

## SUPERIOR COURT RULES GOVERNING ARBITRATION OF CIVIL ACTIONS

1. **Actions subject to arbitration.** – (a) *Types of Actions; Exceptions.* All civil actions filed in the Superior Court in which there is a claim or there are claims for monetary relief not exceeding \$100,000 total, exclusive of interest, costs and attorneys' fees, and district court appeals as determined from the arbitration certificate filed by counsel, are subject to court-annexed arbitration under these rules except actions:

- (1) Involving a class;
- (2) In which there is a substantial claim for injunctive or declaratory relief;
- (3) Involving:
  - (i) family law issues,
  - (ii) title to real estate,
  - (iii) wills and decedents' estates,
  - (iv) landlord and tenant, or
  - (v) book accounts
- (4) Which are cognizable on the formal and special cause calendar;
- (5) Involving a claim for monetary recovery in an unspecified amount later to be determined by an accounting or otherwise, if the claimant certifies in the pleading asserting the claim that the amount of the claim will actually exceed \$100,000; or
- (6) Which are certified by a party to be companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue.

(b) *Arbitration by Agreement.* The court may submit any other civil action to arbitration under these rules or any modification thereof, pursuant to agreement by the parties approved by the court provided that the parties agree in writing that the award shall be binding.

(c) *Court-Ordered Arbitration in Cases Having Excessive Claims.* The court may order any case submitted to arbitration under these rules at any time before trial if it finds that the amount actually in issue is \$100,000 or less, even though a greater amount is claimed.

(d) *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 amount of the claim(s) exceed(s) \$100,000; (ii) the action is excepted from arbitration under Rule 1(a); or (iii) for good cause shown.

(e) *Arbitration Certification.* Upon the filing of the last responsive pleading counsel for a party, within three days thereof shall, with the exception of actions under section (a)(1)-(6) hereof, file an Arbitration Certification of Counsel specifying the amount of the claim. (As amended by the court on July 19, 1993.)

2. **Arbitrators.** – (a) *Selection.* The court shall develop and maintain a list of qualified arbitrators, which shall be a public record. The parties may file a stipulation identifying their mutual selection as an arbitrator from the court's list within thirty (30) days from the date the action is submitted to the court for arbitration and the initial fees have been paid. If the parties do not select an arbitrator within thirty (30) days, the court shall provide each party with an identical list of five candidates from which they may strike no more than two names, and which shall be returned to the Arbitration Office within fifteen (15) days. If one mutually satisfactory name remains, that individual shall be appointed as the arbitrator. If more than one name on the

list is acceptable to both parties, the remaining candidate whose surname comes first alphabetically shall be appointed. Failure of a party to return the list within the required time will result in the court appointing from the list of qualified arbitrators, and thereafter, any substitution of arbitrators shall only be made upon written motion, duly filed.

(b) *Eligibility for the Panel of Arbitrators.* An arbitrator shall have been a member of the Rhode Island Bar in good standing for at least ten years and must be approved by the court for such service, provided, however, that the Presiding Justice may approve a prospective arbitrator with less than ten years of membership in the Rhode Island Bar, who is otherwise qualified. Each attorney wishing to serve as an arbitrator shall participate in an orientation and training session on the program and the role of an arbitrator. The court shall oversee the preparation of a manual outlining selection criteria and describing for arbitrators their role and functions in the program.

(c) *Fees and Expenses.* Arbitrators shall be paid for their services (including but not limited to preparation, hearing and rendering of an award or decision) at the rate of \$400.00 per case. Arbitrators shall be paid promptly when they file their awards with the court. Arbitrators may be reimbursed for reasonable expenses actually and necessarily incurred in connection with arbitration hearings. Arbitrators may petition the court and on a showing of good cause may be granted an increased fee in cases lasting longer than a day.

(d) *Disqualification.* An arbitrator shall disclose to the parties any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel and shall be disqualified on the motion of any party to the arbitrator.

(e) *Replacement of Arbitrator.* If any arbitrator is disqualified or unable or unwilling to serve, a replacement shall be appointed by the court within ten (10) days.

(f) *Duties of Arbitrators.* In addition to the provisions and duties specifically assigned by these rules, arbitrators shall abide by all administrative directives promulgated by the Presiding Justice to ensure the timely adjudication and conclusion of hearings. This obligation shall include, but not be limited to, reporting the status of pending cases to the arbitration office, on forms provided, every sixty (60) days from their designation or appointment and/or to provide to the Arbitration Office any original dismissal stipulation or settlement agreement which may arise as a result of the Arbitration process.

