement is attached. If there is no such attachment, the matter shall be deemed a petition for monies owed and the matter shall be noticed for arbitration. N.C.G.S. §8-45.

Rule 3. Eligibility of Arbitrators.

(a) *Qualification Requirements for Arbitrators*. The chief district court judge shall receive and approve applications for persons to be appointed as arbitrators. Arbitrators so approved shall serve at the pleasure of the appointing court. A person seeking to be added to the list of eligible arbitrators shall:

(1) Be a member in good standing of the North Carolina State Bar;

(2) Have been licensed to practice law for five years;

(3) Shall have been admitted in North Carolina for at least the last two years of the five-year period. Admission outside North Carolina may be considered for the balance of the five-year period, so long as the arbitrator was admitted as a duly licensed member of the bar of a state(s) or a territory(ies) of the United States or the District of Columbia;

(4) Shall complete the arbitrator training course prescribed by the Administrative Office of the Courts or their training designee;

(5) Shall observe at least one arbitration conducted by an arbitrator already on the list of approved arbitrators as provided for herein; and

(6) Have a valid email address.

(b) *Application Process*. The person seeking eligibility as an arbitrator shall submit:

(1) a completed application on an approved form provided by the Administrative Office of the Courts; and

(2) documented proof of the qualifications as set forth in Arb. Rule 3(a) shall be attached to the application form and submitted to the chief district court judge or designee in each judicial district in which the applicant intends to serve as an arbitrator.

(c) *Oath of Office*. Arbitrators shall take an oath or affirmation similar to that prescribed in N.C.G.S. §11-11, on a form promulgated by the Administrative Office of the Courts, before conducting any hearings. Said oath shall be administered by the chief district court judge or designee. A copy of the oath shall be filed by the applicant with the clerk in each county in which they serve.

(d) *Arbitrator Ethics; Disqualification*. Arbitrators shall comply with the Canons of Ethics for Arbitrators promulgated by the Supreme Court of North Carolina. Arbitrators shall be disqualified and must recuse themselves in accordance with the Canons.

(e) *Conflict*. An arbitrator shall be prohibited from participating, serving or being involved in any capacity, in any case wherein they previously served as an arbitrator. An arbitrator shall also be prohibited from participating in other cases, in any capacity, wherein the parties and/or issues arise from a case over which the arbitrator presided.

(f) *Complaints*. All complaints against an arbitrator shall be filed with the chief district court judge or designee for the county in which the arbitration giving rise to the complaint was conducted using a form promulgated by the Administrative Office of the Courts.

Administrative History: Authority – Order of the North Carolina Supreme Court, August 28, 1986; New Arb. Rule 3 adopted _____, 2011 (a) is former Arb. Rule 2(b) and was adopted September 14, 1989, amended March 8, 1990, amended August 1, 1995, amended December 19, 2005 and amended and renumbered _____, 2011. (c) is former Arb. Rule 2(d) and was adopted September 14, 1989 and was amended and renumbered _____, 2011; (d) is former Arb. Rule 2(e) and was adopted September 14, 1989, amended December 19, 2002 and renumbered _____, 2011.

Rule 4. Assignment of Arbitrator.

(a) *Appointment*. The court shall appoint an arbitrator in the following manner:

(1) The court shall rotate through the list for their district, set forth in subsection Arb. Rule 3(a), of available qualified arbitrators and appoint the next eligible arbitrator from the list and notify the parties of the arbitrator selected.

(2) Appointments shall be made without regard to race, gender, religious affiliation or political affiliation. The chief district court judge shall retain the discretion to depart in a specific case from a strict rotation when, in the judge's discretion, there is good cause shown.

(b) *Fees and Expenses*. Arbitrators shall be paid the maximum allowable fee as set forth in N.C.G.S. §7A-37.1(c1) after an award is filed with the court. The arbitrator shall make application with the court on the proper NCAOC form within thirty (30) days of the filing of the award. An arbitrator may be paid a reasonable fee not exceeding the maximum allowable fee for work on a case not resulting in a hearing upon the arbitrator's written application to and approval by the chief district court judge. This fee shall be shared by the parties as set forth by these rules.

(c) *Replacement of Arbitrator*. Any party may move the chief district court judge of the district where the action is pending for an order removing the arbitrator from that case so long as the motion is file more than 7 days before the scheduled arbitration hearing. For good cause, such an order shall be entered. If an arbitrator is removed, recused, unable or unwilling to serve, a replacement shall be appointed by the court from the list of arbitrators in accordance with Arb. Rule 4(a).

