

# RULES FOR COURT-ORDERED ARBITRATION IN NORTH CAROLINA

## RULE 1. ACTIONS SUBJECT TO ARBITRATION

### (a) By Order of the Court.

- (1) **District Court.** All civil actions filed in the District Court Division are subject to court-ordered arbitration under these rules, 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 ejection 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;
  - (iv) Involving family law matters including claims filed under N.C.Gen. Stat. 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) **Superior Court.** The Senior Resident Superior Court Judge may order any civil Superior Court action to arbitration, where the amount in controversy does not exceed \$15,000, under these rules after the Court confers with the parties at a scheduling conference. The judge shall enter a written order, which finds that the action is appropriate for arbitration and that the amount in controversy does not exceed \$15,000.

### (b) Arbitration by Agreement.

- (1) **District Court.** 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, and the amount in controversy does not exceed \$15,000. The consent of the parties shall not be presumed, but shall be stated by the parties expressly in writing.

(2) **Superior Court.** The parties in any civil action pending in the Superior Court Division where the amount in controversy does not exceed \$15,000 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, and the amount in controversy does not exceed \$15,000. The consent of the parties shall not be presumed, but shall be stated by the parties expressly in writing.

(c) **Exemption and Withdrawal From Arbitration.** The Court may exempt or withdraw any action from arbitration on its own motion, or on motion of a party, made not less than 10 days before the arbitration hearing and a showing that: (i) the action is excepted from arbitration under Arb.Rule 1(a)(1) or (ii) there is a compelling reason to do so.

#### **Administrative History**

Pilot Rule Adopted: 28 August 1986.  
Pilot Rule Amended: 4 March 1987.  
Permanent Rule Adopted: 14 September 1989.  
Amended: 8 March 1990--(a) and (d).  
Amended: 19 December 2002 - (a) through (d).

#### **Comment**

The purpose of these rules is to create an efficient, economical alternative to traditional litigation for prompt resolution of disputes in District Court. Subject to the opt-in of Superior Court cases under Arb.Rule 1(b), 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 and Superior Court actions are covered by another dispute resolution program. The \$15,000 jurisdictional limit by statute and Arb.Rule 1 applies only to the claim(s) actually asserted, even though the claim(s) is or are based on a statute providing for multiple damages, e.g. N.C.Gen.Stat. §§ 1-538, 75-16. 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. Counsel are expected to value their cases reasonably without Court involvement.

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

## **RULE 2. ARBITRATORS**

**(a) Selection.**

- (1)** The Court shall approve and maintain a list of qualified arbitrators, which shall be a public record. The parties may stipulate to an arbitrator on the Court's list within the first 20 days after the 60-day period fixed in Arb.Rule 8(b). If there is no stipulation, the Court shall appoint an arbitrator from the list and notify the parties of the arbitrator selected.
- (2)** Parties may choose an arbitrator who is not on the Court's list provided the arbitrator consents, the Court approves the choice, and the arbitrator otherwise meets all the requirements of Arb.Rule 2 with the exception of the requirement to complete the arbitrator training as prescribed by the Administrative Office of the Courts. The stipulation of agreement on an arbitrator, the arbitrator's consent, and the court order approving such stipulation shall be filed within the same 20-day period for choosing an arbitrator on the Court's list.

**(b) Eligibility.** An arbitrator shall be a member in good standing of the North Carolina State Bar and have been licensed to practice law for five years. The arbitrator 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. In addition, an arbitrator shall complete the arbitrator training course prescribed by the Administrative Office of the Courts and be approved by the Chief District Court Judge for such service. Arbitrators so approved shall serve at the pleasure of the appointing Court.

**(c) Fees and Expenses.** Arbitrators shall be paid a \$100 fee by the Court for each arbitration hearing when they file their awards with the Court. An arbitrator may be reimbursed for expenses actually and necessarily incurred in connection with an arbitration hearing and paid a reasonable fee not exceeding \$100 for work on a case not resulting in a hearing upon the arbitrator's written application to and approval by the Chief Judge of the District Court.

**(d) Oath of Office.** Arbitrators shall take an oath or affirmation similar to that prescribed in N.C.Gen.Stat. § 11-11, in a form approved by the Administrative Office of the Courts, before conducting any hearings.

**(e) 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.

**(f) Replacement of Arbitrator.** If an arbitrator is disqualified, recused, unable, or unwilling to serve, a replacement shall be appointed by the Court from the list of arbitrators.

