The District of Columbia Bar

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MEMORANDUM

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester
Manager, Sections Office

DATE: September 17, 1986

SUBJECT: EXPEDITED CONSIDERATION: Comments on proposed D.C. Superior Court Mandatory Arbitration Rules

Pursuant to the Section Guidelines No. 13, Sections a and c, the enclosed public statement is being sent to you by Court Rules Committee, Courts, Lawyers and the Administration of Justice Section

a(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Section will forward (by mail or otherwise) a one-page summary of the comments, (summary forms may be obtained through the Sections Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager of Sections. The one-page summary woll be sent to the Chairperson(s) of each Section steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Section's Board of Governors liaison, and the Chairperson and Vice-Chairperson of the Council of Sections. Copies of the full text will be provided upon request through the Sections Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Section, Bar committee or Board of Governors account). The

Manager for Sections shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Sections shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Sections within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Section may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period.

c(ii): "The Board of Governors may request, pursuant to sub-section (a)(iv), that the Section comments on proposed court rules change be placed on the Board agenda only if (a) the proposed court rule is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VI, Section 1, should be called or (b) the proposed rule affects the practice of law--generally, the admission of attorneys, their discipline, or the nature of the profession,"

a(v): "Another Section or committee of the Bar may request that the proposed set of comments by a Section be placed on the Board's agenda only if such Section or committee believes that it has greater ot coextensive expertise in or jurisidiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline filed with both the Manager for Sections and the commenting Section's chairperson. The short explanation and outline or proposed alternate comments will be forwarded by the Manager for Sections to the Board members."

a(vi): Notice of the request that the statment bne placed on the board's agenda lodged with the Manager for Sections by any Board member may initially be telephobned to the Manager for Sections (who will then inform the commenting Section), but must be supplemented by a writen objection lodged within seven days of the oral objection.,"

c(iii): "If the comments of the Section on a proposed court rules change is placed on the agenda of the Board of Governors, the Board may adopt the comments and the Board's own views, in which case no mandatory disclaimer (see Guideline No. 14) need be placed on the comments. If the Board and the Sections differ on the proposal, each may submit its own views.

Please call me by 5:00 p.m., Friday, September 19 if you wish to have this matter placed on the Board of Governors' agenda for Tuesday, October 14, 1986

I may be reached at 331-3883.

COMMENT OF THE SECTION OF COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR ON PROPOSED SUPERIOR COURT MANDATORY ARBITRATION RULES

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Ellen Bass
Arthur B. Spitzer
Richard B. Hoffman
Thomas C. Papson
Cornish F. Hitchcock
Jay A. Resnick

Steering Committee
Section IV

Randell Hunt Norton* Co-Chair
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Gregg H. Golden
William A. Grant
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Joel Bennett
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Members of the Section's Committee on Court Rules Who Participated in this Comment

* Principal author

STANDARD DISCLAIMER

"The views expressed herein represent only those of the Courts, Lawyers, and the Administration of Justice Section of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

SUMMARY OF COMMENT OF THE SECTION OF COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR ON PROPOSED SUPERIOR COURT MANDATORY ARBITRATION RULES

On August 6, 1986, the Superior Court Rules Committee published its recommended set of rules for Mandatory Arbitration in the District of Columbia Superior Court. The mandatory arbitration program is being instituted as an experimental program and is expected to affect approximately one in twenty civil cases filed after the program is in effect. The attached Comments by the Section on Courts, Lawyers and the Administration of Justice represent the Section's suggestions for making the arbitration procedure effecient and successful.

The Section recommends some substantive changes which it feels would make the program more successful. In proposed Rule II, the Court has adopted a requirement that in each case in which the ad dammum is above $50,000 and in which a party believes that the case should not be submitted to arbitration, that party must file a motion to establish that the case is, indeed, valued at an amount greater than $50,000. Such a motion would have to be ruled on by the Court and would, as a result involve the expenditure of a great deal of time by the Court and by the parties. The Section recommends that this procedure be modified to require only a certification by a party that a case is actually worth over $50,000, which certification may be challenged by another party to the proceeding. This would retain the incentive to the parties to keep the case in the arbitration process while at the same time decrease substantially judicial involvement in evaluating the case.