Administrative History Pilot Rule Adopted: August 28, 1986; Pilot Rule Amended: March 4, 1987; Permanent Rule Adopted: September 14, 1989; (a) was amended March 8, 1990, December 19, 2002 and _____, 2011; former (b) was amended on March 8, 1990, August 1, 1995, December 19, 2002 and was renumbered and reorganized as Arb. Rule 3(a), _____, 2011; former (c) was amended March 8, 1991, December 19, 2002, January 1, 2005 and amended and renumbered as Arb. Rule 4(d), _____, 2011; former (d) was renumbered as Arb. Rule 3(c), _____, 2011; former (e) was adopted September 14, 1989, amended December 19, 2002 and amended and renumbered as Arb,. Rule 3(d), _____, 2011; former (f) was adopted September 14, 2989, amended December 19, 2002 and amended and renumbered as Arb. Rule 4(d), _____, 2011.

COMMENT

The court shall regularly use all arbitrators on the court's list as established in Arb. Rule 4(a). In counties or districts where arbitrators are assigned for multiple cases in a day, the court shall rotate through the list and appoint the next available arbitrator on the list for each day, rather than appointing a different

arbitrator for each case. Under Arb. Rule 4(a)(2), consideration should be given to distance of travel and availability of arbitrators.

In accordance with Arb. Rule 4(b), filing of the award is the final act at which payment should be requested, closing the matter for the arbitrator. The arbitrator should make the award when the hearing is concluded. Hearings must be brief and expedited so that an arbitrator can hear at least three per day. See Arb.Rule 6(q).

Payments authorized by Arb. Rule 4(b) are made subject to court approval to ensure conservation and judicial monitoring of the use of funds available for the program. Arbitrators shall not be paid a fee for continued hearings.

An agreement by all parties to remove an arbitrator may constitute good cause under Arb Rule 4(c).

Rule 5. Fees And Costs

(a) *Arbitration Costs*. The arbitrator may include, in an award, court costs accruing through the arbitration proceedings in favor of the prevailing party. Costs may not include the arbitrator fee or any portion of said fee, which shall be equally divided between the parties in accordance with these rules.

(b) *Arbitrator Fee***.** The arbitrator's fee shall be equally divided among all parties to that action pursuant to Arb. Rule 5(c). No party shall be required to be responsible for any more than their pro rata share of the arbitrator's fee.

(c) *Payment of Arbitrator's Fee.*

(1) *By Non Indigent Parties*. Each party not found by the clerk to be indigent shall pay, into the clerk of court, an equal share of the arbitrator fee prior to the arbitration hearing. Failure to pay the fee shall not be a ground for continuance of the arbitration. The clerk, to whom the fee is paid, shall document each party that pays or is found to be indigent in the file on the proper form promulgated by the Administrative Office of the Court. This form shall be placed in the file.

(2) *By Indigent or Partially Indigent Parties*.

(i) *Partially Indigent Persons*. If, in the opinion of the clerk or court, an indigent person is financially able to pay a portion, but not all, of their pro rata share of the arbitrator's fee, the court shall require the partially indigent person to pay such portion prior to the arbitration. Failure to pay the fee shall not be a ground for continuance of the arbitration. The clerk, to whom the fee is paid, shall document each party that pays the proper amount or is found to be indigent in the file on the proper form promulgated by the Administrative Office of the Courts. This form shall be placed in the file. The clerk shall apply the criteria enumerated in N.C.G.S. §1-110(a).

(ii) *Fully Indigent Persons*. Upon a finding that the party is indigent, that party shall not be required to pay their portion of the arbitration fee prior to the arbitration.

(3) *Liens.* In all cases, wherein any portion of a party's pro rata share of the arbitrator's fee is not paid in full, the court shall direct that a judgment be entered in the office of the clerk of superior court for the unpaid portion of

that party's pro rata share of the arbitrator's fee, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in this rule or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. A district court judge shall direct entry of judgment for actions or proceedings filed in district court or for those matters appealed from a magistrate's award.

(4) *Judgment for Fee.* The order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to N.C.G.S. § 1-233 et seq., in the amount of the partially indigent or indigent party's share of the arbitrator's fee. Each judgment docketed against a person shall include the social security number, if any, of the judgment debtor.