3. **Arbitration Hearings.** – (a) *Hearing Scheduled by Arbitrator.* Arbitration hearings shall be scheduled by the assigned arbitrator on a date, time and place agreed to by the parties or, if they do not agree, selected by the arbitrator; but in no event shall the process extend beyond 240 days of appointment/designation exclusive of the arbitrator's time to render an award.

(b) *Pre-hearing Exchange of Information.* At least 10 days before the date set for the hearing, the parties shall exchange and furnish to the arbitrator:

(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 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.

(4) The information referred to in Paragraph (b) shall not be filed with the court.

(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 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.* Rhode Island Court 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.* Except for the power to punish for contempt, arbitrators shall have the authority of a trial judge to govern the conduct of hearings in accordance with adopted procedures published in the Arbitrators Manual. The arbitrator shall refer all contempt matters to the court.

(h) *Law of Evidence Used as a Guide.* The Rhode Island Court Rules of Evidence do 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 deemed appropriate.

(i) *No Ex Parte Communications with Arbitrator.* No ex parte communication as to substantive matters by a party or counsel with an arbitrator is 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 thereof, 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 the failure to appear. If a party is in default for any other reason but no judgment has been entered upon the default pursuant to Rhode Island Court 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 a party's control. Such motion for rehearing shall be filed with the court within the time allowed for rejection of the award as stated in Rule 5(a).

(k) *No Record of Hearing Made.* No transcript or other recording of an arbitration hearing shall be made.

(l) *Sanctions.* Any party failing or refusing to participate in an arbitration proceeding in a good faith and meaningful manner shall be subject to sanctions by the court on motion of a party, or report of the arbitrator, as provided in Rhode Island Court R. Civ. P. 37 and which shall be heard by the assignment judge.

(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 four hours 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 an enlargement of time for a hearing, which shall not exceed sixty (60) days, must be filed with the arbitrator and must be served on opposing parties at the

earliest practicable time, and no later than the date for prehearing exchange of information under Rule 3(b). The arbitrator will rule on these applications subject to review by the court.

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

(o) *Hearing Concluded.* The arbitrator shall declare the hearing concluded when arguments, if permitted, have been completed and all the evidence is in. In exceptional cases, the arbitrator has discretion to receive post-hearing briefs, but not evidence, if submitted within 10 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 representatives authorized to make binding decisions on their behalf in all matters in controversy before the arbitrator. All parties may be represented by counsel. Only individuals may appear pro se.

(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 deferred to the arbitrator in the exchange of information required by Rule 3(b).

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

4. **The award.** – (a) *Filing the Award.* The award shall be in writing, signed by the arbitrator and filed with the court within 10 days after the hearing is concluded or the receipt of post-hearing briefs, whichever is later. Post hearing briefs shall be filed with the Arbitrator within ten (10) days after the hearing is concluded.

(b) *Findings; Conclusions; Opinions.* No findings of fact and conclusions of law or opinions supporting an award are required unless requested by a party which in no event shall exceed two (2) pages.

(c) *Scope of Award.* The award must resolve all issues raised by the pleadings and may exceed \$100,000 however the costs, interest and attorney's fees shall not be computed and/or included in an award.

(d) *Copies of Award to Parties.* The arbitrator shall forward copies of the award to counsel of record or to a party not represented by counsel. (As amended by the court on July 19, 1993.)

5. **Trial.** – (a) *Trial as of Right.* Any party not in default for a reason which may result in judgment by default who is dissatisfied with an arbitrator's award may have a trial as of right upon filing a written rejection of the award on an approved form within thirty (30) days after the arbitrator's award has been filed, or within thirty (30) days after an adverse determination of a Rule 3(j) motion to rehear.

(b) *Filing Fee.* A party rejecting an award shall post a filing fee of \$300.00 with the Superior Court Arbitration Office.

(c) *Multi-Party Case.* In consolidated cases and in those involving multiple parties, cross-claims, counterclaims and third party claims, a rejection by any one party will cause the entire civil action or actions to proceed to trial in the normal course.

(d) *No Reference to Arbitration.* A trial shall be conducted as if there had been no arbitration proceeding. No reference may be made to prior arbitration proceedings in the presence of jury without the consent of all parties to the arbitration and/or the approval of the court.

(e) *No Evidence of Arbitration Admissible.* No evidence that there have been arbitration proceedings or any fact concerning them may be admitted in a trial, or in any other proceedings, without the consent of all parties to the arbitration and/or the approval of the court.

(f) *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. The notes of the arbitrator are privileged and not subject to discovery.

(g) *Arbitrator's Immunity.* The arbitrator shall have immunity to the same extent as a trial judge with respect to actions of the arbitrator in the arbitration proceeding. (As amended by the court on May 17, 1990; October 31, 1990; February 19, 1993.)

