

Procedures of the Arbitration Program for the Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION DEPARTMENT

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1. Introduction and Scope

The Arbitration Program of the Eastern District of New York operates under the auspices of the Court and is governed by [local Rule](#) 83.7. These procedures were created for the management of the program and do not vest any rights in litigants or their attorneys. By participating in court-annexed arbitration, parties are charged with knowledge of the local rules and the procedures of the Arbitration Program. These procedures are subject to amendment to meet the needs of the Court and litigants.

2. Referral

- a. Arbitration is compulsory for civil cases where money damages being sought do not exceed \$150,000.00 (excluding Social Security cases, tax matters, prisoners' Civil Rights cases and any action based on an alleged violation of a right secured by the Constitution of the United States or if jurisdiction is based in whole or in part on Title 28 U.S.C. S 1343).
- b. Parties must indicate whether a case is eligible for arbitration when completing the Civil Cover Sheet.
 - i. Cases marked eligible will be referred to arbitration, and
 - ii. Cases where the form is blank and the ADR Department or judge determines the case is eligible will be referred to arbitration.
 - iii. Note: Damages will be presumed to be less than \$150,000 if the parties do not certify the damages on the civil cover sheet/in their complaint. Certification of damages must take place within 30 days of the docketing of the case in this district.
- c. Matters with pro se parties are not eligible for arbitration.
- d. The ADR Department or judge will refer eligible cases to arbitration. Parties may also appeal to the presiding judge to refer their case to arbitration. The hearing date will not be set until the answer is filed.
- e. The Court may *sua sponte* or on motion of the parties exclude an eligible case from arbitration if the case presents complex or novel legal issues, if legal issues predominate over factual issues, or for other good cause. Application by a party for an exemption from compulsory arbitration must be submitted no later than 21 days after receipt of the notice to counsel setting forth the date and time for the arbitration hearing.

3. Hearing Date and Arbitrator Selection

- a. The arbitration hearing date is scheduled by the ADR Department on a date no more than 120 days after the answer is filed. If there are multiple parties, the hearing date will not be set until the last answer is filed. The hearing date will be added to the court docket, and parties will be notified of the hearing date via ECF.
- b. Parties may agree to an earlier date for arbitration if they notify the ADR Department within 30 days of the filing of the notice setting the hearing date.
- c. Parties will have 90 days to complete discovery from the date of the notice setting the hearing date. This period can be adjusted by the presiding judge.

- d. Arbitration will not commence until 30 days after the disposition of a motion to dismiss, a motion for judgment on the pleadings, a motion to join necessary parties, or a motion for summary judgment.
 - e. If a third party is added to the action, the notice setting the arbitration hearing will not be filed until an answer is filed by the third party.
 - f. The 120 day and 30 day period in (a) and (b) above may be altered by the Court for good cause.
 - g. The selection of arbitrator must be filed within 30 days of the notice setting the arbitration hearing. Parties must confer to select their arbitrator. Arbitrator's bios and contact information are available on the Court's website: <https://www.nyed.uscourts.gov/adr/index.cfm?adr=a>.
 - h. Once agreed upon, the parties must contact the arbitrator and confirm their availability to serve on the date set by the Court. The parties must then fill out the [Selection of Arbitrator](#) Form. The ADR Department will file the Selection of Arbitrator on the docket.
 - i. If the parties cannot agree upon an arbitrator before the selection period has ended, they must contact the ADR Department for assistance. Parties who have not contacted the ADR Department for help with selection by the end of the 30 day period will be assigned an arbitrator from the panel.
 - j. Arbitrators shall disqualify or recuse themselves in any action which they would be required to if they were a justice, judge or magistrate. The arbitrator must promptly disclose in writing to all parties any concern the arbitrator may have that a conflict of interest might exist.
 - k. If the arbitrator or parties have concerns that a conflict may exist, please notify the ADR Department in writing (via e-mail at nyed_arbitration@nyed.uscourts.gov) of the nature of the conflict.
 - l. In the event an arbitrator must recuse themselves due to a conflict, parties will be responsible for selecting another arbitrator and must file a new [Selection of Arbitrator](#) Form.
4. Adjournment Requests
- a. All requests to adjourn an arbitration hearing, including requests made to the arbitrator, are to be filed via ECF, with a copy e-mailed to the ADR Department at nyed_arbitration@nyed.uscourts.gov. The motion should specify the new hearing date (if one has been selected) and the availability of the arbitrator to hear the case on the new hearing date.
 - b. The arbitrator may grant one 30 day adjournment. The hearing must be rescheduled to occur within 30 days of the originally scheduled hearing date. Subsequent adjournment requests must be addressed to the presiding judge and filed via ECF on the court docket and be approved by the judge.
 - c. All requests to adjourn a hearing must be submitted in writing at least 14 days prior to the scheduled hearing.

- d. Parties must promptly report settlement to the ADR Department and arbitrator. A delay in reporting settlement once an arbitrator has been appointed may result in penalties.