Administrative History Pilot Rules Adopted August 28, 1996; Pilot Rules Amended March 4, 1987; (a) is former Arb. Rule 7(a) and was adopted September 14, 1989, was amended and renumbered _____, 2011; (b) and (c) were adopted _____, 2011; (d) is former Arb. Rule 7(b) and was adopted September 14, 1989, amended December 19, 2002 and renumbered _____, 2011.

COMMENT

When determining each party's equal share of the fee in accordance with Arb. Rule 5(b), take the total arbitrator fee and divide it by the total number of parties in the action. If one party has been granted relief to sue as an indigent, include that party in the number by which the fee is divided to calculate other parties' equal share. Multiple plaintiffs and defendants shall be counted individually and not as one party. These fees are non-refundable.

For purposes of Arb Rule 5, a person shall apply for indigency before the clerk if requesting indigent status as it relates to the arbitration fee by completing and submitting AOC–G-106 or similar form if this form is modified and/or replaced by the Administrative Office of the Courts.

For purposes of Arb. Rule 5, if a party that is not a living human being, as defined by Arb. Rule 1, is listed as a party and a living human being, who is an owner, share holder or has any other ownership interest in that non-human being party is also listed as a party, then each shall be counted as an individual party.

Rule 6. Arbitration Hearings.

(a) *Hearing Scheduled by the Court.* Arbitration hearings shall be scheduled by the court and held in a courtroom, if available, or in any other public room suitable for conducting judicial proceedings and shall be open to the public.

(1) *Scheduling.* The court shall schedule hearings with notice to the parties to begin within 60 days after:

(i) the docketing of an appeal from a magistrate's judgment,
(ii) the filing of the last responsive pleading, or
(iii) the expiration of the time allowed for the filing of such pleading.

(b*) Date of Hearing Advanced by Agreement*. A hearing may be held earlier than the date set by the court, by agreement of the parties with court approval.

(c) *Hearings Rescheduled; Continuance; Cancellation***.** A hearing may be scheduled, rescheduled, or continued to a date after the time allowed by this rule only by the court before whom the case is pending, and may be upon a written motion filed at least 24 hours prior to the scheduled arbitration hearing, and a showing of a strong and compelling reason to do so. In the event a consent judgment or dismissal is not filed with the clerk and notice provided to the court more than 24 hours prior to the scheduled arbitration hearing, all parties shall be liable for the arbitrator fee in accordance with Arb. Rule 5. Any settlement reached prior to the scheduled arbitration hearing must be reported by the parties to the court official administering the arbitration. The parties must file dismissals or consent judgments prior to the scheduled hearing to close the case without a hearing. If the dismissals or consent judgments are not filed before the scheduled hearing, the parties should appear at the hearing to have their agreement entered as the award of the arbitrator.

(d) *Prehearing Exchange of Information*. At least 10 days before the date set for the hearing, the parties shall exchange:

(1) Lists of witnesses they expect to testify;
(2) Copies of documents or exhibits they expect to offer in evidence; and
(3) A brief statement of the issues and their contentions.

Parties may agree in writing to rely on stipulations and/or statements, sworn or unsworn, rather than a formal presentation of witnesses and documents, for all or part of the hearing. Failure to comply with Arb. Rule 6(n) may be cause for sanctions under Arb. Rule 6(o). Each party shall bring to the hearing and provide to the arbitrator a copy of these materials. These materials shall not be filed with the court or included in the case file.

(e) *Exchanged Documents Considered Authenticated*. Any document exchanged may be received in the hearing as evidence without further authentication; however, the party against whom it is offered may subpoena and examine as an adverse witness anyone who is the author, custodian, or a witness through whom the document might otherwise have been introduced. Documents not so exchanged may not be received if to do so would, in the arbitrator's opinion, constitute unfair, prejudicial surprise.

(f) *Copies of Exhibits Admissible*. Copies of exchanged documents or exhibits are admissible in arbitration hearings.

(g) *Witnesses*. Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were a trial. The arbitrator is empowered and authorized to administer oaths and affirmations in arbitration hearings.

(h) *Subpoenas*. N.C.R.Civ.P. 45 shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(i) *Authority of Arbitrator to Govern Hearings*. Arbitrators shall have the authority of a trial judge to govern the conduct of hearings, except the arbitrator may not issue contempt orders, issue sanctions or dismiss the action. The arbitrator shall refer all contempt matters and dispositive matters to the court.

(j) *Law of Evidence Used as Guide*. The law of evidence does not apply, except as to privilege, in an arbitration hearing 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.

(k) *No Ex Parte Communications With Arbitrator*. No ex parte communications between parties or their counsel and arbitrators are permitted.

