

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

**COURT-ANNEXED ARBITRATION
PROGRAM DESCRIPTION**

Definition	Court-annexed arbitration is an arbitration procedure authorized for certain cases by 28 U.S.C. §§ 651-658. The arbitrator hears evidence in a formal hearing, at which the rules of evidence apply, and issues an award reflecting the merits of the case, as opposed to its settlement value.
Authorization	28 U.S.C. §§ 651-658 and W.D. Mich. LCivR 16.6.

THE ARBITRATORS

List of Arbitrators	The Court has certified arbitrators and the ADR Administrator maintains a current list of arbitrators.
Arbitrator Qualifications	To be considered for certification, an applicant must (1) be an attorney with a minimum of ten (10) years of experience in the practice of law, (2) be a member in good standing of this Court's bar and of the State Bar of Michigan, and, (3) be determined by the judges to be qualified and competent to perform the duties of an arbitrator. The Court may reasonably expect an arbitrator to serve in a <i>pro bono</i> capacity once each calendar year.
Certification of Arbitrators	The Chief Judge certifies as many arbitrators as necessary under W.D. Mich. LCivR16, after consultation with the judges of the Court and the Court's Committee on Alternative Dispute Resolution.
Oath or Affirmation	Before serving, each certified arbitrator must take the oath or affirmation prescribed by 28 U.S.C. § 453.
Disqualification Rules	No person serves as a arbitrator in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or, in good faith, are believed to exist.
Powers of Arbitrators	An arbitrator to whom an action is referred under 28 U.S.C. § 654 has the power within the judicial district of this Court to: <ul style="list-style-type: none">A. conduct arbitration hearings;B. administer oaths and affirmations;C. make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing; andD. make awards.
Immunity	Certified arbitrators are entitled to quasi-judicial immunity as officers of the Court.

CASE SELECTION

Eligible Cases

- A. Court-annexed arbitration by order - All cases seeking only money damages in an amount not in excess of \$150,000, exclusive of punitive damages, interest, costs and attorney fees, may be ordered to court-annexed arbitration. In all cases which would be subject to W.D. Mich. LCivR 16.6, except that they include a claim for non-monetary relief, the judge or magistrate judge assigned to the case may determine whether, for purposes of the rule, the claim for non-monetary relief is insubstantial. The judge or magistrate judge may make this determination immediately after a responsive pleading is filed, on an ex parte basis or after consultation with the parties, in the Court's discretion.
1. In all cases where the amount of damages claimed is either unstated or unliquidated, the Court may presume the claim to be for \$150,000 or less, exclusive of punitive damages, interest, costs and attorney fees, unless certified otherwise by counsel. Such certification must include an itemization of damages.
 2. Notwithstanding the damages alleged in a party's pleadings relating to liquidated claims, or a party's certification relating to unliquidated claims, a district judge or magistrate judge may in any appropriate case at any time disregard such allegation or certification and require arbitration if satisfied that recoverable damages do not likely exceed \$150,000, exclusive of punitive damages, interest, costs and attorney fees.
- B. Court-annexed arbitration by consent - Any case based in whole or in part on an alleged violation of a right secured by the Constitution of the United States or in which jurisdiction is based in whole or in part on 28 U.S.C. § 1343 may not be referred to arbitration without the consent of all parties. Except as provided above, any case seeking money damages in excess of \$150,000, exclusive of punitive damages, interest, costs and attorney fees, may not be referred to arbitration without the consent of the parties. Consent must be voluntarily given in writing, and no party may be sanctioned for failure to consent.

Referral Method and Notice to Parties

In preparation for the initial Rule 16 scheduling conference, all parties are required to discuss the use of alternative dispute resolution and indicate their preference in the joint status report. If the district or magistrate judge is satisfied that the matter is eligible for referral and selection of arbitration is appropriate, as described in "Eligible Cases" above, the judge incorporates that selection in the case management order.

THE ARBITRATION PROCESS

Selection of Arbitrator

The parties jointly choose one arbitrator from the list of Court certified arbitrators within fourteen (14) days of the issuance of the case management order. Plaintiff is responsible for notifying the ADR Administrator of the name of the selected arbitrator. If the parties fail to reach a timely agreement, the ADR Administrator selects an arbitrator for them. The ADR Administrator notifies the selected arbitrator, and requests a check for potential conflicts of interest. If a conflict is found to exist, the arbitrator notifies the ADR Administrator, who either selects an alternate arbitrator or requests the parties make a new selection. Once an arbitrator's selection is finalized, the ADR Administrator notifies the judge, who issues an order of referral for arbitration.