5. Arbitration Hearing

- a. Hearings may take place at any location, or in any format, agreed to by the arbitrator and the parties. If the parties cannot agree on a location or format, they must contact the ADR Department for assistance.
- b. Panel arbitrators may reserve rooms in the Courthouse for EDNY annexed arbitrations.
 - i. Please email the ADR Department at nyed_arbitration@nyed.uscourts.gov at least three days before the hearing to reserve space.
 - ii. Electronic Devices in the Courthouses: All visitors to the courthouses in the Eastern District of New York will be screened for security purposes. Attorneys presenting appropriate verification of bar membership may bring electronic devices into the courthouse pursuant to [Administrative Order 2025-02](#).
- c. Hearings may proceed in the absence of a party who, after notice, fails to appear.
- d. If a party fails to participate in a meaningful manner, the Court may impose sanctions, including, but not limited to, the striking of any demand for a *trial de novo* filed by that party.
- e. Federal Rule of Civil Procedure 45 applies to subpoenas for attendance of witnesses and the production of documentary evidence at a hearing.
- f. Testimony at a hearing must be under oath or affirmation.
- g. The Federal Rules of Evidence serve as a guide for admissibility of evidence. All exhibits must be marked and provided to opposing counsel 14 days before the hearing. Objections to the admission of evidence must be made 7 days before the hearing. Absent objection, the arbitrator will receive the exhibits as evidence. Arbitrators may exclude evidence that has not been presented to opposing counsel.
- h. Parties may have the hearing transcribed at their own arrangement and expense.

6. Arbitration Award and Judgment

- a. The arbitration award is a short form award completed by the arbitrator. The arbitrator may find for plaintiff and provide the amount awarded (plus fees and costs if applicable); for the defendant dismissing the matter; or “other.” The “other” category can be used if there are multiple parties or if more space is needed. The award does not include a reasoned opinion.
- b. The arbitration award must be completed and returned to the ADR Department via email at nyed_arbitration@nyed.uscourts.gov within 7 business days of the hearing.
- c. Unless a party has moved for a *trial de novo* as explained below, the award is entered as judgment after the 30 day period for requesting a *trial de novo* has expired.

- d. The judgement entered has the same force and effect as a judgment in a civil action, except that it is not appealable.
- e. In cases with multiple parties and claims, any segregable part of the award for which a party has not timely demanded a *trial de novo* shall become part of the final judgment.
- f. The award is not filed on the docket and may not be seen by the presiding judge
 - i. Unless it is needed to determine whether to assess costs or attorney's fees;
 - ii. Until the district court has entered a final judgement or the action has otherwise terminated; or
 - iii. For use in a report required by section 903(b) of the Judicial Improvement and Access to Justice Act.
- g. Costs may be taxed as part of an arbitration award.

7. Trial De Novo

- a. The parties have 30 days from the entering of the arbitration award to move for a *trial de novo*.
- b. Parties are instructed not to include or attach the arbitration award with the motion for a *trial de novo*.
- c. Once a party has moved for a *trial de novo* and paid the fee (see below), the matter is returned to the litigation track. No information or evidence presented at the hearing will be used at trial.
- d. Upon making a demand for trial de novo the moving party must, unless permitted to proceed in forma pauperis, deposit with the clerk of the court an amount equal to the arbitration fees of the arbitrators. This sum is returned to the party demanding a trial de novo if that party obtains a final judgment that is more favorable than the arbitration award.

8. Compensation and Expenses of Arbitrators

- a. EDNY Arbitrators provide an invaluable service to the Court and litigants. Their service both increases the accessibility litigants have to ADR and reduces the number of cases that must proceed with traditional litigation.
- b. Panel Arbitrators are compensated by the Court at a rate set by [local rule](#). Currently, arbitrators are compensated \$250 per case. If the arbitrators are serving on a three-arbitrator panel, each arbitrator is compensated \$100. If the hearing is protracted, the arbitrator may appeal to the presiding judge for additional compensation.
- c. After the hearing, the arbitrator will complete the arbitration award and Certification of Services Rendered (forms available on the [Court's website](#)) and email them to the ADR Department at nyed_arbitration@nyed.uscourts.gov.
- d. The arbitrator is instructed not to enter the award on the docket.
- e. The ADR Department will file a notice of the award on the docket and will contemporaneously email parties the award.

9. Procedures Regarding Panel Arbitrators

An individual may apply to join the Arbitration Panel if he or she satisfies the following criteria:

- a. Is a member in good standing for at least five years of the bar of any United States District Court,
- b. Is admitted to practice in the EDNY,
- c. Has arbitration training,
- d. Provides two letters of reference, and
- e. Is willing to participate in orientation, training, mentoring programs, and ongoing assessments as detailed below in 11(b) and 13.

10. Arbitration Panel Application Process

- a. Arbitration Panel applications are collected from January until the end of March each year using the electronic application on the Court's website. Incomplete applications are not considered.
- b. Applications are reviewed in April and individuals will be notified if they have been selected for an interview. Please note that the Court cannot accept all applicants who meet the above criteria, and that the current needs of the Court will be considered when selecting arbitrators.