(l) *Failure to Appear; Defaults; Rehearing*. If a party who has been notified of the date, time and place of the hearing fails to appear, or fails to appear with counsel for cases in which counsel is mandated by law, without good cause therefor, the hearing shall proceed and an award may be made by the arbitrator against the absent party upon the evidence offered by the parties present, but not by default or dismissal for failure to appear. If a party is in default for any other reason but no judgment has been entered upon the default pursuant to N.C.R.Civ.P. 55(b) before the hearing, the arbitrator may hear evidence and may issue an award against the party in default. The court may order a rehearing of any case in which an award was made against a party who failed to obtain a continuance of a hearing and failed to appear for reasons beyond the party's control. Such motion for rehearing shall be filed with the court within the time allowed for demanding trial de novo stated in Arb. Rule 9(a).

(m) *No Record of Hearing Made*. No official transcript of an arbitration hearing shall be made. The arbitrator may permit any party to record the arbitration hearing in any manner that does not interfere with the proceeding.

(n) *Parties Must Be Present at Hearings; Representation*. All parties shall be present at hearings in person or through counsel. Parties may appear pro se as permitted by law.

(o) *Sanctions*. Any party failing to attend an arbitration proceeding in person or through counsel shall be subject to those sanctions available to the court in N.C.R.Civ.P. 11, 37(b)(2)(A)- 37(b)(2)(D) and N.C.G.S. § 6-21.5 on the motion of a party, report of the arbitrator, or by the court on its own motion.

(p) *Proceedings in Forma Pauperis*. The right to proceed in forma pauperis is not affected by these rules.

(q*) Limits of Hearings*. Arbitration hearings shall be limited to one hour unless the arbitrator determines at the hearing that more time is necessary to ensure fairness and justice to the parties.

(1) A written application for a substantial enlargement of time for a hearing must be filed with the court and the arbitrator if the arbitrator has been assigned, and must be served on opposing parties at the earliest practicable time, and no later than the date for prehearing exchange of information under Arb. Rule 6(d). The court will rule on these applications after consulting the arbitrator if an arbitrator has been assigned.

(2) An arbitrator is not required to receive repetitive or cumulative evidence.

(r) *Hearing Concluded*. The arbitrator shall declare the hearing concluded when all the evidence is in and any arguments the arbitrator permits have been completed. In exceptional cases, the arbitrator has discretion to receive post-hearing briefs, but not evidence, if submitted within three days after the hearing has been concluded.

(s) *Motions*. Designation of an action for arbitration does not affect a party's right to file any motion with the court.

(1) The court, in its discretion, may consider and determine any motion at any time. It may defer consideration of issues raised by motion to the arbitrator for determination in the award. Parties shall state their contentions regarding pending motions referred to the arbitrator in the exchange of information required by Arb. Rule 6(d).

(2) Pendency of a motion shall not be cause for delaying an arbitration hearing unless the court so orders.

(t) *Binding Hearing*. All parties to an action may agree that any award by the arbitrator be binding. Such agreement shall be in writing on a form promulgated by the Administrative Office of the Courts and shall be executed by all parties. The consent shall be filed with the clerk's office in the county in which the action is pending. Parties consenting to a binding hearing may not request a trial de novo after the arbitration award is issued. Once all parties agree to binding arbitration, no party may dismiss an appeal from a magistrate's award or dismiss the action in full except by consent. The clerk or court shall enter judgment on the award at the time the award is filed if the action has not been dismissed by consent.

Administrative History Pilot Rule Adopted August 28, 1986. Pilot Rule Amended March 4, 1987. Permanent Rule Adopted September 14, 1989. This is former Arb. Rule 3 renumbered _____, 2011. (b), (j), (o), and (q) were amended March 8, 1990; (a), (b), (g), (j), (l), (n), (o), (p) and (q) were amended December 19, 2002; (r) was adopted _____, 2011and applies to all cases filed on or after _____, 2011.

COMMENT

The 60 days in Arb. Rule 6(a)(1) will allow for discovery, trial preparation, pretrial motions, disposition and calendaring. A motion to continue a hearing will be heard by a judge mindful of this goal. Continuances may be granted when a party or counsel is entitled to such under law, e.g. N.C.R.Civ.P. 40(b); rule of court, e.g. N.C.Prac.R. 3; or customary practice.

