UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FILED

JUN 25 1987

AT 8:30 M
WILLIAM T. WALSH
CLERK

In the Matter of the :
Plan Pursuant to Speedy : ORDER
Trial Act of 1974 :

It is on this 25TH day of June, 1987, for good cause shown,

ORDERED that Section II, subsection 6(a) of the District Plan for prompt disposition of criminal cases pursuant to Speedy Trial Act of 1974, as amended 1979 -- 18 U.S.C. §3165(e)(3), be amended to read:

6. Exclusion of Time From Computations.

(a) Applicability. In computing any time limit under Sections 3, 4 or 5, the periods of delay set forth in 18 U.S.C. §3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under Section 7. In determining excludable time under 18 U.S.C. §3161(h)(1)(F), 90 days will be the maximum time excluded, unless the Court orders a hearing on the motion or additional extensions of time for filing briefs are specifically allowed by the Court. If the Court orders a hearing on the motion or additional extensions of time for filing briefs are allowed, the time consumed thereby shall be excluded only if the Court makes a specific and approximately contemporaneous determination that such delays are reasonably necessary to make the motion ready for judicial determination.

This amendment is effective this date.

CLARKSON S. FISHER
Chief Judge

UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW JERSEY

FILED

JUN 25 1987

AT 8:30 M
WILLIAM T. WALSH
CLERK

IN RE: GENERAL RULES
OF THE COURT

ORDER

On the Court's own motion and for good cause shown,

IT IS on this 25th day of June, 1987,

ORDERED that General Rules 5 (Designation of Local Counsel), 8A (Filing of Papers, Form), 12C (Application; Motions and Arguments), 15C (Discovery), 23A (Costs), 30A (Dismissal of Inactive Cases), 35F (Bail, Other Security, and Deposits in Court) and 40D (United States Magistrates) shall and hereby are amended as follows:

Rule 5. Designation of Local Counsel

No member of the bar of this Court not maintaining an office within the District of New Jersey for the regular transaction of business shall appear as attorney of record for any party in any case without designating, in all notices, orders and pleadings a member of the bar of this Court maintaining a bona fide office within the District of New Jersey upon whom all notices, orders and pleadings may be served, in accordance with the Rules and practices of this Court, and who may be required to attend before the Court, Clerk, or other officer of the Court.

Rule 8. Filing of Papers, Form

A. The initial pleading, motion, or other paper of any party filed in any cause other than criminal actions in this Court shall state in the first paragraph the street and post office address of each named party to the case or, if the party is not a natural person, the address of its principal place of business. If a pleading, motion, or other initial paper submitted for filing in a case does not contain

the street and post office address of counsel, their client(s) or unrepresented parties, it may be struck by the Clerk and returned to the submitting party by the Clerk unless a statement why the client's address cannot be provided at this time is presented. Counsel and/or unrepresented parties must advise the court of any change in their or their client's address within five (5) days of being apprised of such change by filing a notice of said change with the Clerk. Failure to file a notice of address change may result in the imposition of sanctions by the Court.

Rule 12. Applications; Motions and Arguments

C. Motion Practice -- Generally

All other applications by notice of motion or otherwise shall be made returnable on a regular argument day before the Judge to whom the case has been assigned.

All motions filed shall have annexed thereto a proposed order. In the event the proposed order is not adequate, the prevailing party, upon direction of the Court, shall submit an order within five days of the ruling on the motion on notice to his or her adversary. Unless the Court otherwise directs, if no specific objection to that order with reasons therefor is received within 7 days of receipt by the Court, the order may be signed. If such an objection is made, the matter may be listed for hearing at the discretion of the Court.

Rule 15. Discovery

C. Discovery Motions

1. Motions pertaining to discovery must be designated as such on the front cover page of the motion and must be accompanied by a separate affidavit certifying that the moving party has conferred with counsel for the opposing party in an effort in good

faith to resolve by agreement the issues raised by the motion without the intervention of the Court and has been unable to reach such agreement. The affidavit shall set forth the date and method of communication used in attempting to reach agreement on the subject of the motion. If some of the issues raised by the motion have been resolved by agreement, the affidavit shall specify both those issues and the issues remaining unresolved.