11. Service as an Arbitrator

- a. An individual may serve as an arbitrator once he or she has been certified by the Chief Judge, the ADR Oversight Judge, or his or her designee to be competent to perform the duties of an arbitrator for this Court.
- b. Panel arbitrators must attend an orientation session where they will take the oath or affirmation prescribed by 28 U.S.C. § 453.
- c. Arbitrators serve for a three-year term, subject to renewal.
- d. Unless the Administrator of the ADR Program approves otherwise, arbitrators who join the Court's Panel are expected to meet the following criteria to remain on the Panel:
 - i. Membership in good standing of the bar of any United States District Court,
 - ii. Attend at least one continuing education program in ADR each year,
 - iii. Participate in ongoing assessment as determined by the ADR Administrator, and
 - iv. Obey all directives of the Arbitration Program.
- e. All arbitrators listed on the Panel are assumed to be available to accept cases. It is the arbitrator's responsibility to contact the ADR Department if they cannot accept cases for a discrete period of time by emailing the ADR Department at nyed_arbitration@nyed.uscourts.gov with the start and end dates.
- f. Repeated (three or more) rejection of assignments (for reasons other than conflicts) may result in removal from the Panel.

- g. Arbitrators must promptly notify the ADR Administrator if they are the subject of disciplinary investigations/proceedings for their professional conduct.
- h. Arbitrators are required to inform the ADR Department of a change in their contact information listed on the Court's website by emailing nyed_arbitration@nyed.uscourts.gov with the corrected information.

12. Code of Conduct

The code of conduct below applies to every arbitrator on the Panel.

- a. As representatives of the Eastern District of New York, arbitrators should at all times be professional, respectful, and measured in all of their communications related to the arbitration.
- b. Arbitrators should ensure that parties understand that they serve as neutrals, not advocates or representatives.
- c. This code of conduct also applies to prospective Panel Members, observers, or others accessing the Arbitration Program.

13. Complaints about Arbitrators

The following protocol is used when the ADR Department receives a complaint about an arbitrator. The Administrator of the ADR Program will first gather information from the relevant parties, attorneys, judges, observers, or others. The ADR Administrator will then contact the arbitrator to discuss the complaint or concern. In most matters, the complaint will be considered addressed after this process.

- a. If the complaint is not resolved, is serious, or part of a larger pattern, the ADR Administrator and arbitrator will meet to address remediation. A remediation plan will be developed on a case-by-case basis and may include being observed or observing arbitrations, attending training, or participating in simulations. The arbitrator may be suspended from the Panel during this remediation period. The ADR Administrator will meet with the arbitrator at the end of this period to assess their ability to rejoin the Panel.
- b. If an arbitrator refuses to participate in the remediation process, they will be removed from the Panel.
- c. If further complaints persist after the remediation period, the ADR Administrator and arbitrator will meet to discuss additional remediation, or the arbitrator may be removed from the Panel.

14. Complaints about Counsel

The ADR Department maintains a record of each complaint made against counsel including the name of the attorney, the date of the complaint, the nature of the complaint, and the name of the complainant. All complaints about parties should be made to the ADR Administrator.

- a. The following protocol will be used when the ADR Department receives a complaint about an attorney participating in arbitration:

- i. The ADR Administrator will contact the complainant and the attorney to discuss the complaint. In most matters, the complaint will be considered addressed after this process.
 - ii. If the ADR Administrator determines that further action is needed, the ADR Administrator will provide written notice to the attorney with directions for responding to the complaint. The notice will include the nature of the violation and the consequences.
 - iii. Serious or continued complaints will be brought to the attention of the ADR Oversight Judge.
 - iv. Serious or continued complaints may result in being prohibited from using the Arbitration Program.
- b. The ADR Oversight Judge will adjudicate allegations of counsel misconduct in arbitration sessions. Parties must contact the ADR Administrator to commence this process.

15. Complaints about the Arbitration Program or Administrator

- a. Complaints by an arbitrator or a participant about the Arbitration Program or procedures should be made to the ADR Administrator. If the complaint is not resolved, the complainant may contact the ADR Oversight Judge.
- b. Complaints about the ADR Administrator should be made to the ADR Oversight Judge.

16. Resignation or Removal from the Arbitration Panel

Arbitrators may resign from the Panel at any time by notifying the ADR Department.

The Administrator of the ADR Program may remove arbitrators from the Panel for:

- a. Failing to meet the requirements of 11(b) & (d), or
- b. Violating the code of conduct in 12,
- c. Failing to address complaints in 13 (b) & (c),
- d. Violating other procedures promulgated by the ADR Department, or
- e. Based on complaints, observations or communications with parties that indicate that an arbitrator is no longer conducting himself/herself in a way that is appropriate for the Arbitration Program.

17. Immunity and Liability Insurance

- (a) Panel Arbitrators are immune from liability or suit with respect to their conduct in court-annexed arbitration as provided in [local Rule](#) 83.7(c).