Under Arb. Rule 6(c), both parties are responsible for notifying the court personnel responsible for scheduling arbitration hearings that a consent judgment or dismissal has been filed. The notice required under Arb. Rule 6(c) should be filed with the court personnel responsible for scheduling the arbitration hearings. Failure to do so will result in assessment of the arbitrator fee. The "court official administering the arbitration" is the arbitration coordinator, judicial assistant or other staff member managing the arbitration program, as may vary

from county to county.

Arb. Rule 6(d)(3) contemplates that the arbitrator shall return all evidence submitted when the hearing is concluded and the award has been made. Original documents and exhibits should not be marked in any way to identify them with the arbitration to avoid possible prejudice in any future trial.

For purposes of Arb. Rule 6(g), the arbitrator shall have such authority to administer oaths if such authorization is consistent with the laws of North Carolina.

As articulated in Arb Rule 6(i), the arbitrator is to rule upon the evidence presented at the hearing, or lack thereof. Thus an arbitrator may enter a $0 award or an award for the defendant if the evidence presented at the hearing does not support an award for the plaintiff.

Arb. Rule 6(n) requires that all parties be present in person or through counsel. The presence of the parties or their counsel is necessary for presentation of the case to the arbitrator. Rule 6(n) does not require that a party or any representative of a party have authority to make binding decisions on the party's behalf in the matters in controversy, beyond those reasonably necessary to present evidence, make arguments and adequately represent the party during the arbitration. Specifically, a representative is not required to have the authority to make binding settlement decisions.

Arb. Rule 6(n) sets forth that parties may appear pro se, as permitted by law. In accordance with applicable state law, only parties that are natural persons may appear pro se at arbitrations. Any business, corporation, limited liability corporation, unincorporated association or other professional parties, including but not limited to, businesses considered to be a separate legal entity shall be represented by counsel in accordance with the North Carolina General Statutes. See Case Notes Below.

The rules do not establish a separate standard for pro se representation in court-ordered arbitrations. Instead, pro se representation in court-ordered arbitrations is governed by applicable principles of North Carolina law in that area. See Arb. Rule 6(n). Conformance of practice in court-ordered arbitrations with the applicable law is ensured by providing that pro se representation be “as permitted by law.”

The purpose of Arb. Rule 6(q) is to ensure that hearings are limited and expedited. Failure to limit and expedite the hearings defeats the purpose of these rules. In this connection, note the option in Arb. Rule 6(d) for use of prehearing stipulations and/or sworn or unsworn statements to meet time limits.

Under Arb. Rule 6(r), the declaration that the hearing is concluded by the arbitrator formally marks the end of the hearing. Note Arb. Rule 7(a), which requires the arbitrator to file the award within three days after the hearing is concluded or post-hearing briefs are received. The usual practice should be a statement of the award at the close of the hearing, without submission of briefs. In the unusual case where an arbitrator is willing to receive post-hearing briefs, the arbitrator should specify the points to be addressed promptly and succinctly. Time limits in these rules are governed by N.C.R. Civ. P. 6 and N.C.G.S. §§103-4, 103-5.

Under Arb. Rule 6(s)(1), the court will rule on prehearing motions which dispose of all or part of the case on the pleadings, or which relate to procedural management of the case.

No party shall be deemed to have consented to binding arbitration unless it is documented on the proper form, which is executed after the filing date of the action. No executed contract, lien, lease or other legal document, other than the proper form designating the arbitration as binding, shall be used to make an arbitration binding upon either party.

Case Notes- For note discussing representation of parties who are not living human beings, see Lexis-Nexis v Travishan Corp., 155 N.C. App. 205, 573 S.E.2d 547 (2002).

Rule 7. The Award.

(a) *Filing the Award*. The award shall be in writing, signed by the arbitrator and filed with the clerk within three days after the hearing is concluded or the receipt of post-hearing briefs, whichever is later. The arbitrator shall file a complete award indicating any award, the rate of any applicable interest and any accrued interest.

(b) *Findings; Conclusions; Opinions*. No findings of fact and conclusions of law or opinions supporting an award are required.

(c) *Scope of Award*. The award must resolve all issues raised by the pleadings, may be in any amount supported by the evidence, shall include interest as provided by law, and may include attorney's fees as allowed by law.

(d) *Copies of Award to Parties*. The arbitrator shall deliver a copy of the award to all of the parties or their counsel at the conclusion of the hearing or the clerk shall serve, in accordance with the N.C.R.Civ.P. 5, the award within three (3) days after filing. A record shall be made by the arbitrator or the court of the date and manner of service.