The Section also recommends that Rule XIII be amended to provide more concrete disincentives to requesting a trial de novo. It suggests that the trial de novo be placed on a "fast track" trial calendar and that the party requesting the trial de novo be required to pay a $100 fee at the time a trial de novo is requested. Such additional concrete incentives would increase the success of the program by decreasing the number of requests for trial de novo for reasons of delay or other tactics.

The Section also recommends procedural changes to Rule I (permitting arbitration where injunctive or declaratory claims are merely ancillary); Rule III (providing for notice by the clerk of assignment to arbitration); Rule IV (regarding grounds for removal from arbitration); Rule V (regarding qualifications for arbitrators); Rule VI (regarding selection of arbitrators, including a new subsection on the recusal issue); Rule VII (Discovery); Rule VIII (clarifying situation where not all defendants are served); Rule IX (regarding procedure during arbitration, evidence, etc.); Rule X (regarding the award of the arbitrator) and Rule XVI (adding a provision clarifying the procedure for filing papers in an arbitration proceeding).

COMMENTS ON PROPOSED SUPERIOR COURT
MANDATORY ARBITRATION RULES

These Comments on the Proposed Superior Court Mandatory Arbitration Rules are submitted by the Section on Courts, Lawyers and the Administration of Justice of the D.C. Bar (hereinafter "the Section") and its Committee on Court Rules. 1/

The Section has endeavored to tailor these comments so as to advance the objectives set forth in its Arbitration Report of January, 1986. Those objectives were:

> " - disposing of both arbitration and civil cases faster;
>
> - reducing the costs of civil litigation; and
>
> - retaining or increasing litigant satisfaction with the adjudicative process."

January 1986 Report at 37.

While these comments contain a number of minor technical suggestions, there are a number of areas in which the Section had concerns of a more substantive nature. These areas include the procedure for determining eligibility for arbitration and the disincentives to requesting a trial de novo.

The proposed Rules will be dealt with in order.

Rule I:

The Section suggests amending subsection (3) as

1/ In addition, the Steering Committee of the Section on Injury to Persons to Property has reviewed these comments and concurs in them.

follows:

"(3) actions seeking solely equitable or declaratory relief."

This proposed amendment is intended to prevent a plaintiff's attorney from avoiding arbitration in an action for damages merely by adding an equitable or declaratory claim or count. The Section also suggests a complementary change to Rule IV permitting the removal of a case from arbitration where injunctive or declaratory relief is more than merely an ancillary claim. See comment to Rule IV.

Rule II:

The Section notes the setting of a high cutoff for arbitration ($50,000) and opposes the requirement that a formal motion be filed before an action may be exempted from arbitration.

The January 1986 Report found that the large majority of the Superior Court's civil filings were valued at less than $15,000 and that few of the cases under that amount involved the sort of complexity that would make them inappropriate for arbitration. Of the four effective arbitration programs studied by the Report (Pittsburgh, Philadelphia, California, and Rochester, N.Y.) none had a limit higher than $20,000. The Section recommends that at the end of the experimental period, the limit be reviewed to determine if it is too high or low.

The Section opposes the procedural requirement that a party must file a formal Motion for Exclusion from Mandatory Arbitration along with its complaint or answer in all cases valued at $50,000 or more. Such a requirement places unnecessary burdens both on the parties and on judicial resources without any corresponding benefit to the arbitration process. In two of the successful programs reflected in the Division IV Report (Pittsburgh and Rochester, N.Y.) the plaintiff's attorney, by setting the ad damnum, controlled whether the case qualified for arbitration, with little or no involvement or review by the court. While in at least one program (California) the court made the determination, in none of the programs discussed in the Report was there the requirement that the party objecting to arbitration file a formal motion.

Far from advancing the goals of disposing of the court's civil caseload faster or reducing costs to litigants, the requirement of such a motion would increase the cost to the parties and increase the expenditure of judicial time and resources. Such a motion would have to be filed by the parties and ruled on by the court in each case where arbitration is arguably inappropriate. The requirement of a motion also reflects a certain distrust of attorneys in connection with their approach to the arbitration system for which no justification has been demonstrated.