Compensation of Arbitrator

An arbitrator is paid a fee of two hundred fifty (\$250.00) dollars and is reimbursed for expenses reasonably incurred. The arbitrator should submit a voucher on the form prescribed by the Clerk for payment by the Administrative Office of the United States Courts of compensation and reasonable expenses, when the arbitrator files a decision. No reimbursement will be made for the cost of office or other space for the hearing. In determining whether actual expenses incurred are reasonable, the arbitrator is to be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing travel regulations. In cases settling within a period of two (2) days before a scheduled arbitration hearing, an arbitrator may apply for compensation in the amount of fifty (\$50.00) dollars plus expenses reasonably incurred, upon representation that prior to the settlement the arbitrator had been actively studying the documents submitted by the parties.

Consent to Final Determination

- A. The parties may consent that the award of the arbitrator be deemed a final determination on the merits and that judgment be entered thereon by the Court. In the absence of consent, the effect of the award is governed by the section on "Filing of Award; Entry of Judgment" below.
- B. Any consent filed must be in writing, signed by all attorneys of record or pro se parties. The consent must be filed before the hearing. No judicial officer may threaten or coerce any party to consent, but may suggest the advisability of consent in any case. No party or attorney may be sanctioned or otherwise prejudiced by reason of a failure or refusal to consent.

Timing of the Arbitration Hearing

The arbitration hearing must be scheduled for a date no earlier than one hundred forty (140) days and no later than one hundred eighty (180) days after the filing of the last responsive pleading, except as provided below. If any party files a motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, the motion must be heard by the assigned judge or magistrate judge, and further proceedings under W.D. Mich. LCivR 16.6 will be deferred pending decision on the motion. If the action is not dismissed or otherwise terminated as the result of the decision on the motion, the arbitration hearing takes place within twenty-eight (28) days of the filing of the decision. The 180-day and 28-day periods specified herein may be modified by the Court for good cause shown.

Timing and Nature of Submissions Required Before the Arbitration Hearing	Within seven (7) days before the hearing, a concise brief, including all documents on questions of liability and damages must be submitted to the arbitrator and all opposing counsel. The summary must state the party's factual and legal positions and may include medical reports, bills, records, photographs, and any other documents supporting the party's claim.
Late Submissions	Failure to submit the documents or the proof of service within the time designated, will result in penalty costs of one hundred fifty dollars (\$150.00), payable to the arbitrator. Each late brief must be accompanied by a check for one hundred fifty dollars (\$150.00). The proof of service must include a statement that costs of one hundred fifty dollars (\$150.00) were delivered to the arbitrator with the brief. If the arbitrator waives these costs, they are paid to the Clerk of Court as recovery of the Court's costs.
Attendance at the Arbitration Hearing	Parties or representatives of the parties (other than counsel) with full settlement authority are required to attend the arbitration hearing(s).
Proofs of Service	Whenever a party or the arbitrator serves any brief, notice, award or other document, a proof of service thereof must be submitted to the ADR Administrator.
Ex Parte Communication	There must be no ex parte communications between an arbitrator and counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.
Format for Hearing	All testimony is given under oath or affirmation, and the Rules of Evidence apply. Each party is allowed a maximum of two and one-half hours for the presentation of its case. The conduct of the hearing and the admission of evidence is within the discretion of the arbitrator. Presentations are made in summary fashion. Witnesses may testify in person, but the scope of direct and cross-examination is within the discretion of the arbitrator.
Transcript	A party may cause a transcript or recording to be made of the proceedings at its expense, but must, at the request of the opposing party, make a copy available to the party at a reasonable charge, unless the parties have otherwise agreed. In the absence of agreement of the parties, no testimony shall be admissible in evidence at any subsequent <i>de novo</i> trial of the action, except for purposes of impeachment.
Status of Discovery and Motions During Arbitration Process	For the purposes of arbitration, discovery shall be limited to one hundred twenty (120) days from and after the last responsive pleading. Time taken to dispose of motions set forth in "Timing of Arbitration Process" above will not be charged against the one hundred twenty (120) days allowed for discovery. Selection of a case for arbitration has no effect on the normal progress of the case toward trial.
Arbitration Logistics and Location	Hearings are held at any location within the Western District of Michigan designated by the arbitrator. In making the selection, the arbitrator must consider the convenience of the parties and the witnesses. The arbitrator sends notice of the hearing to all parties and the ADR Administrator, and files a proof of service.

