

Civil Arbitration Protocol

I. General Introduction

In response to requests from the Bar Association, the Court has implemented this program in order to reduce the number of cases awaiting arbitration hearings.

The current public health emergency precludes us from holding such hearings in person at the Courthouse. The Court has utilized advanced communication technologies, such as Zoom, to conduct other types of proceedings before Judges and individual Masters. However, attempting to transfer this strategy to conduct arbitration hearings presents significant obstacles that would be difficult or impossible to overcome. These obstacles include, but are not limited to, access to court filings by the arbitrators (non-parties), presentation of exhibits to three individual arbitrators, scheduling (arbitration chair would need to have access to Zoom and would need to actually schedule the hearings) and the transfer of scheduling information and dispositions to the Court for proper recording.

We know that most of these cases are ultimately resolved by settlement. We believe that having attorneys review their files and by facilitating meaningful discussions it will result in a significant number of these cases being resolved. Because the Court lacks sufficient judicial resources to have a Judge preside over settlement conferences, the Court has appointed ten Judges Pro Tem to address arbitration cases.

II. Appointments of Judges Pro Tem

The Court has selected ten attorneys who have been chosen jointly by the Court and Bar Association Leadership as Judges Pro Tem. The appointment is temporary and will be revoked upon the discontinuance of the program. Each Judge Pro Tem will be assigned an inventory of arbitration cases which will be scheduled for a mandatory settlement conference.

III. Procedure

A. Identification and Assignment of Cases

Court Administration will identify an initial pool of 100 arbitration cases from the arbitration inventory. The cases chosen for the program will be those with the earliest praecipe date. Ten cases will be assigned to each Judge Pro Tem for mandatory settlement conference. The Judge Pro Tem shall advise the Court of any potential conflicts and cases would be appropriately reassigned.

B. Notice of Assignment of Arbitration Cases

Court Administration shall send Orders to Attend Arbitration Settlement Conference to counsel and unrepresented parties from those cases identified pursuant to Paragraph A. above setting forth the following:

1. Name of assigned Judge Pro Tem
2. Order that the Arbitration Settlement Conference is mandatory, and that Counsel and parties shall appear by videoconference and be prepared to discuss settlement of the case.
3. Order for Counsel and parties to provide contact information to the Judge Pro Tem.
4. Order that Counsel and individuals with settlement authority shall attend the videoconference and shall have knowledge of the case as well as access to any parties including insurance adjustors if applicable, who are necessary to authorize settlement, and that the attorney appearing before the Judge Pro Tem shall be the same attorney who will handle the arbitration in the event that the matter does not settle.
5. Order for Counsel and unrepresented parties to provide a pretrial memorandum which shall contain the information required by Pa.R.C.P. 212.2 (a)(7) and M.C.R.C.P 212.2(a)(7) which shall be delivered electronically to the assigned Judge Pro Tem at least seven days prior to the scheduled date of the videoconference, and that the Judge Pro Tem is authorized to request additional documentation and that Counsel and unrepresented parties shall be required to provide the same if requested to do so.

C. Scheduling of Arbitration Settlement Conference

Following assignment of the case, the assigned Judge Pro Tem shall send a Scheduling Order to counsel and unrepresented parties setting forth the following:

1. Date and time of videoconference
2. Link, password and other information to facilitate connection to the conference via Zoom
3. Email address to which the pretrial memorandum shall be forwarded

D. Conference

Attendance at the settlement conference is mandatory. Counsel and parties shall come prepared to discuss settlement of the case. Following the conference, if the case is settled, the Judge Pro Tem will advise the Court and an appropriate Order will be entered. If the case is not settled, the case will return to the arbitration list until hearings resume.

IV. Review

The Court will review the process as it unfolds. If necessary, the protocol may be adjusted. If the program is successful, additional cases will be scheduled and it is possible that additional individuals will be named as Judges Pro Tem.

V. Acknowledgment

The Court would like to thank all of the individuals who weighed in on this proposal, both in terms of suggesting the frame work of the program and the assisting in the implementation. We specifically note the invaluable assistance of Leno Thomas, Esquire and Montgomery Bar Association Executive Director Denise Vicario.