

2016 5666

LUZERNE COUNTY

Order Amending Rule of Civil Procedure 1301 (Arbitration);
No. 5666 of 2016

ORDER

AND NOW, this 23rd day of May, 2016, it is hereby ORDERED, as follows:

1. Luzerne County Rule of Civil Procedure (Luz.Co.R.Civ.P.) 1301 et seq. is *Rescinded*, and new Luzerne County Rule of Civil Procedure (Luz.Co.R.Civ.P.) 1301, a copy of which follows, is hereby adopted as Luzerne County Rules of Civil Procedure (Luz.Co.R.Civ.P.) 1301-13, effective thirty (30) days after publication in the *Pennsylvania Bulletin* and on the Unified Judicial System Portal.

2. It is further Ordered that the Court Administrator shall file one (1) certified copy of this Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

3. It is further Ordered that these local rules shall be kept continuously available for public inspection and copying in the Office of Judicial Services and Records of Luzerne County.

By the Court

Richard M. Hughes III

RICHARD M. HUGHES, III
President Judge

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PROTHONOTARY
LUZERNE COUNTY
2016 MAY 24 PM 3:02

Rule 1301 – Arbitration

Rule 1301 – Cases Subject to Arbitration

- (a) All civil actions, actions in replevin and actions upon mechanics' liens wherein the amount in controversy shall be \$50,000.00 or less shall first be submitted to and heard by a Board of Arbitrators pursuant to Pa.R.C.P. 1301 et seq.
- (b) For purposes of determining the amount in controversy, every complaint or counterclaim in such civil actions, in replevin or upon mechanics' lien, shall set forth a statement that the total amount of damages claimed in such pleading, exclusive of interest and costs, is \$50,000.00 or less or is more than \$50,000.00, or in replevin, that the value of the property claimed is \$50,000.00 or less or is more than \$50,000.00.
- (c) The amount in controversy shall be determined from the complaint and/or counterclaim as required by Subsection (b) or by a Stipulated Agreement filed by the attorneys. The term "amount in controversy" shall be exclusive of interest and costs. The amount in controversy when determined from the pleadings shall be the largest amount claimed by any one party.
- (d) The following types of actions shall not be subject to arbitration under this rule: mandamus, quo warranto, quiet title actions involving title to real estate, ejectment, municipal claims, tax claims, mortgage foreclosure, and actions upon ground rents.

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Rule 1302 – Certification for Arbitration

- (a) When a case is ready in all respects, an attorney or a party may file a Certification for Arbitration with a time-stamped copy delivered to the Office of Court Administration. The form of the Certification for Arbitration shall be provided by these rules. At least 30 days prior to the filing of a Certification for Arbitration, an unrepresented party (pro se) or attorney must notify all other unrepresented (pro se) parties or attorneys of one's intention to file the Certification for Arbitration. All required information must be completed on the Certification for Arbitration. Failure to provide the required information will result in the Certification for Arbitration being rejected. All hearings shall be conducted at the Luzerne County Court House.
- (b) In the event that there is a dispute between or amongst the parties as to whether or not a case is ripe for the filing of a Certification for Arbitration, any party may file a Petition and Rule Returnable for hearing on said issue which shall be made returnable for hearing in Miscellaneous Court in accordance with the normal scheduling process in regard to same. The Court shall then determine suitability for arbitration.
- (c) The following form, or a form substantially similar, shall be used as the Certification for Arbitration:

(CAPTION)

CERTIFICATION FOR ARBITRATION

TO THE CLERK OF JUDICIAL RECORDS AND SERVICES (PROTHONOTARY) OF
THE COURT OF COMMON PLEAS OF LUZERNE COUNTY:

The undersigned hereby certifies pursuant to Luzerne County Local Rule
1302 as follows:

1. The amount in controversy is \$50,000.00 or less;
2. The case is ripe in all respects to be heard by a Board of Arbitration;
3. At least thirty (30) days prior notice was given of the intention to file this Certification for Arbitration to all counsel who have entered their appearance and to all unrepresented parties; and,
4. No objection has been made to the appointment of a Board of Arbitration by any party.

