CHAPTER 11

§ 11.5

Alternative to Trial: Arbitration

Lessening the Burden on the Court

Arbitration is a form of alternative dispute resolution. In arbitration, the parties prepare much the same as they would for trial. The case is heard by a person who is not a judge (in most cases) in a somewhat simplified and more informal hearing. Many states use arbitration to relieve the courts of some of the burden of the recent increase in civil litigation. It is an attempt to foster a settlement prior to trial. While an individual cannot be forced to give up his right to a trial, he or she may be forced to go through the arbitration process, but that process will not be binding.

In arbitration, the losing party has the right to ask for a trial (by filing a *motion for trial de novo*), but there may be penalties, if the party loses again at trial. On these pages we have presented an outline of a typical arbitration process. The specific elements of arbitration in your jurisdiction may vary.

Requirements for a Case to Go to Arbitration
Cases filed in the state trial court will generally be arbitrated if the damages requested do not exceed an amount set by statute. The maximum requested damages will vary, but a typical amount is anywhere from $25,000 to $40,000, depending on jurisdiction. Most arbitration cases involve car accidents and neighbor disputes, but other litigation matters are also eligible.

How Is an Arbitrator Assigned?
In most states, there is a discovery commissioner or master to oversee the process of arbitration. This official, whose title varies from state to state, assigns arbitrators to specific cases.

In a typical system, the commissioner proposes five arbitrators to both parties. Each party may strike two names from the list, leaving at least one accepted arbitrator. The commissioner then assigns the arbitrator. In some jurisdictions, the court performs the duties of the discovery commissioner, assigning arbitrators and settling procedural disputes.

What Does the Arbitrator Do?
The arbitrator acts as a quasi-judge and is usually paid by the parties. While the rules of discovery are generally still in effect during the arbitration stage, the arbitrator may limit discovery at his or her discretion. An arbitrator, for example, may limit interrogatories to 20 questions instead of the usual 40. In some states, only attorneys are allowed to act as arbitrators. However, in other states non-attorneys, including paralegals, may fill this role.

What Happens at an Arbitration Hearing?
The arbitrator sets a hearing date. During the hearing, both parties have a chance to present arguments, present evidence, and call witnesses to testify.

The examination during the hearing is similar to examination during a deposition with the rules generally more lax than in-court examination. Subpoenas for witnesses are permitted, but not generally required.

Can a Party Appeal a Decision?
The mechanism for "appeal" of an arbitrator's decision is usually a *motion for trial de novo*, a request for a court trial. In many states, however, if a party files a *motion for trial de novo* to reverse the arbitrator's decision and loses, the court may order the losing part to pay court costs and the opposing party's attorney's fees.

To determine the details of arbitration in your state, check your court rules, including any arbitration rules. You may also call the clerk at the court in which the action is being litigated.

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§ 11.6

Examples of Paralegals as Advocates

"No one should stand in the way of your client's rights"

EXAMPLES OF ADVOCACY

In legal terms, advocacy is usually thought of as a part of the role of an attorney. The attorney argues for, or advocates on behalf of, his or her client. This is especially important in litigation. However, today advocacy is not simply argument on behalf of a client. It is any attempt to convince someone to do something even when that person may not have any motivation to do so. This can be in court in front of a judge, or it can be at a hospital trying to convince a doctor to release patient documents. In many cases, the paralegal becomes an extension of the attorney during the litigation process by obtaining information relevant to representation.

When a consumer talks a store clerk into taking an item back without a receipt, he is being an advocate. When a woman talks her way out of a traffic ticket, she is being an advocate. When a paralegal convinces a hospital records clerk to let him view the un-sanitized notes in a patient's file, he is being an advocate for his client.