**6. The court's judgment.** – (a) *Termination of Action by Agreement Before Judgment.* The parties may file with the court a stipulation of dismissal or consent judgment at any time before entry of judgment on an award.

(b) *Judgment Entered on Award.* If the case is not terminated by agreement of the parties, and no party files a written rejection of the award within thirty (30) days after the award is filed, provided all required fees have been paid the court shall enter judgment to include interest and costs, if any, on the arbitrator's award. (As amended by the court on February 25, 1992.)

**7. Administration.** – (a) *Actions Designated and Time Schedules.* In all actions subject to arbitration the court shall designate such actions for arbitration 60 days after the filing of the arbitration certificate required by Rule 1(e) provided the provisions of 7.1(a)(1) and 7.1(c) have been fulfilled. The designation date may coincide with the date of selection/appointment of the arbitrator. The court shall set a date of not more than 240 days after selection/appointment, by which time the arbitration hearing must be concluded.

(b) *Notice.* Notice that a case has been assigned to arbitration shall be served on the selected arbitrator and all parties within five days of such selection. Within five (5) days of receiving such notice, the selected arbitrator shall notify the Arbitration Office and all parties to the matter, either electronically or by first class mail, that he/she has received and accepted the designation.

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

(d) *Forms.* Forms for use in these arbitration proceedings must be approved by the Superior Court.

(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, depending upon the context in which it is used, the Presiding Justice or a designee of the Presiding Justice. (As amended by the court on May 17, 1990.)

**7.1. Administration and proration of reasonable costs of arbitration pursuant to R.I.G.L. 8-6-5, as amended.** – (a) It is hereby determined that five hundred dollars (\$500.00) is a reasonable cost of an arbitration performed within these rules and said five hundred dollars (\$500.00) shall be apportioned as follows:

#### **PAYMENT SCHEDULE**

(1) Except in consolidated cases, wherein one or more parties is different, each party, (a party shall be all the plaintiffs and all the defendants, if more than one of each) shall pay \$100.00 in accordance with Rule 7.1(c) 1 and 2.

(2) If, at the conclusion of the arbitration hearing an award is rendered for the plaintiff and no rejection is filed, each party shall pay \$100.00.

(3) If, at the conclusion of the arbitration hearing an award is rendered for the defendant and no rejection is filed, the defendant shall pay \$200.00 and the plaintiff will pay no fee.

(b) All matters rejected by any party shall be subject to Rule 5(b) regarding the filing fee for rejecting an award.

(c) The Supreme Court Finance Office shall be responsible for establishing a process for billing. The Arbitration Office shall be responsible for collecting and transmitting to the Supreme Court all of the funds received by it pursuant to these rules, which shall be maintained and used exclusively for arbitration purposes.

The monies assessed and apportioned as directed in paragraph (a) shall be collected by the Arbitration Office in the following manner:

(1) As to all cases certified to arbitration pursuant to Rule 1(a), (b), and (c) all funds due the court must be delivered to the Arbitration Office no later than 30 days after the arbitration certificate has been received and filed by it;

(2) As to all cases designated to arbitration or otherwise placed into arbitration where the arbitrator is to be selected or appointed within 30 days, the funds due must be paid before the arbitrator is notified of the appointment or selection;

(3) As to all cases not rejected under Rule 5(b) the funds due shall be paid no later than forty (40) days after the arbitrator's award was received and filed by the Arbitration Office. (As amended by the court on December 17, 1992.)

**7.2. Sanctions.** - If a party(ies) does not comply with the Rules stated herein and does not deliver the monies to the Arbitration Office when required the case may be removed from Arbitration and/or sanctions may be imposed by the Presiding Justice or his/her designee upon a showing that notice, to the last known address, was properly sent by the Arbitration Office and payment was not received within the time provided by these Rules. If an award has been filed and no rejection timely filed, the judgment usually entered pursuant to said award shall not be entered until payment has been made.

The Honorable Court, after a hearing, may impose such other sanctions as may be warranted.  
(As amended by the court on December 17, 1992.)

**8. Application of rules.** – These rules shall apply to cases filed before or after their effective date or cases referred to arbitration by order of the court; provided that the amendments to Rules 1, 2(a), 2(c), 3(a), 3(n)(1), 5(a), 5(b), 7(a), 7(b) and 7.1 shall apply to cases certified to Arbitration after the effective date of the amendments.