Rule 23. Costs

A. Within 30 days after the entry of judgment allowing costs, or within 30 days of the filing of an order dispositive of the last of any timely-filed post-trial motions, whether or not an appeal has been filed, the prevailing party shall serve on the attorney for the adverse party and file with the Clerk a Bill of Costs and Disbursements, together with a notice of motion when application will be made to the Clerk to tax the same.

Rule 30. Dismissal of Inactive Cases

A. Civil cases, other than bankruptcy matters, which have been pending in the Court for more than 120 days without any proceedings having been taken therein may be dismissed for lack of prosecution by the Court (i) on its own motion, or (ii) on notice from the Clerk. Notice shall be provided by the Clerk of either action contemplated above under sub-paragraphs (i) and ii) to counsel, their client(s) and/or unrepresented persons who have appeared.

Rule 35. Bail, Other Security, and Deposits in Court.

F. Deposit in Court Pursuant to Rule 67 of the Civil Rules

1. Order for Deposit -- Interest Bearing Account

Whenever the Court orders (pursuant to F.2. below) that money deposited into Court shall be deposited by the Clerk in an interest-bearing account, the party seeking the order shall personally serve a copy of such order upon the Clerk, Chief Deputy Clerk, Deputy-in-Charge, or Chief Financial Deputy forthwith.

2. Orders Directing the Investment of Funds by the Clerk

Any order obtained by a party or parties in an action that directs the Clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the Court pursuant to 28 U.S.C. Sec. 2041 must substantially comply with the form of order at Appendix D of these rules, and shall include the following:

(See Form of Required Order at Appendix D.)

Rule 40. United States Magistrates

D. Appeals from Judgments and Other Orders

4. Appeals from Non-Dispositive Orders

(a) Any party may appeal from a Magistrate's determination of a non-dispositive matter within 10 days after entry of the Magistrate's order, unless a different time is prescribed by the Magistrate or Judge. ...

The foregoing amendments shall be effective August 1, 1987.

CLARKSON S. FISHER
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

:

: Civil Action No. _____

:

:

:

Application for an Extension of Time to Answer, Move or otherwise Reply
(General Rule 13.B)

Application is hereby made for a Clerk's Order extending time within which defendant(s) _____

_____

may answer, move or otherwise reply to Complaint filed by plaintiff(s) herein and it is represented that:

1. No previous extension has been obtained;
2. Service of Process was effected on _____ _____; and
3. Time to Answer, Move or otherwise Reply expires on _____ (date)

_____
Attorney for Defendant(s)

Address: _____
_____

ORDER

The above application is ORDERED GRANTED.
ORDER DATED _____

WILLIAM T. WALSH, Clerk

By: _____
Deputy Clerk

(APPENDIX L)

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

GUIDELINES FOR ARBITRATION

Office of the Clerk

May 1, 1985
Revised: July 11, 1985
Revised: February, 1987

I. Case Management Responsibility of the Assigned District Judge

The referral of civil actions to the Arbitration Program, pursuant to General Rule 47 B, does not divest the assigned District Judge and Magistrate of the responsibility for exercising overall management control over a case during the pendency of the arbitration process, nor does it preclude the parties from filing pretrial motions or pursuing discovery.

The management of cases referred to arbitration will continue to be subject to this Court's procedures regulating discovery and other pre-trial matters, the applicable Federal Rules of Civil Procedure, and the General Rules of the Court. As in other cases, the dates for concluding pretrial discovery (including expert discovery) will be set at the Scheduling Conference under Rule 16(b), Fed. R. Civ. P., and the parties will be required to complete all pretrial discovery before the arbitration hearing. Unlike other cases, these dates will not be extended except where a new party has been joined recently or an exceptional reason is presented to the Judge or Magistrate. Extended discovery and the final pre-trial conference will be eliminated. This means that approximately one (1) month following the filing of the last answer plus a 120 day discovery period, or at such other date as set by the Scheduling Order, the case will be set for arbitration through the Arbitration Clerk.