The following information is submitted:

Plaintiff:	_____	Defendant:	_____
Attorney:	_____	Attorney:	_____
Address:	_____	Address:	_____
	_____		_____
Telephone:	_____	Telephone:	_____
Facsimile:	_____	Facsimile:	_____
Email:	_____	Email:	_____

For any party unrepresented by legal counsel, or additional parties represented by legal counsel, the following is submitted:

Party: _____
Status: _____
(Plaintiff, Defendant, Add'tl Defendant, etc.)
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

RESPECTFULLY SUBMITTED:

Signature

Name

Rule 1303 - Administration

- (a) Proceedings under this rule shall be administered by the Office of Court Administration as directed by the District Court Administrator. Court Administration shall have the power to interpret these rules and prescribe forms subject to review by the Court.
- (b) In order to be considered for appointment to the Board of Arbitrators, an attorney must:
 - 1. be admitted to practice within the Commonwealth of Pennsylvania and be in good standing before the Supreme Court of Pennsylvania; and,
 - 2. be actively engaged in the practice of law within Luzerne County; and,
 - 3. maintain an office in Luzerne County; and,
 - 4. file the required Arbitrator Registration Form with the Office of Court Administration.
- (c) The Office of Court Administration shall promulgate an Arbitrator Registration Form to be completed in full by attorneys seeking appointment to Boards of Arbitration. In addition to general and contact information, the Arbitrator Registration Form shall state whether the attorney is practicing alone, is a member of a firm, or is associated in some way with one or more other attorneys, either in private practice, as an employee of a public office, such as District Attorney or Public Defender, legal aid, in-house legal counsel, etc.

Any change of status must be promptly reported to Court Administration.

- (d) Upon receipt of a fully completed certified Arbitrator Registration Form, the Court Administrator will add the name of the person submitting the form to the list of those eligible to serve as a member of an arbitration board. Boards of Arbitration will be appointed from the list of members of the bar who have filed such information. The Court Administrator shall have sole authority to determine whether an arbitrator is qualified under these rules.
- (e) The following form, or a form substantially similar, shall be used as the Arbitrator Registration Form:

REGISTRATION TO SERVE AS ARBITRATOR

By completing and filing this Arbitrator's Registration form with the Office of Court Administration, I hereby certify my eligibility and request that I be placed upon the list of attorneys for appointment to a Board of Arbitrators. I certify that I am familiar with the Rules of Procedure governing Arbitration and Boards of Arbitrators and will at all times act in compliance with those rules.

The following information is submitted:

Name: _____
Atty. I.D. No: _____
Address: _____
Telephone: _____
Facsimile: _____
Email: _____

I further hereby certify as follows:

1. I am admitted to the practice of law in the Commonwealth of Pennsylvania and am currently on active status with the Supreme Court of Pennsylvania;
2. I am actively engaged in the practice of law in Luzerne County and maintain a professional office within Luzerne County.
3. I maintain a solo legal practice, or maintain the following association with other attorneys:

I verify that the foregoing statements are true and correct

RESPECTFULLY SUBMITTED:

Signature

Name

Rule 1304 - Selection of Arbitrators

Boards shall consist of three (3) members, one of whom shall serve as the chair. The chair shall be a member of the bar admitted to practice of law for at least three years. The chair of the Board of Arbitrators shall be appointed by the Court Administrator and shall be responsible for the preparation and filing of the Board's report and award. All other members of the Board of Arbitrators shall also be appointed by the Court Administrator. No more than one member of a family, firm association or other entity shall serve on an arbitration panel. The Court Administrator shall maintain a list of attorneys eligible to serve as arbitrators which shall be maintained in the Office of Court Administration and be available to the public for inspection.

An attorney may resign by letter addressed to the Court Administrator, whereupon the Court Administrator shall note the resignation and date thereof on the appropriate list or list behind the attorney's name.

The Court Administrator shall also note all deletions from the aforementioned lists whether by death, removal of principal office from Luzerne County, cessation of active practice before this court, suspension from practice or disbarment and the date thereof.

