

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE
RULES FOR COURT-ORDERED ARBITRATION

Pursuant to section 7A-37.1 of the General Statutes of North Carolina, the Court hereby amends the Rules for Court-Ordered Arbitration. This order affects Rules 5 and 9.

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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.~~

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, shareholder 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 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 a 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.

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 de 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.

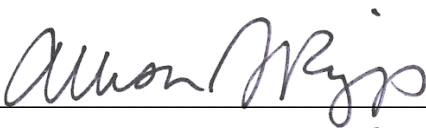
For purposes of Arb. Rule 9, if a party that is not a living human being, as defined by Arb. Rule 1, is listed as a party and a living human being, who is an owner, shareholder or has any other ownership interest in that non-human being party is also listed as a party, then each shall be counted as an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

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These amendments to the Rules for Court-Ordered Arbitration become effective on 2 June 2025.


These amendments shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 21st day of May 2025.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of May 2025.



GRANT E. BUCKNER
Clerk of the Supreme Court