The burden placed on the court and the parties by the requirement of a formal motion is particularly onerous given the experimental nature of this program. Although only one out of twenty cases will be selected for arbitration, selection will not occur until after the first answer is filed. Therefore every plaintiff or defendant who thinks arbitration inappropriate to his or her case is required to file such a motion even though the case stands only a 5 percent chance of being selected for arbitration.

The Section recommends that the court modify the rule to require only a certification by plaintiff's attorney, in good faith, that he or she has reasonable grounds to evaluate the case at higher than $50,000. Although this proposal carries with it the potential for abuse, the Section feels that such potential would be minimal, particularly when weighed against the heavy burdens accompanying the requirement of a motion. As a "paper" filed with the court, such a certification would have imposed upon it the requirements and potential for sanctions of Rule 11. Furthermore, it is unlikely that a plaintiff whose case is realistically worth less than $50,000 would want to avoid the speedy resolution obtainable through arbitration when the alternative is a wait of at least two years on the Civil II Calendar.

If the Court is hesitant to rely entirely on plaintiff's evaluation of the case, it could impose a

provision in which any party disputing the evaluation may file a motion demonstrating that the case is in fact worth less than $50,000. The costs and attorney's fees of such a motion could be imposed against the party opposing arbitration if the motion were successful. This would retain "checks and balances" against abuse of the system while limiting the number of motions that must be filed and ruled upon by the Court. Such motions would only have to be filed in cases in which the parties disagree as to whether arbitration should be had or not.

The Section, therefore, suggests that Rule II read as follows:

> "All cases filed in the Civil Division and valued at $50,000 or less, except those excluded by operation of this Rule or Rule I, shall be eligible for assignment to the Mandatory Arbitration Program by the Court. Regardless of the ad damnum clause, any action shall be presumed to be valued at $50,000 or less, and therefore eligible for assignment to arbitration unless the complaint, counterclaim or responsive pleadings thereto are accompanied by a certification by the party or the attorney for the party that the action is reasonably valued in excess of $50,000. This certification must contain sufficient factual information to justify a determination that the claim properly is valued at more than $50,000. The valuation set forth in the certification shall be presumed correct unless any party to the action, within 30 days after service of said certification on that party, files a motion to establish that the case should be valued at $50,000 or less and is eligible for assignment to arbitration. In the event said motion is granted, the court may award the

costs and expenses of bringing such motion, including attorney's fees, against the party opposing arbitration."

The proposed amended rule also provides that a certification must be filed not just with a complaint or answer, but with a counterclaim, crossclaim, or the responses thereto. The Section feels that the procedure for exclusion from the program should apply to any claim reasonably valued at more than $50,000 regardless of the form of the pleading in which the claim is asserted.

Rule III

The Section recommends that there be a specific provision requiring that the clerk send notice to all parties of the assignment to arbitration. Therefore, there should be added a final sentence stating: "Immediately upon an action being assigned to arbitration, the clerk shall send a notice of such assignment to each party or its attorney."

Rule IV

Consistent with its proposed amendment to Rule I permitting inclusion in the program of claims for damages with accompanying claims for injunctive or declaratory relief, the Section recommends the insertion in Rule IV of language permitting, upon motion, the removal from the program of a claim in which the injunctive or declaratory relief represents more than merely an ancillary claim. The proposed amended rule is as follows:

"Rule IV: Removal from Arbitration Docket

> At any time following the assignment of a case to mandatory arbitration, the arbitrator may enter, for good cause shown, sua sponte or pursuant to any party's motion therefor, an Order for Removal from the Arbitration Docket. Any such motion must contain sufficient justification for removal, based on the complexity of the case, value of the claim, the number of parties, the plaintiff's failure to serve a named defendant, the presence of a request for injunctive or declaratory relief not simply ancillary to the claim for damages, or any other good reason. Denial of such a motion shall not be appealable."

Rule V

In order to enhance the confidence by litigants in arbitrators, the Section suggests that, as additional qualifications to serve as an arbitrator, the rule provide that the arbitrator have trial experience similar to that required by several federal District Courts which have implemented recommendations of the "Devitt Committee" requiring lawyers to have a certain quantum of trial experience before they be allowed to serve as counsel of record in a trial. Such a "trial bar" has been established by the United States District Court for the District of Maryland, and the Section believes that adoption of such a standard (e.g., three trials of at least four hours in length) is appropriate. Therefore, the Section suggests the addition of the following sentence to Rule V:

> "Furthermore, such individual shall have participated in at least three

trials of over four hours in length in a court of record."

