

ARBITRATION INSTRUCTIONS FOR COUNSEL AND PARTIES REMOTE

(last updated May 4, 2021)

1. **Referral to Arbitration**

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). Cases may also be referred to arbitration at the discretion of the Judge, or at the request of the parties.

2. **Arbitration Hearing Scheduling**

The arbitration hearing date will be scheduled by the Arbitration Clerk on a date occurring 120 days after the Answer is filed. The hearing date will be added to the court docket, and parties will be notified of the hearing date via ECF.

3. **Selection of Arbitrator**

Cases referred to the EDNY arbitration program are heard by one arbitrator. Counsel will select one arbitrator to hear the case from the EDNY panel of certified arbitrators. The names of the arbitrators and their areas of specialty are listed on the Court's website, here: <https://www.nyed.uscourts.gov/adr/>.

Upon selecting an arbitrator, 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 [Stipulation for Selection of Arbitrator](#) and forward the fully executed Stipulation to the Arbitration Clerk via e-mail submission to rita_credle@nyed.uscourts.gov. The Arbitration Clerk will file the Stipulation for Selection of Arbitrator on the docket.

If the parties cannot agree upon the selection of an arbitrator by the deadlines set forth by the Court, the Arbitration Clerk will assist the parties with a ranking process to appoint an arbitrator.

4. **Conflict of Interest and Disclosure**

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 counsel any concern the arbitrator may have that a conflict of interest might exist.

If the arbitrator or parties have concerns that a conflict may exist, please notify the Arbitration Clerk in writing (via e-mail) of the nature of the conflict.

In the event an arbitrator must recuse themselves due to a conflict, counsel will be responsible for selecting another arbitrator, and must file a new Stipulation for Selection of Arbitrator.

5. Adjournment Requests

All requests to adjourn an arbitration hearing, including requests made to the arbitrator, are to be filed via ECF, with a copy clearly marked “Courtesy Copy” e-mailed to the Arbitration Clerk at rita_credle@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.

The arbitrator may grant *one* thirty (30) day adjournment and the hearing must be rescheduled to occur within 30 days of the originally scheduled hearing date. Subsequent adjournment requests must be addressed to the Judge and filed via ECF on the court docket and be approved by the Judge.

All requests to adjourn a hearing must be submitted at least 14 days prior to the scheduled hearing.

6. Discovery

Upon referral into the arbitration program, parties will be notified that they have 90 days to complete discovery.

The arbitrator cannot extend the discovery period. Any requests to extend discovery must be filed as a motion via ECF. If a discovery dispute arises, or the parties wish to extend discovery, the parties must bring it to the attention of the Magistrate Judge assigned to the case. This can be done by filing a notice of the discovery dispute via ECF, with a copy clearly marked “Courtesy Copy” e-mailed to the Arbitration Clerk.

Copies or photographs of all exhibits, except those intended solely for impeachment, must be marked for identification and delivered to adverse parties at least fourteen (14) days prior to the hearing.

Arbitrators shall receive exhibits in evidence without formal proof unless counsel has been notified at least seven (7) days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. Arbitrators may refuse to receive in evidence any exhibit, a copy or photograph of which has not been delivered to the adverse party as provided in these instructions.

7. Rules of Evidence

The Federal Rules of Evidence are used as guidelines for the admissibility of evidence in arbitration hearings. Rule 45 of the Federal Rules of Civil Procedure applies to subpoenas for attendance of witnesses and the production of documentary evidence.

8. Attendance at Hearing

Arbitration hearings are being conducted remotely via video conference platforms until further notice. The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the arbitration process in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo filed by that party.

9. Witness & Hearing Participants

Counsel must jointly e-mail the arbitrator with a list of participants (including witnesses and certified court reporters) and their e-mail addresses, for the purpose of inviting and admitting them to the virtual arbitration hearing. Counsel is responsible for sending the original hearing invitation to the necessary participants.

Counsel should also ensure that all witnesses are given access to a complete set of unannotated exhibits by hardcopy or via a shared document server. All non-party witnesses must be sequestered until they testify.

10. Exhibits to Arbitrator

Prior to the hearing, counsel shall provide the arbitrator with an unannotated set of exhibits. The arbitrator will instruct counsel whether to send the exhibits as a hard copy or via a shared virtual document repository.

11. Arbitration Award

The arbitrator will submit the arbitration award to the Arbitration Clerk promptly after the hearing is concluded. The Arbitration Award is a confidential document. At the conclusion of the arbitration hearing, the arbitrator will not share the decision with counsel.

The Arbitration Clerk will convey the award to counsel via e-mail. The award will become a final Judgment of the Court, entered by the Clerk of Court, after the 30-day period for requesting de novo review has expired. The contents of any arbitration award shall not be made known to any Judge who might be assigned the case, except as necessary for the Court to determine whether to assess costs or attorney's fees or until the District Court has entered final judgment in the action or the action has been otherwise terminated.

12. De Novo Review

Within thirty (30) days after the arbitration award is entered on the docket, any party may demand, in writing, a trial de novo in the District Court. Such demand shall be filed with the Arbitration Clerk and served by the moving party upon all counsel of record or other parties. Withdrawal of a demand for a trial de novo shall not reinstate the arbitrators' award and the case shall proceed as if it had not been arbitrated. Upon making a demand for trial de novo the moving party shall, unless permitted to proceed in forma pauperis, deposit with the Clerk of the Court an amount equal to the arbitration fees of \$250.00.

13. Transcripts and Interpretation Services

A recording/transcript may be made of the hearing; the parties requesting the transcript must make the arrangements and bear the costs of the court reporting service.

If an interpreter is needed for the hearing, the parties should make necessary arrangements for a court certified interpreter and bear the expenses thereof.

14. Pro Se Litigants

If you are representing yourself and your case is filed in the Brooklyn Courthouse you may be eligible for free legal assistance from the Pro Se Legal Assistance Project operated by the New York City Bar Association. To schedule an appointment call: 212-382-4729 or visit their website at: <https://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/>

If you are representing yourself and your case is filed in the Central Islip Courthouse you may be eligible for free legal assistance from the Pro Se Legal Assistance Program operated by Hofstra Law School. To schedule an appointment call: 613-297-2575 or e-mail: pslap@hofstra.edu You may visit their website at: <https://proseprogram.law.hofstra.edu/>

15. Other Resources

Arbitration Clerk

Rita Credle

Phone: (718) 613-2325

E-mail: rita_credle@nyed.uscourts.gov

[EDNY Remote Guidelines for Arbitration Participants](#)