Amended effective December 19, 2002; amended effective January 1, 2005.

### **Administrative History**

Pilot Rule Adopted: 28 August 1986.

Pilot Rule Amended: 4 March 1987.

Permanent Rule Adopted: 14 September 1989.

Amended: 8 March 1990--(a) and (b).

Amended: 1 August 1995--(b).

### **Comment**

Under Arb.Rule 2(a) the parties have a right to choose one arbitrator from the list if they wish to do so, but they have *the burden of taking the initiative if they want to make the selection*, and they must do it promptly.

When assigning arbitrators to serve in cases, the Court is encouraged to regularly use all arbitrators on the Court's list as established in Arb.Rule 2(a).

The parties in a particular case may choose a person to be an arbitrator who is not on the list required by Arb.Rule 2(a)(1), provided that person consents, the choice is approved by the Chief District Court Judge, and the person otherwise meets the requirements of Arb.Rule 2. The stipulation of agreement on an arbitrator, the arbitrator's consent, and the order approving such stipulation and consent must be filed within the 20-day period mentioned in Arb.Rule 2(a)(1).

Under Arb.Rule 2(c) filing of the award is the final act at which payment should be made, 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 3(n).

Payments and expense reimbursements authorized by Arb.Rule 2(c) are made subject to Court approval to insure conservation and judicial monitoring of the use of funds available for the program.

### **RULE 3. 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.

**(b) 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 3(b) may be cause for sanctions under Arb.Rule 3(l). 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.

(c) **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.

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

(e) **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.

(f) **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.

(g) **Authority of Arbitrator to Govern Hearings.** Arbitrators shall have the authority of a trial judge to govern the conduct of hearings, except for the power to punish for contempt. The arbitrator shall refer all contempt matters to the Court.

(h) **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.

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

(j) **Failure to Appear; Defaults; Rehearing.** If a party who has been notified of the date, time and place of the hearing fails to appear without good cause therefor, the hearing may 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 for failure to appear or by dismissing the case. 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 5(a).

**(k) 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.

**(l) Sanctions.** Any party failing to attend an arbitration proceeding shall be subject to sanctions by the Court on motion of a party, report of the arbitrator, or by the Court on its own motion. These sanctions may include those provided in N.C.R.Civ.P. 11, 37(b)(2)(A)-37(b)(2)(D) and N.C.Gen.Stat. § 6-21.5.

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

**(n) 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 appointed, 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 3(b). The Court will rule on these applications after consulting the arbitrator if appointed.

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

**(o) 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.

**(p) 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.

**(q) 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 3(b).

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

### **Administrative History**

Pilot Rule Adopted: 28 August 1986.

Pilot Rule Amended: 4 March 1987.

Permanent Rule Adopted: 14 September 1989.

Amended: 8 March 1990--(b), (j), (o), and (q).

Amended: 19 December 2002--(a), (b), (g), (j), (l), (n), (o), (p) and (q).

### **Comment**

Good faith compliance with Arb.Rule 3(b) is required by professional courtesy and fairness as well as the spirit of these rules. Failure to comply with Arb.Rule 3(b) may justify a sanction of limiting of evidence otherwise admissible under Arb.Rules 3(c)-3(f) and 3(g).

Arb.Rule 3(d) 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.

The purpose of Arb.Rule 3(n) 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 3(b) for use of prehearing stipulations and/or sworn or unsworn statements to meet time limits.

Under Arb.Rule 3(o) the declaration that the hearing is concluded by the arbitrator formally marks the end of the hearing. Note Arb.Rule 4(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.Gen.Stat. §§ 103-4, 103-5.

Arb.Rule 3(p) 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 3(p) 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.

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 3(p). Conformance of practice in court-ordered arbitrations with the applicable law, whatever it may provide, is ensured by providing that pro se representation be "as permitted by law."

Under Arb.Rule 3(q)(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. The Court will normally defer to the arbitrator's consideration motions addressed to the merits of a claim

requiring a hearing, the taking of evidence, or examination of records and documents other than the pleadings and motion papers, except in cases in which an N.C.R.Civ.P. 12(b) motion is filed in lieu of a responsive pleading.

#### **RULE 4. 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.

(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 Court shall serve the award after filing. A record shall be made by the arbitrator or the Court of the date and manner of service.

#### **Administrative History**

Pilot Rule Adopted: 28 August 1986.

Pilot Rule Amended: 4 March 1987.