It is felt that this will not be an onerous burden to the arbitrator, will ensure a better hearing and, as a result, will strengthen the confidence in the system.

Rule VI

Subsection (b) As is the practice in the current voluntary arbitration program, the Section believes that the clerk should maintain separate lists of eligible arbitrators who have experience in particular fields of law and that the random selection of arbitrators should be made from such lists. In order to effectuate this procedure, the Section suggests inserting the following sentence after the second sentence of subsection (b):

> "The clerk shall create and maintain lists of eligible arbitrators by fields of law (e.g., personal injury or contract law). The clerk shall prepare the list of potential arbitrators in a particular case by drawing randomly from the list for the field of law which applies to that case."

Subsection (d) There should be some technical modifications to this subsection to reflect the possibility of more than two parties. The Section suggests that the rule read as follows:

> "If parties desire a panel of three arbitrators, they must make this request within fifteen days of the Notification of Assignment to Arbitration and on the same day deposit with the court a check to cover the additional arbitrators' fees. (See Rule XI for the prevailing fee.)

Parties electing a panel of three arbitrators will be forwarded an identical list of additional randomly selected arbitrators (two for each party), along with a current resume of each arbitrator. Each party is entitled to exercise three (3) peremptory challenges from the total list of arbitrators forwarded pursuant to Rule VI (b) and (d), and must exercise such challenges pursuant to Rule VI (b). The Court shall designate the first three arbitrators on the list who have not been challenged and so notify the arbitrators and the parties. The first arbitrator on the list shall serve as Chair of the panel and be responsible for scheduling and coordinating all proceedings."

Subsection (e) The Section suggests the following additional subsection (e):

"Within five days after the selection of the arbitrator or arbitrators, any party with objections for cause to an arbitrator may file them with the arbitrator. In addition, within five days of the selection of the arbitrator, the arbitrator shall notify the parties and the Court of any reason why he or she should not serve. The decision whether the arbitrator must withdraw shall be made by the arbitrator using the standards for recusal by a trial judge of this Court. If an arbitrator withdraws pursuant to this subsection, the clerk should then designate the next arbitrator from the list who has not been challenged."

Nowhere in the rules is the potential problem of conflict or prejudice by the arbitrator raised. The Section feels that the above proposed subsection provides a procedure and a standard for dealing with such a situation.

Rule VII

The Section suggests that the second and third sentences of the first paragraph of Rule IX be moved from Rule IX and inserted after the first sentence of Rule VII. Such a change would place all the discovery provisions under the "Discovery" rule and thus eliminate confusion.

Rule VIII

The language in the rule indicating that the complaint against a defendant not served within 90 days should be dismissed from the arbitration proceedings is somewhat ambiguous and is subject to the possible interpretation that the complaint against that defendant will be dismissed for all purposes. The Section, therefore, suggests that the rule be amended to reflect the following language:

> "Rule VIII: Removal of Claim
>
> The claim against any defendant who is not served within 90 days of Notification of Assignment to Arbitration shall be removed from the Mandatory Arbitration Program by the arbitrator without prejudice to the claim's return to the arbitration program once that defendant is served. In the case of multiple defendants, the action may proceed against those defendants who were timely served."

Rule IX

The first paragraph of the rule should be deleted as unclear and confusing. The "applicable" Rules of Civil Procedure are not identified. Furthermore, the application of the Civil Rules discussed in the first sentence is more

specifically covered in Rule XVI. With respect to the discovery rules discussed in the second and third sentences, they should be included in Rule VII: "Discovery."

(b)(1) The third sentence, allowing only one contested or uncontested continuance "without leave of the arbitrator" does not make sense and should be deleted. Presumably no continuance will be granted without leave of the arbitrator. Furthermore, the Section believes that it is unrealistic to limit the arbitrator to granting only one or two continuances no matter what the circumstances. Instead, the Section recommends that the following sentence be inserted after the present second sentence:

> "The arbitrator may continue the hearing beyond the 120 day deadline set forth herein only upon a showing of exceptional circumstances."