Administrative History Pilot Rules Adopted August 28, 1986; Pilot Rules Amended: March 4, 1987; Permanent Rule Adopted September 14, 1989; This is former Arb. Rule 4, renumbered _____, 2011. (a), (c) and (d) were adopted _____, 2011; (a) and (d) were amended _____, 2011.

COMMENT

Ordinarily, the arbitrator should issue the award at the conclusion of the hearing. See Arb. Rule 7(a). If the arbitrator wants post-hearing briefs, the arbitrator must receive them within three days, consider them, and file the award within three days thereafter. See Arb. Rule 6(r) and its Comment. If the arbitrator deems it appropriate, the arbitrator may explain orally the basis of the award.

If an award is incomplete or unclear, the clerk should request clarification from the arbitrator and the arbitrator should amend the award to make the award, including any interest, evident. In the event this occurs after the award was announced to the parties, the court should serve the amended order on all parties in accordance with Arb. Rule 7(d). The service of an amended order shall

cause the period for demanding a trial de novo to restart in accordance with Arb. Rule 8.

Rule 8. The Court's Judgment.

(a) *Termination of Action Before Judgment*. Dismissals or a consent judgment may be filed at any time before entry of judgment on an award.

(b) *Judgment Entered on Award***.** If the case is not terminated by dismissal or consent judgment and no party files a demand for trial de novo within 30 days after the award is served, the clerk or the court shall enter judgment on the award, which shall have the same effect as a consent judgment in the action. A copy of the judgment shall be served on all parties or their counsel by mail in accordance with N.C.R.Civ.P. 5(b).

(c) *Judgment upon dismissal or withdrawal of a demand for trial de novo***.** If the case is noticed for trial de novo and all parties consent to withdraw the demand for the trial de novo in accordance with Rule 9(a)(3), the clerk or court shall immediately enter judgment on the award. A copy of the judgment shall be served on all parties or their counsel by the clerk in accordance with N.C.R.Civ.P. 5. A certificate of service shall be executed by the clerk and shall be filed.

Administrative History Pilot Rule Adopted August 28, 1986. Pilot Rule Amended March 4, 1987. Permanent Rule Adopted September 14, 1989. This is former Arb. Rule 6, renumbered _____, 2011. (a) was amended December 19, 2002; (b) was amended March 8, 1990 and December 19, 2002; (c) was adopted _____, 2011 and applies to all cases filed on or after _____, 2011.

COMMENT

No appeal lies from an arbitration award to the appellate courts of this State. The remedy available to a party aggrieved by the award is to demand a trial de novo in the district court. In the absence of such a demand within the 30 day period set forth in Arb. Rule 8(b), the clerk or the court will enter judgment on the award.

Rule 9. Trial De Novo.

(a) *Trial De Novo as of Right.*

(1) Any party not in default for a reason subjecting that party to judgment by default who is dissatisfied with an arbitrator's award may have a trial de novo as of right upon filing a written demand for trial de novo with the court, and service of the demand on all parties, on form promulgated by the Administrative Office of the Courts within 30 days after the arbitrator's award has been served on all parties, or within 10 days after an adverse determination of an Arb. Rule 6(l) motion to rehear. Demand for jury trial pursuant to N.C.R.Civ.P. 38(b) does not preserve the right to a trial de novo. A demand by any party for a trial de novo in accordance with this section is sufficient to preserve the right of all other parties to a trial de novo. Any trial

de novo pursuant to this section shall include all claims in the action. No rulings by the arbitrator shall be binding on the court at a trial de novo.

(2) Upon the demand of a trial de novo by any party pursuant to these Rules, that demand shall be deemed to have preserved the rights of all parties and all issues in the case for trial de novo. No party shall lose a right to a trial de novo of any eligible issue as a result of the failure of the party initially demanding the trial de novo to proceed for any reason. In the event the party initiating the trial de novo fails to proceed for any reason, any other party may request that the trial de novo be calendared for all issues.

(3) The court shall, upon any party demanding a trial de novo of any issue, calendar all parties and issues before the court for a de novo trial. All issues and parties shall remain as pending matters and shall be calendared by the court in a timely manner for the trial de novo hearing unless and until such time as all parties agree to dismiss the demand for a trial de novo. Any such agreement shall be recorded on a form promulgated by the Administrative Office of the Courts, executed by all parties and filed with the clerk in the county in which the action is pending prior to the trial de novo.