It is the professional obligation of all members of the bar who qualify under these Rules to serve on Boards of Arbitrators when scheduled, unless absent or excused for good cause and compelling reason. If an arbitrator fails to appear, or appears late for a scheduled arbitration hearing without compelling reasons, his or her name will be stricken from the arbitration list, and he or she will be so

notified by the Court Administrator. He or she may be reinstated by application to the court, upon cause shown.

The President Judge may strike from the list of eligible arbitrators the name of any attorney who has consistently demonstrated an inability to serve with civility.

In the event that an arbitrator is unavailable to attend a scheduled hearing, he or she shall give prompt notice to the Office of Court Administration so that a substitute may be appointed. Repeated unavailability after appointment may result in the removal of the attorney from the eligible list of attorneys for appointment.

A member of a board who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately withdraw as arbitrator.

Rule 1305 - Striking of Case from Arbitration List or Trial List

The Court may, on its own motion or upon the motion of any party, strike any case from the trial list which should have first been arbitrated, or, strike any case from the arbitration list which the Court determines should be tried by a jury or by a judge without a jury. If a case is stricken from the trial list by the Court, counsel or an unrepresented (pro se) party shall file a Certification for Arbitration on the form approved by the Court, together with the appropriate filing fee.

If a case is stricken from the arbitration list, counsel or an unrepresented (pro se) party shall file a Certificate of Readiness for Trial immediately with the Clerk of Judicial Services and Records (Prothonotary) and serve copies of same upon counsel, unrepresented (pro se) parties and Court Administration.

Rule 1306 - Notice of Hearing

The Office of Judicial Services and Records (Prothonotary), under the direction of Court Administration, shall mail a copy of the Order scheduling the hearing date, time and place to each attorney of record and, in the event a party is not represented of record by an attorney, to such party at his or her last known address by first-class mail and file of record proof of service in each case. E-mail notice shall be allowed whenever permitted by rules of procedure.

- a) The hearing shall be scheduled within 45 days of the filing of the Certificate for Arbitration.
- b) The written notice of hearing shall contain the following statement:

"NOTICE OF DUTY TO APPEAR AT ARBITRATION HEARING

This matter will be heard by a Board of Arbitrators at the time, date and place specified, but, if one or more the parties is not present at the hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge."

Rule 1307 - Continuances

- (a) More than seven (7) days prior to the hearing date, a case may be continued one (1) time by agreement of all counsel and unrepresented parties. The request for continuance must be in writing and presented to Court Administration. Court Administration shall reschedule the arbitration hearing to the next available date, but not more than sixty (60) days after the original date.

- (b) Requests for continuance made less than seven (7) days before the scheduled hearing, or in instances when all parties and/or counsel do not concur in the request for continuance, shall, after notice to all parties, be presented to the Motions Judge for adjudication.

Rule 1308 - Hearing

1. All hearings shall commence promptly at the time scheduled.
2. Hearings shall be conducted by the Chairman with decorum in full compliance with judicial proceedings. Witnesses shall be sworn in the customary manner. Testimony shall be taken through the same procedures and decorum as used before the Court of Common Pleas. Testimony before a Board of Arbitrators is not transcribed unless by special request and at the expense of the requestor.
3. Boards of Arbitrators shall conduct hearings with due regard to the law and rules of evidence. Boards of Arbitrators shall have the general powers of the Court including administering oaths or affirmations, determining admissibility of evidence, permitting testimony to be offered by deposition and deciding the law and the facts of the case submitted.

Rule 1309 - Award

1. The Boards of Arbitrators shall file its findings and award, if any, as well as any written opinion (as in its discretion it may choose to submit), within three (3) business days from the conclusion of the hearing in each case. If a member of the panel dissents from the majority's findings or award, that arbitrator shall so state on the award form and may, in his or her discretion, submit an opinion indicating the reason(s) for such dissent.
2. The Report and Award shall be in the form set forth in Pa.R.C.P. 1312.
3. Arbitrators may not award punitive damages.
4. Arbitrators may award costs.
5. Arbitrators may award possession in Landlord/Tenant matters.
6. Arbitrators may award possession and monetary value of the property or special damages sustained in a replevin action.
7. Monetary awards shall not exceed the jurisdictional limit of \$50,000.00 exclusive of interest and costs.
8. Arbitrators may award delay damages when that issue is properly pending in the action.

