

Rule 87. Appointment, Qualification and Compensation of Arbitrators

(a) List of Arbitrators. A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

(c) Disqualification. Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

(d) Oath of Office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators. Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of \$100 per hearing.

Adopted May 20, 1987, effective June 1, 1987; amended December 3, 1997, effective January 1, 1998; amended March 1, 2001, effective immediately; [amended January 25, 2007](#), [corrected January 26, 2007](#), effective February 1, 2007.

Committee Comments

Paragraph (a)

Paragraph (a) is substantially modeled after Pennsylvania Rule 1302. The Committee, in its investigation of several programs in that jurisdiction, found that there were some, particularly at Pittsburgh and Philadelphia, where the arbitration lists were adequately filled by volunteers. In other counties, either by reason of the lack of enough volunteers or the view that this was an essential public service, all members of the bar were listed for such service. It is the Committee's recommendation that each circuit engaged in an arbitration program can best determine its method of utilizing its attorney resources. Retired judges are often interested and available for such service and should be considered eligible even though not then engaged in the practice of law.

Paragraph (b)

The Committee has learned of several methods extant for the appointment of arbitrators to hearing panels. Most frequently recommended is the method of random selection. Other methods include: appointment from the list in alphabetical order or in the order of arrival on signing-in on the hearing date. One jurisdiction selects three members with a combined experience of 10 years.

The Committee believes that each circuit should determine its own method of appointment.

There also exist variations for the appointment of chairpersons for each panel. In some jurisdictions and districts, the member with the longest number of years in practice becomes the chairperson. In Allegheny County (Pittsburgh) a special list is maintained as the roster for appointment of the chairperson of the panel. This list consists of those who are determined by the arbitration administrator to have the longest and most pertinent experience in the practice. Here again, rather than by specific rule, the Committee recommends that this subject be determined by the circuit.

The qualification for members of the panel other than the chairperson consists of their then being engaged in the practice of law or if the retired judge does not see fit to act as chairperson, he is otherwise eligible to serve as another member of the panel.

In our initial draft of proposed rules, we adopted the phrase “actively engaged in the practice of law.” At the hearings held by the Committee, representatives of the Illinois bar raised questions as to the intended meaning of the words “actively engaged.” Although Pennsylvania uses those terms as a condition of eligibility and for service, its rules and reports offer no interpretation of what would constitute active engagement in the practice and leaves the interpretation to each judicial district.

The meetings held with out-of-State attorney practitioners has produced the universal recommendation from them that we avoid wherever possible imprecise terms. They called to our attention that there will always be members of the bar whom they refer to as “technocrats,” inclined to demand a precise as opposed to a reasonable interpretation. Accordingly and to avoid difficulty in the interpretation of what constitutes “actively engaged” we have omitted the word “actively” in the firm belief it adds nothing substantive to the purpose intended. Leading members of the Philadelphia and Pittsburgh bars fully endorse minimal requirements for qualification to serve on the panel other than that for the chairperson.

The Pennsylvania statewide rule requires that the chairperson be admitted to practice for a minimum of three years. We have determined to add the additional requirement of trial experience. Trial experience brings with it an understanding of the role of the arbiter in a trial setting as well as knowledge of the rules of evidence. Interviews conducted, and hearings held, disclose a prevalent and seemingly valid concern on the part of the practicing bar that arbitrators, particularly the chairperson, be fully conversant with established rules of evidence. This knowledge is more likely to facilitate an expedited hearing and acceptable results. By reason of their experience in this regard, retired judges would seemingly fit this requirement.

Presiding Judge Michael J. O’Malley, at Pittsburgh responding to an inquiry, expressed the following view.

“Experienced trial attorneys serving as arbitrators are extremely valuable. Indeed, we attempt in Pittsburgh to have the chair of each three-member panel be an experienced lawyer. It would be even better if all three had extensive trial experience but it is not an absolute necessity.” Letter to Judge Lerner dated April 22, 1986.

The majority of jurisdictions utilizing a single arbitrator require, as a minimum, five years’

admission to the bar.

The following minimal qualifications for years of admission to practice for chairpersons were adopted in the counties, other than Philadelphia, visited by the Committee: Allegheny 5, Bucks 4, Northampton 5, Lancaster 5 and Chester 10.

Although there were members of the Committee who preferred a five-year trial experience qualification for the chairperson, the concern expressed by some that certain circuits might be hard pressed to obtain sufficient volunteers brought about the three-year minimum stated in the rule.

The qualifications stated in this rule are intended to be minimal. Each circuit may opt to enlarge upon those stated herein both as to chairpersons and other members of the panel.

Paragraph (c)

No provision is made in these rules for a substitution of arbitrators or change of venue from the panel or any of its members. The remedy of rejection of an award and the right to proceed to trial is determined to be the appropriate response to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award. Subdivision (c) requires an attorney who has been appointed to serve as arbitrator to disqualify himself or herself on a particular case if circumstances relating to the parties, their counsel, or the matter in controversy would appear to be grounds for such recusal under the Code of Judicial Conduct. A motion on that basis could be presented to the court to determine the existence of any basis for disqualification and for reassignment to another panel or the substitution of another panelist. Where one of the counsel has raised the question of bias or prejudice of a member of the panel, if that panelist is not replaced or a new panel made available, an award adverse to that counsel will likely be rejected.

Paragraph (d)

As is the case with Pennsylvania, we recommend an official form for this purpose, similar to that of the Pennsylvania rules.

Paragraph (e)

The fee recommended in this rule to be paid to arbitrators is consistent with the amounts now being paid as arbitrators' fees in other jurisdictions. It was the view of the Committee that the fee be standard throughout the circuits utilizing these services; the same level of competency and performance should be expected.