(b) *Trial De Novo Fee.*

(1) The first party filing a demand for trial de novo in cases wherein the initiating party has not properly moved the court for indigent relief and relief from payment of the trial de novo fee, in accordance with Arb. Rule 9(b)(2)(ii), shall pay a filing fee at the time the written demand for trial de novo is filed with the clerk, equivalent to the arbitrator's compensation, as set forth in Arb. Rule 4(b), which shall be held by the clerk until the case is terminated. The fee shall be returned to the demanding party only upon written order of the trial judge finding that the position of the demanding party has been improved over the arbitrator's award. Otherwise, the filing fee shall be deposited into the Judicial Department's General Fund at the expiration of thirty days from the final judgment from a court of competent jurisdiction or the expiration of the time for filing any available appeals, whichever is later. No party may make application for the return of this fee after the expiration of thirty days from the final judgment.

(2) If a party properly moves the court by proper motion which includes that party’s social security number for indigent status and requests relief from the payment of the trial de novo fee prior to the trial de novo hearing, that party shall not be required to pay the trial de novo fee at the time of demanding the trial de novo. Said motion shall be heard subsequent to the completion of the trial de novo. In a ruling upon such motions, the judge shall apply the criteria enumerated in N.C.G.S. §1-110(a), but shall take into consideration the outcome of the trial de novo and the previous arbitration and whether a judgment was rendered in the indigent’s favor. A judge may find that the party was indigent at the time of arbitration, but not indigent at the time of the trial de novo and make a ruling on the fees due accordingly. The court shall enter an order granting, in part or in full, or denying the party’s request and:

(i) If the party is denied indigent relief, that party shall pay the trial de novo fee within ten (10) days of a final judgment from a court of competent jurisdiction or the expiration of time for all available appeals, whichever is later. In the event the party fails to pay the trial de novo fee as directed by the court, the clerk shall follow the procedure set forth in this rule for entry of judgment in the amount of the trial de novo fee as if the person had been found indigent.

(ii) If the party is granted indigent relief for any portion of the trial de novo fee, the court shall direct that a judgment be entered in the clerk's office in the county in which the action is pending for the unpaid portion of that party's pro rata share of the trial de novo fee, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. The order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to N.C. Gen. Stat. §1-233 et seq., in the amount of the partially indigent or indigent party's share of the trial de novo fee. Each judgment docketed against a person shall include the social security number, if any, of the judgment debtor.

(c) *No Reference to Arbitration in Presence of Jury.* A trial de novo shall be conducted as if there had been no arbitration proceeding. No reference may be made to prior arbitration proceedings in the presence of a jury without consent of all parties to the arbitration and the court's approval.

(d) *No Evidence of Arbitration Admissible*. No evidence that there have been arbitration proceedings or of statements made and conduct occurring in arbitration proceedings may be admitted in a trial de novo, or in any subsequent proceeding involving any of the issues in or parties to the arbitration, without the consent of all parties to the arbitration and the court's approval.

(e) *Arbitrator Not to Be Called as Witness*. An arbitrator may not be deposed or called as a witness to testify concerning anything said or done in an arbitration proceeding in a trial de novo or any subsequent civil or administrative proceeding involving any of the issues in or parties to the arbitration. The arbitrator's notes are privileged and not subject to discovery.

(f) *Judicial Immunity*. The arbitrator shall have judicial immunity to the same extent as a trial judge with respect to the arbitrator's actions in the arbitration proceeding.

(g) *Exclusion of Issues*. All parties to an action may consent to limit the issues to be considered by the court in a trial de novo. Any such consent shall be in writing and executed by all parties or their respective counsel, filed with the clerk and submitted to the court at the trial de novo. The consent document shall set forth the issues upon which agreement has been reached and all issues remaining for consideration by the court.

Administrative History Pilot Rule Adopted August 28, 1986; Pilot Rule Amended March 4, 1987; Permanent Rule Adopted September 14, 1989; This is former Arb. Rule 5 and was renumbered _____, 2011; (a)(1) was formerly Arb. Rule 5(a), was amended March 8, 1990, December 19, 2002 and was amended and renumbered _____, 2011; Arb. Rule (a)(2) and Arb. Rule(a)(3) were

adopted _____, 2011 and apply to all cases filed on or after _____, 2011; (b)(1)was amended March 8, 1990, December 19, 2002 and was amended and renumbered _____, 2011; Arb. Rule (b)(2) was adopted _____, 2011and applies to all cases filed on or after _____, 2011; (e) and (f) were amended March 8, 1990; (c)(d) were amended December 19, 2002; (g) was adopted _____, 2011and applies to all cases filed on or after _____, 2011

COMMENT

Arb. Rule 9(a)(2) and 9(a)(3) clarify that each party is not required to notice their respective issues for a trial de novo. Once a trial de novo has been demanded, it shall be heard unless all parties consent otherwise in writing.

