

INSTRUCTIONS TO ARBITRATOR

(Last Updated August 25, 2020)

Dear EDNY Panel Arbitrator,

Thank you for your service on the Eastern District of New York Arbitration Panel. Below are some basic guidelines to assist you with your upcoming arbitration assignment. If you have any questions, please do not hesitate to contact ADR Department, Rita Credle – email: Rita_Credle@nyed.uscourts.gov or by telephone at (718) 613-2326.

YOUR ARBITRATOR ASSIGNMENT

An arbitrator is jointly selected by counsel for both parties from the EDNY Arbitration Panel listing on the EDNY ADR Website here:
<https://www.nyed.uscourts.gov/adr/Arbitration/displayAllArb.cfm>.

Once selected, the parties will contact you directly to confirm your availability on the date, time and location of the hearing set forth on the docket. Upon confirmation of your availability, the parties will complete and send a fully executed Stipulation for Selection of Arbitrator to the ADR Coordinator for proper notification and entry onto the docket.

Once the Stipulation has been completed and returned to the ADR Coordinator, an Order for Appointment of Arbitrator will be signed by the judge and filed on the docket

Pleadings for the case can be obtained via a special PACER account set up for Mediators and Arbitrators in the EDNY. You may obtain the PACER information by contacting Rita Credle by phone or email.

CONFLICTS OF INTEREST

In reviewing whether a conflict of interests exists, you may follow the guidelines set forth in 28 U.S.C. section 455 – pages 5-6.

Your service is appropriate only if (1) no conflict of interest would compromise your impartiality, and (2) the appearance of your impartiality is not compromised. Please conduct a complete review the docket for any conflicts prior to accepting the appointment as arbitrator.

In the event a conflict of interest does arise, please notify Rita Credle via e-mail and indicate the nature of the conflict.

ARBITRATION HEARING SCHEDULING AND ADJOURNMENT REQUESTS

An arbitration hearing is scheduled by the ADR Department as soon as the Answer is filed. Parties are not permitted, under any circumstance, to adjourn the arbitration hearing without permission of the assigned arbitrator or judge. **Parties may be sanctioned for failing to**

properly follow adjournment procedures or for removing a scheduled hearing from the calendar without properly notifying the arbitrator, or the Court.

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” emailed attention Rita Credle. As an EDNY Arbitrator, you may grant *one* 30 day adjournment and the hearing must be rescheduled to occur within 30 days of the originally scheduled hearing date. Subsequent adjournments must be approved by the court.

When scheduling an adjournment, you may select a mutually acceptable date for the arbitration hearing with all counsel, however, the hearing date must be cleared for the purpose of room availability. Please do not send notices scheduling/rescheduling a hearing to be held at the courthouse before you check for an available room.

If the hearing will be held at your office or at a mutually agreeable office of counsel, please advise in writing. Counsel will be required to follow up in writing with the new hearing date and location of the hearing. Telephone calls to adjourn an arbitration hearing are not permitted and will not be accepted.

On occasion an arbitration hearing date may be scheduled by a judge. **When an Arbitration hearing has been scheduled by a judge, you may not adjourn the hearing.** Instead, the parties are instructed to file a request to adjourn the hearing returnable before the judge assigned to the case. The request must be filed via ECF at least 48 hours before the scheduled hearing. No postponement of a hearing date set by a judge (however brief) will be permitted absent an Order of the Court.

You may require the parties to attend the hearing as scheduled if a formal request to adjourn does not appear on the docket.

Be mindful that a request to adjourn a scheduled Arbitration hearing beyond *any* 30 day period must be approved by the Court and filed via ECF. The request must be filed at least 48 hours in advance of the hearing.

HEARING LOCATION

Arbitration hearings may take place at the EDNY Brooklyn or Central Islip Courthouses. Counsel or the arbitrator should contact the ADR Coordinator for a room assignment at least 48 hours in advance of the arbitration hearing by telephone or by email.

Arbitration hearings may also be conducted at the arbitrator offices, or a location that is acceptable to both the arbitrator and all counsel. Written notice of the location, date and time of the hearing should

Be sent to the ADR Coordinator in writing.

PRE HEARING SUBMISSIONS AND EVIDENCE

Upon referral into the arbitration program, counsel are notified that they have 90 days to complete discovery. The Federal Rules of Evidence shall be used as guides to the admissibility of evidence for arbitration hearings. 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. The 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 herein.

Rule 45 of the Federal Rules of Civil Procedure applies to subpoenas for attendance of witnesses and the production of documentary evidence. Testimony at an arbitration hearing shall be under oath or affirmation.

DOCUMENTS

In preparation for the hearing, you will receive the following documents:

1. Arbitration Award Form
2. Certification of Services Rendered
3. Oath of Arbitrator
4. Oath For Witness – Oath to be administered to witnesses at the hearing
5. Notice of Appearance - to be filled out by counsel at the hearing

These forms are also available at the Court's ADR Website Here:

<https://www.nyed.uscourts.gov/adr-forms>

All forms are to be returned to Rita Credle by e-mail or regular mail at the conclusion of the hearing.

ARBITRATION AWARD

The arbitration award should be e-mailed or mailed to Rita Credle promptly after the hearing concludes.

The ADR Department will distribute the award to counsel via e-mail. Arbitration awards must be kept confidential and are maintained by the ADR Department.

It is imperative that the arbitration award is not made known to any judge assigned to the case. The award should not be entered onto the docket. The award will become a final judgment of the Court after 30 days unless a party files a demand for a trial de novo.

TRANSCRIPTS AND INTERPRETATION SERVICES

A recording/transcript may be made of the hearing; the parties should make the necessary arrangements and bear all expenses thereof.

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

SETTLEMENTS

If the parties report that a case has been settled prior to the scheduled arbitration date, please advise Rita Credle by telephone or email. Please also inform counsel that it is the responsibility of the parties (not the Arbitrator) to file proper notification of settlement to the court.

ARBITRATOR COMPENSATION

EDNY Arbitrators receive a flat fee of \$250.00 per case. Arbitrators that serve on a panel of three arbitrators will receive a flat fee of \$100 per case. If an arbitration hearing is protracted, the certifying Judge may entertain a petition for additional compensation.

In order to receive payment make sure you complete and return the attached DUNS information form if you have not already done so.

If you have questions regarding completing the DUNS form, please contact: James Guzman at: 718-613-2245.

Contact: Rita Credle – ADR Coordinator
U.S. District Court, EDNY
225 Cadman Plaza East
Brooklyn, NY 11201
(718) 613-2326
Email: rita_credle@nyed.uscourts.gov

28 § 455. Disqualification of Justice, Judge, or Magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material Witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceedings;

(iii) Is, known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his *household*.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization,

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No Justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record.