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Hon. Glenn A. Grant
Administrative Director of the Court
comments.mailbox@njcourts.gov

Re: Comments on A Proposal to Require Submission of Arbitration Statements to the Arbitrator Before the Hearing.

Your Honor:

Thank you for the opportunity to comment on proposed changes to Rule 4:21A-4(a) pursuant to the Notice to the Bar dated October 6, 2022.

I frequently litigate for plaintiff in commercial cases that are scheduled for arbitration. Most of my arbitrations have been in the Superior Court in the Essex County vicinage. I have appeared for both in person and remote arbitrations many of which have involved pro se parties in opposition. My practice has been to submit email copies of my arbitration statements to the arbitrator prior to remote hearings even when the court does not require it. I do this simply because the pre-hearing information includes the contact information for the arbitrator. I have come to expect that most pro se opposing parties will not submit a written arbitration statement even though the hearing notice requires one. In years past I routinely mailed a copy of my statement to the vicinage arbitration administrator, but I found that it rarely found its way to an arbitrator prior to the hearing. My comments below are based on that experience.

1. I favor early submission of materials to the arbitrator all other things being equal. It never hurts for information to get to a hearing officer in advance of the hearing. Arbitrators who are pre-assigned for remote hearings are in an especially good position to benefit from having the statements early. It is also trivially easy for a party to send its statement for a remote hearing either by email (my preference) or mail. So, I favor a procedure that provides a means of getting advanced copies of my arbitration statement to an arbitrator.

2. If the arbitration statement can be sent to the opposing parties ten days in advance, it can also be sent to a designated arbitrator at the same time. A separate deadline would just be confusing.
3. Using current procedures, pre-hearing submission directly to an arbitrator is practical only for remote arbitrations. Arbitrators for remote hearing must be pre-assigned in order that they can send remote conference instructions to the attendees. In contrast, the arbitrators for in-person hearings may not even be designated or have the file until immediately prior to the hearing. Sending an advance copy of the statement to be held by the arbitration administrator until the time of the hearing just creates another clerical burden with no benefit.
4. Any consequences for non-submission or late submission of the arbitrations statement need not be specified by rule but can be left up to the arbitrator. In the alternative, the amended rule might state that the arbitrator shall have the discretion to not consider some or all of the submission. That's what they do anyway, but such a remedy is rarely needed. Exclusion would be appropriate if surprising or voluminous matter were untimely submitted. However, the usual and common infraction is the omission of a written statement by a pro se party who is navigating unfamiliar waters. The arbitrators are generous in permitting pro se parties to explain their position verbally and I would not have it otherwise.

I hope that my comments will be of assistance.



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