

Rule 89. Discovery

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

Adopted May 20, 1987, effective June 1, 1987; amended March 26, 1996, effective immediately.

Committee Comments

The rules for discovery are intended to provide the means to obtain fair and full disclosure of the facts; they are not intended to provide a weapon for abusive tactics. The Committee anticipates a good faith effort on the part of the bar to utilize discovery to an extent and in a manner consistent with the value and complexity of arbitrable claims.

If the amount of the claim is stated to have a value not in excess of \$50,000, Supreme Court Rule 222 would apply. Note that the timelines provided in Supreme Court Rule 222(c) for full compliance may be amended by a local arbitration rule. Relief from any undue restrictions under the rule should readily be forthcoming from the court; preferably counsel will cooperate to meet their recognized requirements in that regard.

Our study has disclosed relatively little use of depositions for discovery and preparation for the mandatory arbitration hearing. Rather, there has been a more extensive use of interrogatories. We are not aware of the requirement of disclosure statements in the other jurisdictions as are required under our Rule 222. It may be that the content of the disclosure statements, if fully and fairly revealed, may make sufficient the limited number of interrogatories permitted. If the allowance of more interrogatories would obviate the need for taking one or more depositions, the cost savings alone would justify such alternative.

An early and timely disposition of arbitrable matters must be doomed by courts that are tolerant of late attention to discovery. Firmness of the courts in the implementation of this rule will help to insure the successful results that are available from this procedure.

Prohibiting discovery after award places a premium on as early, and as thorough, a degree of preparation as is necessary to achieve a full hearing on the merits of the controversy. Neither side should be encouraged to use this proceeding, *i.e.*, the hearing itself, merely as an opportunity to discover the adversary's case en route to an eventual trial.

If the lapse of time between an award and a requested trial is substantial or if in that period there has been a change in the circumstances at issue, additional discovery would appear to be appropriate and should be granted.