This procedure provides litigants with a prompt and less expensive alternative to the traditional courtroom trial and relieves the heavy burden of the constantly increasing case load. The Court intends for the resulting arbitration hearing to be similar in purpose to a bench trial but without the formality required by the Federal Rules of Evidence.

II. Arbitrator's Responsibility for Managing the Arbitration Hearing Process

Although the assigned District Judge retains overall responsibility for cases referred to the arbitration program, the Court delegates authority to the arbitrator to control and regulate the scope and duration of the arbitration hearing, including:

(1) Ruling upon the admissibility of testimonial evidence.

(2) Ruling upon the admissibility of documentary evidence.

(3) Ruling upon the admissibility of demonstrative evidence.

(4) Ruling upon objections to evidence.

(5) Ruling upon requests of counsel to excuse individual parties or authorized corporate representatives from attending the arbitration hearing.

(6) Commencing the hearing in the absence of a party.

(7) Limiting the time for presentation of evidence and summary arguments by a party.

(8) Compelling the presence of witnesses, if desirable.

(9) Swearing witnesses.

(10) Adjourning the arbitration hearing to a date certain, not to exceed 30 days from court order date, to accommodate lengthy proceedings or an unavailable witness, whom the arbitrator determines to be essential to the proceedings.

(11) Preparing the Arbitration Award.

The scope of delegation to the arbitrator does not include the powers to:

(1) Exercise civil or criminal contempt.

(2) Continue the hearing for an indefinite period.

Arbitrator as Adjudicator. The arbitrator's role is as a non-jury adjudicator of the facts based upon evidence and arguments presented at the arbitration hearing. The arbitrator is not a mediator, and the arbitrator shall not convene a settlement discussion at any point in the arbitration process unless all litigants have first explicitly requested the arbitrator to preside over settlement discussions. The arbitrator may decline the parties' request for a settlement discussion if the arbitrator believes that such participation would bring his or her own impartiality into question if the matter is arbitrated. The Court expects that the arbitrator and counsel shall strive at all times to preserve the essential functions of a finder of facts at a hearing which, though less formal than a trial, nonetheless inspires similar confidence in the objectivity and validity of the fact-finding process.

III. Suggested Format for the Presentation of Evidence at Arbitration Hearings

The court intends that attorneys shall be prepared to present evidence through any combination of exhibits, affidavits, deposition transcripts, expert reports and, if desirable, live testimony. The Court further expects that testimonial evidence shall be limited to situations involving issues of credibility of witnesses. Evidence shall be presented primarily through the attorneys for the parties, who may incorporate arguments on such evidence in their presentation. Expert opinion may normally be presented through written reports, although live expert testimony is desirable where helpful to resolving profound differences of opinion between such experts through direct and cross-examination. In a general sense, the Court envisions this presentation process to be somewhat similar to a combination of opening and closing arguments augmented by live testimony where necessary to aid the arbitrator's fact-finding function.

In developing their arguments, counsel may present only factual representations supportable by reference to discovery materials; to a signed statement of a witness; to a stipulation; to a document; or by a representation that counsel personally spoke with the witness and is repeating what the witness stated.

Arbitrators and counsel are reminded that General Rule 47 E.5 notes that the Federal Rules of Evidence shall be employed as a guide; however, the Rules should not be construed in a manner to preclude the presentation of evidence submitted by counsel in the fashion discussed above. General Rule 47 E.5 further

requires, "Copies of photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 10 days prior to the hearing ..." To facilitate this exchange, counsel may obtain exhibit stickers from the Clerk's Office. Copies of all exhibits exchanged must also be forwarded to the arbitrator at least 10 days prior to the hearing.