Under Arb. Rule 9(b)(1), if a party prevails but does not improve their position at the trial novo hearing, that party shall not be eligible for reimbursement of the trial de novo filing fee.

Arb. Rule 9(c) does not preclude cross-examination of a witness in a later proceeding concerning prior inconsistent statements during arbitration proceedings, if done in such a manner as not to violate the intent of Arb. Rules 9(c) and 9(d).

In a case involving multiple defendants and where one or more defendants have been dismissed, a demand for trial de novo by a remaining defendant does not operate to rejoin the dismissed defendant in the action absent properly filed pleadings in accordance with N.C.R.Civ.P. 13.

In the event a party has previously requested a trial by jury, the trial de novo shall be a jury trial. See also the Comment to Arb. Rule 8 regarding demand for trial de novo.

Final judgment of a court of competent jurisdiction as referenced in Arb. Rule 9(b)(1) shall mean the final judgment once all parties have availed themselves of all possible appellate processes and no avenues of appeal remain, either because the appeal has been heard and judgment has been rendered, the court has declined to consider the appeal or the time for properly filing all appeals has expired.

For purposes of Arb. Rule 9(b)(2), a person shall apply for indigency relief before the district court judge by completing and submitting AOC–G-106 or similar form if this form is modified and/or replaced by the Administrative Office of the Courts.

For purposes of Arb. Rule 9, if a party that is not a living human being, as defined by Arb. Rule 1, is listed as a party and a living human being, who is an owner, share holder or has any other ownership interest in that non-human being party is also listed as a party, then each shall be counted as an individual party.

Rule 10. Administration.

(a) *Forms*. Forms for use in these arbitration proceedings must be approved by the Administrative Office of the Courts.

(b) *Delegation of Nonjudicial Functions*. To conserve judicial resources and facilitate the effectiveness of these rules, the court may delegate nonjudicial, administrative duties and functions to supporting court personnel and authorize them to require compliance with these rules.

(c) *Local Rules.* The chief district court judge may publish local rules, not inconsistent with the Rules and N.C.G.S. 7A-37.1, implementing arbitration.

Administrative History: Authority – Order of the North Carolina Supreme Court, August 28, 1986, pilot rule adopted; pilot rule amended effective March 4, 1987; permanent rule adopted, by order of the North Carolina Supreme Court, September 14, 1989; Arb. Rule 8(a), renumbered as Arb. Rule 2(3), effective _____, 2011, was amended March 8, 1990 and December 19, 2002; Arb. Rule 8(b), renumbered as Arb. Rule 8(b)(1) and former Arb. Rule 8(b)(2), effective _____, 2011, was amended March 8, 1990 and December 19, 2002; Arb. Rule (d) was amended March 8, 1990 and (f), renumbered as Arb. Rule 1(b), effective _____, 2011, was amended March 8, 1990 and December 19, 2002; Amended December 19, 2002 – (c) and (e); Effective _____, 2011, former (a), (b), (c) were renumbered, reorganized and amended; Effective _____, 2011, Arb. Rule 10(d) was reorganized as Arb. Rule 10(a) and Arb. Rule 10(e) was reorganized as Arb. Rule 10(b).

Rule 11. Application Of Rules.

These Rules shall apply to cases filed on or after the effective date of these rules and to pending cases submitted by agreement of the parties under Arb. Rule 2(b) or referred to arbitration by order of the court in those districts designated for court-ordered arbitration in accordance with N.C.G.S. §7A-37.1.

Administrative History: Authority – Order of the North Carolina Supreme Court, August 28, 1986, pilot rules adopted; pilot rule amended effective March 4, 1987; permanent rule adopted, by order of the North Carolina Supreme Court, September 14, 1989; Amended March 8, 1990; Amended December 19, 2002; Amended _____, 2011, effective immediately to all cases filed on or before _____, 2011.

COMMENT

A common set of rules has been adopted. These rules may be amended only by the Supreme Court of North Carolina. The enabling legislation, N.C.G.S. §7A-37.1, vests rule-making authority in the Supreme Court, and this includes amendments.

_____

Editor's note. – As to the applicability of the Rules for Court-Ordered Arbitration, see the order of the Supreme Court preceding these rules.