

MSC RULES – EFFECTIVE DATE JANUARY 1, 2012

RULE 12. RULES FOR ARBITRATION

In this form of settlement procedure the parties select an arbitrator who shall hear the case and enter an advisory decision. The arbitrator's decision is made to facilitate the parties' negotiation of a settlement and is non-binding, unless neither party timely requests a trial *de novo*, in which case the decision is entered by the senior resident superior court judge as a judgment, or the parties agree that the decision shall be binding.

A. ARBITRATORS.

Arbitrator's Canon of Ethics. Arbitrators shall comply with the Canons of Ethics for Arbitrators promulgated by the Supreme Court of North Carolina (Canons). Arbitrators shall be disqualified and must recuse themselves in accordance with the Canons.

B. EXCHANGE OF INFORMATION.

- (1) **Pre-hearing Exchange of Information.** At least 10 days before the date set for the arbitration hearing the parties shall exchange in writing:
 - (a) Lists of witnesses they expect to testify;
 - (b) Copies of documents or exhibits they expect to offer into evidence; and
 - (c) A brief statement of the issues and contentions of the parties.

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. 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.

- (2) **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.

- (3) **Copies of Exhibits Admissible.** Copies of exchanged documents or exhibits are admissible in arbitration hearings, in lieu of the originals.

C. ARBITRATION HEARINGS.

- (1) **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.
- (2) **Subpoenas.** Rule 45 of the North Carolina Rules of Civil Procedure (N.C.R.Civ.P.) shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these Rules.
- (3) **Motions.** Designation of an action for arbitration does not affect a party's right to file any motion with the court.
 - (a) 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 Rule 12.B.(1).
 - (b) Pendency of a motion shall not be cause for delaying an arbitration hearing unless the court so orders.
- (4) **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.
- (5) **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 matters involving contempt to the senior resident superior court judge.
- (6) **Conduct of Hearing.** The arbitrator and the parties shall review the list of witnesses, exhibits and written statements concerning issues previously exchanged by the parties pursuant to Rule

12.B.(1), above. The order of the hearing shall generally follow the order at trial with regard to opening statements and closing arguments of counsel, direct and cross-examination of witnesses and presentation of exhibits. However, in the arbitrator's discretion the order may be varied.

- (7) **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.
- (8) **Parties must be Present at Hearings; Representation.** Subject to the provisions of Rule 10.C.(9), all parties shall be present at hearings in person or through representatives authorized to make binding decisions on their behalf in all matters in controversy before the arbitrator. All parties may be represented by counsel. Parties may appear *pro se* as permitted by law.
- (9) **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.

D. THE AWARD.

- (1) **Filing the Award.** The arbitrator shall file a written award signed by the arbitrator and filed with the clerk of superior court in the county where the action is pending, with a copy to the senior resident superior court judge within 20 days after the hearing is concluded or the receipt of post-hearing briefs whichever is later. The award shall inform the court of the absence of any party, attorney or insurance company representative known to the arbitrator to have been absent from the arbitration without permission. An award form, which shall be a NCAOC form, shall be used by the arbitrator as the report to the court and may be used to record its award. The report shall also inform the court in the event that an agreement upon all issues was reached by the parties and, if so, state the name of the person(s) designated to file the consent judgment or voluntary dismissal(s) with the court. Local rules shall not require the arbitrator to send a copy of any agreement reached by the parties to the court.

- (2) **Findings; Conclusions; Opinions.** No findings of fact and conclusions of law or opinions supporting an award are required.
- (3) **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.
- (4) **Costs.** The arbitrator may include in an award court costs accruing through the arbitration proceedings in favor of the prevailing party.
- (5) **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 arbitrator shall serve the award after filing. A record shall be made by the arbitrator of the date and manner of service.

E. TRIAL DE NOVO.

- (1) **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 a NCAOC form within 30 days after the arbitrator's award has been served. 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.
- (2) **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.

F. JUDGMENT ON THE ARBITRATION DECISION.

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

resident superior court judge 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.

G. AGREEMENT FOR BINDING ARBITRATION.

- (1) **Written Agreement.** The arbitrator's decision may be binding upon the parties if all parties agree in writing. Such agreement may be made at any time after the order for arbitration and prior to the filing of the arbitrator's decision. The written agreement shall be executed by the parties and their counsel and shall be filed with the clerk of superior court and the senior resident superior court judge prior to the filing of the arbitrator's decision.
- (2) **Entry of Judgment on a Binding Decision.** The arbitrator shall file the decision with the clerk of superior court and it shall become a judgment in the same manner as set out in N.C.G.S. § 1-567.1 ff.

H. MODIFICATION PROCEDURE.

Subject to approval of the arbitrator, the parties may agree to modify the procedures required by these rules for court ordered arbitration.