**Filing of Arbitration
Award; Entry of
Judgment**

- A. Announcement and submission of award - The arbitrator must submit the original award to the ADR Administrator and serve a copy on all parties within seven (7) days of the close of the hearing. The arbitrator files a proof of service with the ADR Administrator.
- B. Form of award - The award states clearly and concisely the name or names of the prevailing party or parties and the party or parties against whom it is rendered, and the precise amount of money and other relief awarded, if any, including prejudgment interest, costs, fees and all attorney's fees. The award must be in writing and signed by the arbitrator. Unless all parties have consented to arbitration, the amount of the award, exclusive of interest and costs, may not exceed \$150,000.
- C. Entry of judgment on award and time for demand for trial *de novo* - Within twenty-eight (28) days of the submission of the award, a party may file and serve a written demand for a trial *de novo*. If a demand for trial *de novo* is not timely made, the Clerk enters judgment on the award, in accordance with Rule 58 of the Federal Rules of Civil Procedure. The judgment has the same effect as any judgment of the Court in a civil action, except that no appeal lies from such a judgment.
- D. Sealing of results - The contents of the award must not be made known to the judge assigned to the case except as allowed by 28 U.S.C. 657(b). If a trial *de novo* is demanded, the ADR Administrator places all arbitration documents in a sealed envelope before forwarding them to the Clerk of Court for filing.

**Arbitrations Involving
Multiple Parties**

- A. Each party may demand a trial *de novo* for claims by or against that party. However, as to any particular party, a trial *de novo* may only be demanded as to all claims regarding that party.
- B. A party who does not demand a trial *de novo* may nevertheless demand a conditional trial *de novo*. Under a demand for a "conditional trial *de novo*," the demand will only be effective of one or more of the opposing parties also demand a trial *de novo*. If no other party demands a trial *de novo*, the conditional trial *de novo* demand will result in judgment being entered on the award as to all parties.
- C. If a party makes a demand for a conditional trial *de novo* under paragraph B. above, and some of the other parties make demands for a trial *de novo* and some do not, for the purpose of the cost provisions of "Liability for Costs Following Demand for Trial *De Novo*" below, the party who made the demand for a conditional trial *de novo* is deemed to have demanded a trial *de novo* as to those parties who did not make such a demand.

**Liability for Costs
Following Demand for
Trial *De Novo***

A. Arbitrator's costs - Any party demanding a trial *de novo* must deposit the amount of the arbitrator's fee, as described in "Compensation of Arbitrator" above, with the court at or before filing the demand, except that this requirement does not apply to parties proceeding in forma pauperis or to the United States, its officers or agencies. If the party demanding a trial *de novo* fails to obtain judgment in an amount which, inclusive of interest and costs, is more favorable to the party than the arbitration award, the arbitrator's fee is taxed as costs against that party. If the party obtains a result more favorable than the arbitrator's award, or if the court finds that the demand for trial *de novo* was made for good cause, the party is reimbursed the amount it has deposited with the court.

B. Opposing party's costs -

1. In any trial *de novo* conducted after an arbitration done by consent of all parties, the Court may assess the opposing parties' costs under 28 U.S.C. § 1920 and reasonable attorney's fees against the party demanding trial *de novo* if:

- a) such party fails to obtain a judgment, exclusive of interest and costs, in the Court which is substantially more favorable to such party than the arbitration award; and
- b) the Court determines that the party's conduct in seeking a trial *de novo* was in bad faith.

However, if the opposing party has also demanded a trial *de novo*, a party is entitled to costs only if the verdict is more favorable to that party than the arbitrator's award.

2. For the purpose of paragraph 1.a) above, a verdict must be adjusted by adding to it costs and interest on the amount of the verdict from the filing of the complaint to the date of the arbitrator's award. After this adjustment, the verdict is considered substantially more favorable to a defendant if it is more than ten (10) percent below the award, and is considered substantially more favorable to the plaintiff if it is more than ten (10) percent above the award.

3. Actual costs include those costs and fees taxable in any civil action and reasonable attorneys' fees for each day of trial as may be determined by the Court.

4. The provisions of 1., 2., and 3. above shall not apply to claims to which the United States or one of its agencies is a party.

**Limitations on Evidence
in the Trial *De Novo*.**

At a trial *de novo*, no evidence of or concerning the arbitration may be received except as provided in 28 U.S.C. § 657(c) or as stipulated to by the parties.

COURT ADMINISTRATION OF THE ARBITRATION PROGRAM

Administrative Structure

The arbitration program is administered by the clerk's office. Problems are initially handled by the ADR Administrator.

Evaluation of the Program

The ADR Administrator gathers data relevant to a careful, in-depth analysis of the efficacy of the program, and reports to the Court on a regular basis. In an effort to gather information, the Court may develop questionnaires for participants, counsel and arbitrators, to be completed and returned at the close of the arbitration process. Responses will be kept confidential and not divulged to the Court, the attorneys or the parties. Only aggregate information about the program will be reported.