This change is proposed in recognition of the flexibility which must be granted the arbitrator to deal with all the circumstances which may require a continuance. At the same time, however, it enjoins the arbitrator to continue a case beyond the 120 day deadline only when faced with exceptionally compelling grounds for such continuance.

The Section also recommends that the arbitrator be required to consult with counsel before setting hearing dates and places. In light of these changes, it is proposed that the language of subsection (b)(1) be reordered and amended to read as follows:

> "The time and place of the hearing shall be fixed by the arbitrator after consultation with the parties. The arbitrator is to make every effort to accommodate the choices of the parties in making his or her determination of the location and time of the hearing. Any request to postpone the hearing or to change its location is subject to approval by the arbitrator upon a showing of cause. The arbitrator may continue the hearing beyond the 120-day deadline set forth herein only upon a showing of exceptional circumstances. All hearings shall be conducted within the District of Columbia. Hearings may be held at the Courthouse if facilities are available."

(b)(2) For the reasons set forth in the comment to subsection (b)(1), the last phrase in subsection (b)(2) ("and any such continuance shall not be counted against any party.") should be deleted.

(c) The Section recommends that the first sentence be amended to make it clear that the arbitrator, and not the Court, is to decide all motions which are still pending when the case is assigned to arbitration or which are filed thereafter. The suggested amended first sentence reads as follows:

> "The arbitrator shall have the exclusive power to decide all motions that remain undecided after assignment to arbitration or are filed after assignment to arbitration."

(d) The second sentence of subsection (d) may not be in compliance with existing District of Columbia law. Under D.C. Transit System v. Young, 293 A.2d 488 (D.C. 1972), the trial court may not award a judgment against a

non-appearing defendant unless plaintiff produces evidence of both damages and liability, if the non-appearing defendant has filed an answer denying liability. A default judgment based on proof of damages only is permitted only when the defendant has failed to file an answer. Thus, the second sentence should read: "However, the imposition of liability or the granting of damages against a party shall not be based solely upon the absence of that party, but shall be based on ex parte proof."

(e) In order to avoid confusion regarding how subpoenas are issued, the Section recommends the deletion of all of subsection (e) after the first sentence. The remaining provisions appear to be surplusage. With this portion deleted, there would be no question that, under Rule XVI, the issuance and serving of subpoenas for arbitration hearings would be the same as in any other civil proceeding; that is, they would be issued by the clerk. To facilitate this the Section recommends that the clerk prepare a subpoena form for use in arbitration similar to the current deposition subpoena form.

(f)(1) Although the Section recognizes that the provision calling for a one week notice of intention to introduce a medical report, as contrasted with the two week notice requirement for medical bills, is taken verbatim from the current voluntary arbitration rules, the Section questions whether that distinction makes sense. If anything, it

is a report, rather than bills, that poses the greater likelihood of objection and the greater need for rebuttal. Therefore, the medical reports should also be provided to opposing counsel two weeks before the hearing. Furthermore, to maintain consistency the words "or reports" should be inserted in the third line of subsection (f)(1) after "bills or estimates."

(f)(2) It was the Section's feeling that the inclusion of subsection (f)(2) would only serve to encourage the use of affidavits in lieu of more competent evidence. Under the first paragraph of subsection (f), the arbitrator is permitted to liberally construe the rules of evidence if the proposed evidence is fair and reliable. Therefore, an affidavit that meets the test of fairness and reliability can be admitted under that general provision. However, highlighting the use of affidavits over other forms of evidence, particularly where the right to cross-examine such affidavit may be absent or seriously curtailed, would only encourage the use of such questionable evidence. The Section feels that the use of such affidavit evidence should not be so unduly emphasized.

(h)(4) In the interest of completeness and clarity, the court should consider inserting the following sentence immediately before the last sentence: "The plaintiff may then present any rebuttal evidence to any new matter presented by the defendant."

Rule X

The Section feels that the rule should contain a requirement that the award of the arbitrator should include a notice of the right to a trial de novo. Therefore, immediately after the second sentence, the Section recommends the insertion of the following sentence: "The Award shall include a notice to the parties, in a form provided by the clerk, of the right to request a trial de novo and of the deadline for filing a trial praecipe to obtain such a trial."