Permanent Rule Adopted: 14 September 1989.

Amended: 19 December 2002--(a), (c), and (d).

## Comment

Ordinarily, the arbitrator should issue the award at the conclusion of the hearing. See Arb.Rule 4(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 3(o) and its Comment. If the arbitrator deems it appropriate, the arbitrator may explain orally the basis of the award.

### RULE 5. TRIAL DE NOVO

(a) **Trial De Novo as of Right.** 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 an approved form within 30 days after the arbitrator's award has been served, or within 10 days after an adverse determination of an Arb.Rule 3(j) 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.

(b) **Filing Fee.** The first party filing a demand for trial de novo shall pay a filing fee equivalent to the arbitrator's compensation, which shall be held by the Court 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.

(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.

### **Administrative History**

Pilot Rule Adopted: 28 August 1986.  
Pilot Rule Amended: 4 March 1987.  
Permanent Rule Adopted: 14 September 1989.  
Amended: 8 March 1990--(a), (b), (e), and (f).  
Amended: 19 December 2002--(a), (b), (c), and (d).

### **Comment**

Arb. Rule 5(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 5(c) and 5(d). See also the Comment to Arb. Rule 6 regarding demand for trial de novo.

## **RULE 6. 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 judgement, 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 judgement in the action. A copy of the judgment shall be served on all parties or their counsel.

### **Administrative History**

Pilot Rule Adopted: 28 August 1986.  
Pilot Rule Amended: 4 March 1987.  
Permanent Rule Adopted: 14 September 1989.  
Amended: 8 March 1990--(b).  
Amended: 19 December 2002--(a) and (b).

### **Comment**

A judgment entered on the arbitrator's award is not appealable because there is no record for review by an appellate court. A trial de novo is not an "appeal," in the sense of an appeal to the North Carolina Court of Appeals from Superior Court or District Court, from the arbitrator's award. By failing to demand a trial de novo the right to appeal is waived.

## **RULE 7. COSTS**

**(a) Arbitration Costs.** The arbitrator may include in an award court costs accruing through the arbitration proceedings in favor of the prevailing party.

**(b) Costs Denied if Party Does Not Improve Position in Trial De Novo.** A party demanding trial de novo whose position is not improved at the trial may be denied costs in connection with the arbitration proceeding by the trial judge, even though that party prevails at trial.

### **Administrative History**

Pilot Rule Adopted: 28 August 1996

Pilot Rule Amended: 4 March 1987.

Permanent Rule Adopted: 14 September 1989.

Amended: 8 March 1990--(c).

Amended: 19 December 2002--(b) and (c).

### **RULE 8. ADMINISTRATION**

(a) **Actions Designated for Arbitration.** The Court shall designate actions eligible for arbitration upon the filing of the complaint or docketing of an appeal from a magistrate's judgment and give notice of such designation to the parties.

(b) **Hearings Rescheduled; 60 Day Limit; Continuance.**

(1) 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.

(2) 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 upon a written motion and a showing of a strong and compelling reason to do so.

(c) **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.

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

(e) **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 approved procedures.

(f) **Definitions.** "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.

### **Administrative History**

Pilot Rule Adopted: 28 August 1986  
Pilot Rule Amended: 4 March 1987  
Permanent Rule Adopted: 14 September 1989.  
Amended: 8 March 1990--(a), (b), (d), and (f).  
Amended: 19 December 2002--(a), (b), (c), (e), and (f).

### **Comment**

One goal of these rules is to expedite disposition of claims filed in District Court. See Arb.Rule 8(a). The 60 days in Arb.Rule 8(b)(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.

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 a consent judgment prior to the scheduled hearing to close the case without a hearing. If the dismissals or consent judgment 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.

## **RULE 9. APPLICATION OF RULES**

These Rules shall apply to cases filed on or after their effective date and to pending cases submitted by agreement of the parties under Arb.Rule 1(b) or referred to arbitration by order of the Court in those districts designated for court-ordered arbitration in accordance with G.S. §§ 7A-37 and 7A-37.1

### **Administrative History**

Pilot Rule Adopted: 28 August 1986.  
Pilot Rule Amended: 4 March 1987.  
Permanent Rule Adopted: 14 September 1989.  
Amended: 8 March 1990.  
Amended: 19 December 2002.

### **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, G.S. §§ 7A-37 and 7A-37.1, vests rule-making authority in the Supreme Court, and this includes amendments.