With respect to the admissibility and subsequent use of evidence offered at an arbitration hearing, counsel are reminded that General Rule 47 G.2 provides:

> "Upon the filing of a demand for trial de novo ... the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration...."

Therefore, neither the fact that the case was arbitrated nor the amount of the arbitrator's award is admissible. However, testimony given upon the record of the arbitration hearing may be used to impeach the credibility of a witness at any subsequent trial de novo. In light of the limitation placed by the Court upon the use of exhibits at subsequent Court proceedings, the arbitrator should return all exhibits to counsel at the conclusion of the arbitration hearing.

IV. **Attendance of Parties; Participation in a "Meaningful Manner"**

Although General Rule 47 E.3 provides for the arbitration hearing to proceed in the absence of any party, the Court has determined that the attendance of the parties and/or corporate representatives is essential for the hearing to proceed in a meaningful manner. The goals of the arbitration program and the authority of the Court will be seriously undermined if a party were permitted to refuse to attend an arbitration hearing and then demand trial de novo. Accordingly the Court has, in the same rule, allowed for the imposition of "appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo" filed by a party who fails to participate in the arbitration process in such a "meaningful manner." Failure by a party or counsel to follow these Guidelines will also be considered in determining whether there has been meaningful participation in the process.

V. **Stenographic Transcript**

A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necesary arrangments for same and shall bear all expenses so incurred.

VI. **The Arbitration Procedure - A Summary**

Upon receipt of the Order referring the case to arbitration and appointing an arbitrator, counsel for plaintiff shall promptly forward to the arbitrator copies of all pleadings

including any counterclaim or third party complaint and answers thereto. Thereafter, and at least ten (10) days prior to the arbitration hearing, each counsel shall comply with General Rule 47 E.5 by delivering to the arbitrator and to adverse counsel premarked copies of all exhibits, including expert reports and all portions of depositions and interrogatories, to which reference will be made at the hearing (but not including documents intended solely for impeachment). Failure to timely submit such exhibits may be deemed a failure to meaningfully participate in the process under General Rule 47E.3.

The arbitrator will have reviewed the pleadings prior to the arbitration hearing. At least one week prior to the scheduled date of the arbitration hearing, the arbitrator should conduct a conference call with the attorneys to determine whether live testimony will be necessary and who the witnesses will be.

The following is presented as a example of the agenda for a typical arbitration hearing; however, the arbitrator is empowered to define the scope and sequence of events at the hearing.

(1) Convening of the arbitration hearing and introduction of the arbitrator, counsel for the parties, and the parties.

(2) Brief procedural overview presented by the arbitrator.

(3) Opening statement by plaintiff's counsel.

(4) Opening statement by defendant's counsel.

(5) Presentation of evidence by plaintiff's counsel including, if desirable, live testimony.

(6) Presentation of evidence by defendant's counsel including, if desirable, live testimony.

(7) Summation by plaintiff's counsel.

(8) Summation by defendant's counsel.

(9) Adjournment of the arbitration hearing.

(10) Retirement of the arbitrator for deliberation and for documentation of the arbitration award.

VII. Scope of the Arbitration Award

The $75,000 limit of General Rule 47.C.4 is jurisdictional for the purpose of referring cases to the program pursuant to General Rule 47. However, once a case has been referred to the program, the actual award need not be limited to $75,000. The arbitrator's award may also make provision for interest and punitive damages if appropriate.

VIII Processing the Arbitration Award

At the conclusion of the hearing, the arbitrator shall promptly file the award with the Clerk. When the award is filed, the Clerk's Office will docket the fact of the award, leaving out the details, and mail a copy of the award to the arbitrator and counsel.

IX. Compensation of Arbitrators

In the event that an arbitration hearing is protracted, the District Judge to whom the matter is assigned may entertain a petition for additional compensation.

Although the Clerk's Office does not make any deductions from the compensation paid to arbitrators, it should be treated as ordinary income for tax purposes.