The Section also recommends that the time within which to request a trial de novo be increased from 15 to 30 days. Thirty days is the familiar appeal time to the Court of Appeals. For that reason, there would be less likelihood of parties inadvertently missing the deadline. In addition, 15 days is very short given the possibility that awards may be entered during attorneys' vacations, etc. A longer deadline would very likely decrease the number of requests for trial de novo, since under the very short 15-day deadline many parties will file such a request merely to preserve their rights until they have had a chance to consider their options. A 30-day deadline would give the parties a longer time to make a considered decision.

The Section further suggests that the arbitrator be required to file with the award a brief statement of the grounds for such award. The burden on the arbitrator would

be very light, while the value to the litigants in determining whether to request a trial de novo would be substantial. It is, therefore, suggested that the first two sentences of Rule X be amended to read as follows:

> "The Court shall provide each arbitrator with an Arbitration Award form. In each case, the arbitrator shall complete and file the Arbitration Award form, together with a concise statement of the reasons for his or her decision with the Court and serve it upon all parties within (15) days after the hearing."

The Section also recommends that the reference to Rule 60(b) be deleted from the last sentence of the first paragraph. The Section believes Rule 60(b) may very well have important applications to judgments entered pursuant to this rule. If one of the grounds for relief under Rule 60(b) should arise, there is no reason why a party should not be granted the same relief as a party in a case in which judgment was entered for reasons other than by means of arbitration. Rule 60(b) performs the important function of allowing correction of miscarriages of justice. A miscarriage is no less a miscarriage because it takes place in an arbitration proceeding rather than in a courtroom.

Rule XIII

(a) The Section suggests that a trial de novo be calendared on a "fast track" rather than "as if it had not been referred to arbitration." As a practical matter, the period during which the case was before the arbitrator will

be lost for purposes of having the case placed on the Civil II Calendar. The party satisfied with the arbitration award should not be penalized by having its ultimate recovery or resolution of the case delayed as a result of the arbitration. In addition, both parties have already prepared their cases for hearing once and presumably would be able to put on their evidence before the Court at the earliest date available on the trial calendar. Therefore, the Section recommends that the language "and treated for all purposes...to arbitration" be deleted and the words "with priority over cases not assigned to arbitration" inserted instead.

(c) The Section suggests that the "disincentives" to requesting a trial de novo reflected in subsection (c) are insufficient. The Section recommends that at the time a trial praecipe is filed, the party requesting a trial be required to pay to the court the cost of the single arbitrator compensated by the court (in other words, $100). Such an imposition of a fee is similar to the systems in Pittsburgh, Philadelphia, and Rochester which the Section's January 1986 Report identified as being successful. While such a fee should not, consistent with due process, be so high as to effectively discourage a right to a jury trial, a $100 fee is not an unreasonable amount. It would present the party seeking the trial de novo with a real financial decision. Under the present rule, however, the only

disincentive to requesting a trial de novo is the possibility of paying some of the opposing party's costs in the event the party requesting trial is unsuccessful. Indeed, under the present rule, the unsuccessful party is not even taxed the court's arbitrator's cost. The Section recommends, therefore, that a first sentence be added to subsection (c), stating:

> "Except as to parties proceeding in forma pauperis, upon the filing of the trial praecipe requesting a trial de novo, the party requesting the trial de novo shall pay a non-refundable filing fee of $100.00 to defray the 'Court's costs of the arbitration.'"

Even if the Court declines to require such prepayment, there should be added to subsection (c) the requirement of the payment to the court of its $100.00 arbitration expense by a party who has requested a trial de novo but was unsuccessful at that trial.

Subsection (c)(2) should probably be modified to clarify what is meant by "services" of an expert. Such "services" could be interpreted to include consultations with parties, preparation time, deposition testimony and other matters over and above actual testimony at trial or arbitration hearing. For that reason, the Section recommends that "reasonable costs of the services of expert witnesses" be replaced by "reasonable costs of the trial or arbitration hearing testimony of expert witnesses."

Rule XVI

It is suggested that the following sentence be added as a new paragraph at the end of Rule XVI:

> "All papers filed in the arbitration proceeding shall be filed with the clerk as required under the Superior Court Rules of Civil Procedure and a copy of each paper shall be filed with the arbitrator or arbitrators."

This provision makes it clear that all papers are to be filed both with the Court and with the arbitrator.