**APPENDIX**  
**ADMINISTRATIVE ORDER NO. 89-10**  
**RELATING TO THE DUTIES AND**  
**RESPONSIBILITIES OF THE**  
**ARBITRATION OFFICE**

The office of the Administrator of the program instituted for the arbitration of civil actions within the Superior Court shall be known as the Arbitration Office which shall have as its general purpose the implementation of the procedures established by the rules and regulations governing the arbitration of such actions. The Arbitration Office shall have the duties and responsibilities set forth in this administrative order.

1. It shall maintain approved forms in quantities sufficient to assist all interested parties in the orderly implementation of the rules and regulations.

2. It shall keep current the list of arbitrators approved by the Presiding Justice which list may be reviewed and revised by the Presiding Justice at least once in each six (6) month period commencing with the six (6) month anniversary date after the Presiding Justice files the initial list of arbitrators and a certified copy of the rules and regulations with the Chief Supervisory Clerk of the Superior Court.

3. From and after 60 days of the filing of a certificate of arbitration or upon the immediate designation to arbitration by the court or in accordance with the rules (Rules 1(b), 1(c), 7(a)), it shall transmit to all parties or their counsel the form entitled "Designation to Arbitration and Selection/Appointment of Arbitrators" (form 3) listing the names of five (5) arbitrators. In the event that the parties or their counsel have failed to agree upon an arbitrator from the list of

arbitrators approved by the court, they shall employ the striking procedure to the five named arbitrators as provided for in Rule 2(a).

4. In the event that the form is not filed with the Arbitration Office by a party or its counsel within the time designated by the rules, it shall select an arbitrator from the list of approved arbitrators and give notification of the selection to all who may be entitled.

5. It shall give its receipt for such funds which are required to be paid to it by statute or rule and shall deposit the same in an account designated by the State Court Administrator.

6. The fees of an arbitrator shall be paid by the State Court Administrator in accordance with Rule 2(c). No item of expense shall be allowed or paid unless such expenditure has had the prior approval of the Arbitration Office.

7. Motions affecting the arbitrator's service or the arbitration process shall be in writing, on 8 1/2" x 11" paper and filed with the Arbitration Office. A copy of any such motion shall be transmitted to opposing counsel or party by the movant.

8. It shall maintain a calendar for motions which affect the arbitrator's service or the arbitration process and shall notify the parties or their counsel of the time when and place where the motion will be heard. Within ten (10) days of the disposition of the motion by the court, the prevailing party or its counsel shall notify the Arbitration Office, in writing, of the decision of the court.

9. If any arbitrator is disqualified or unable or unwilling to serve, it shall cause a replacement to be appointed in accordance with Rule 2(e).

10. It shall assist the arbitrator in whatever manner necessary to bring the arbitration to a speedy conclusion which duty shall include the coordination and scheduling of the use of any courtroom, public hearing room or other public facility available to it for such use.

11. Upon the completion of the arbitration, it shall:

(a) Receive, in original form the award rendered by the arbitrator;

(b) Receive, in original form a rejection of an award together with the fee provided for by Rule 5(b) which fee shall be made payable to the Superior Court Arbitration Office;

(c) Receive, where no rejection of the award is filed in accordance with Rule 5(a), the judgment in original form to be entered by the court;

(d) Receive, in original form, any consent judgment or stipulation of dismissal which terminates the action;

(e) Enter a record by computer in each case of the date of the entry of judgment and the amount of judgment.

12. The Superior Court Arbitration Office shall transmit, immediately upon receipt, the original of any document referred to in paragraph 11, to the clerk of our court for the county in which the matter was filed.

13. A party who has rejected an award, has posted the filing fee in accordance with Rule 5(b) and has, after trial, received a jury verdict or bench decision more favorable than the rejected award (exclusive of interest and costs) shall have the filing fee reimbursed by the clerk. No such reimbursement shall be made unless the Arbitration Office receives from the party a written request therefore which request is accompanied by certified copies of the arbitrator's award which was the subject of rejection and of the judgment entered by the court after trial, respectively.

14. Where an action subject to arbitration, whether so designated by the rules or by the court, is terminated by final judgment, dismissal or otherwise after it has been certified to arbitration or

designated for arbitration, the plaintiff shall transmit a copy of the final judgment, dismissal or other terminating document to the Arbitration Office.

15. No case transferred to Providence and Bristol Counties shall be designated for arbitration.

16. In accordance with Rule 58 of the Rules of Civil Procedure of the Superior Court all permanent records of rejections, awards and of judgments shall be maintained in the custody of the clerk for the county in which the matter was filed.

The Arbitration Office is hereby designated as the “Court” referred to in Rule 7(f) except as to any matter which involves a judicial function or requires the exercise of the powers of a justice of the Superior Court.