Rule 1310 - Delay Damages

1. In all cases subject to the provisions of this Rule where damages for delay are claimed, the Plaintiff shall, no later than the commencement of the hearing, present to the Chairman of the Board of Arbitrators in a sealed envelope a statement containing the required information, which shall be substantially in the form contained in subsection 3 below. Each question on the form shall be answered and the form shall be executed by all parties to the action or their counsel.

Those parties not concurring in the information contained on the form to be submitted by Plaintiff shall state thereon a brief explanation as to the reasons for their nonconcurrence. Parties failing to state the reasons for nonconcurrence shall be deemed to be in concurrence.

Plaintiff shall serve a copy of the executed form upon all other parties or their counsel at or before the time the same is presented to the arbitrators. Failure of Plaintiff to comply with this rule shall be deemed to be a waiver of any delay damages.

2. No arbitrator shall open the aforesaid envelope or in any other manner attempt to ascertain the contents thereof until the Board of Arbitrators has reached a decision on the merits in the case, and then, only if delay damages are applicable. If, after deciding the merits of the case, delay damages are not applicable, the Chairman of the Board of Arbitrators shall return the unopened envelope to the Office of Judicial Services and Records (Prothonotary), together with the report of the Board.

3. The form referred to in sub-section 1 shall be as follows:

**IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY**

	Plaintiff/s	:	
vs.		:	
		:	Civil Action -
	Defendant/s	:	NO. _____

DELAY DAMAGES

This Court finds that Plaintiff/s has/have not established the probable validity of its claim for the property described in its Complaint.

1. On what date did the cause of action accrue?
2. On what date was the Complaint filed?
3. Was a written offer of settlement made by any Defendant, or additional Defendant? If so state:
 - a. The date of the written offer.
 - b. Whether it was in effect at the time of commencement of the hearing;
 - c. The amount of the offer of settlement; and,
 - d. Attach a copy of the written offer of settlement.

Attorney for Plaintiff/s

Attorney for Defendant/s

I do not concur for the following reasons:

_____ **Attorney for Defendant/s**

_____ **Attorney for Add'tl Defendant/s**

Where opposing counsel refuses to execute the document, the following shall be attached:

ATTORNEY'S CERTIFICATE

I hereby certify that I served a copy of the foregoing document on opposing counsel on the ____ day of _____, 20____, and sought concurrence.

_____ **Attorney for Plaintiff/s**

Rule 1311 - Award Docketing, Notice, Lien and Judgment

Upon the filing of the award, if any, said award shall have full force and effect as would any decision of the Court subject to right of appeal. Notice of the Report and Award, if any, shall be served by the Office of Judicial Services and Records (Prothonotary) upon all counsel and pro se parties.

Rule 1311 - Appeal

1. Any party may appeal from the findings or award of the Board of Arbitrators to the Court of Common Pleas of Luzerne County. Appeals shall result in de novo proceedings before the trial court. The right of appeal is limited by Rule 1301(f) which concerns failure of a party to be present at time of arbitration.
2. The cost of appeal shall be set by Court order and shall include a sum to compensate the fees of the Arbitration board.
3. Simultaneously with the filing of the appeal, appellant shall file a Certificate of Readiness for Trial with the Office of Judicial Services and Records (Prothonotary), serve all counsel and unrepresented parties and shall deliver a time-stamped copy to Court Administration which shall assign the case to a Judge for trial in the ordinary course.

Rule 1313 - Compensation

Each arbitrator shall receive a fee of \$200.00 as compensation for each half day of hearing required (a half-day shall be no more than three hours regardless of the number of cases heard within a half-day period). Members of the Board shall not be entitled to compensation until after the filing of the original report and/or award with the Office of Judicial Services and Records (Prothonotary) with a time-stamped copy delivered to Court Administration.