

**Proceeding to Compel Arbitration and Confirm
an Arbitration Award in a Consumer Credit Transaction**

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Rule 1326. Definitions. Scope

(a) As used in this chapter,

“arbitration” means statutory arbitration pursuant to Section 7301 et seq. of the Judicial Code, 42 Pa.C.S. § 7301 et seq., known as the Uniform Arbitration Act, or common law arbitration pursuant to Section 7341 et seq. of the Judicial Code, 42 Pa.C.S. § 7341 et seq;

“arbitrator” includes a board of arbitrators;

“consumer credit transaction” means a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.

(b) The rules of this chapter shall govern proceedings to compel arbitration and confirm an arbitration award entered in a claim arising from a consumer credit transaction.

Rule 1327. Confirming Arbitration Award

Any party may file a motion to confirm an arbitration award which was entered by an arbitrator only if

- (1) the party against whom an arbitration award is sought to be confirmed either
 - (i) attended a hearing before the arbitrator, or
 - (ii) signed a writing after the claim that is the basis for the arbitration award was filed with the arbitrator, agreeing to submit the claim to the arbitrator, or

NOTE: The writing under subparagraph (1)(ii) may provide for the arbitrator to decide the claim in a proceeding that does not involve a personal appearance before the arbitrator, such as a proceeding in which the hearing before the arbitrator involves only a review of documents submitted by the parties.

See Rule 1328 for the procedure to confirm an arbitration award entered as provided by either subparagraph (1)(i) or (ii).

- (2) the arbitration award was entered following a court order or docket entry staying proceedings pending arbitration as provided by Rule 1329.

NOTE: See Rule 1329 for the procedure to compel arbitration and to confirm the arbitration award.

Rule 1328. Motion to Confirm Arbitration Award as an Original Proceeding.

(a) Any party may file as an original proceeding a motion to confirm an arbitration award if the arbitration award was entered pursuant to Rule 1327(1). The motion to confirm such an award shall be filed in the county in which the defendant resides or has a place of business or, if there is no such county, then in the county in which the arbitration hearing was held.

(b) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served in the manner provided for service of original process in a civil action.

NOTE: Section 7317 of the Judicial Code, 42 Pa.C.S. § 7317, provides that, unless the parties otherwise agree, notice of an initial application for an order of court shall be served in the manner provided by law for the service of a writ of summons in a civil action.

(c) The motion shall contain factual allegations establishing that the arbitration award was entered pursuant to Rule 1327(1).

(d) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(e) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(f) If the responding party files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions.

Rule 1329. Civil Action to Compel Arbitration. Motion to Confirm Arbitration Award as Ancillary to a Civil Action

(a)(1) A plaintiff seeking to compel arbitration of a claim shall commence a civil action against the defendant. Except as otherwise provided by this rule, the procedure in the action shall be in accordance with the rules governing a civil action, including service of original process and venue.

NOTE: A defendant who seeks to compel arbitration of a claim for which a plaintiff is not seeking arbitration shall proceed by preliminary objection or a motion to compel arbitration.

(2) The complaint shall include an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration.

(b) If the defendant fails to file a responsive pleading, the plaintiff may obtain a default judgment pursuant to Rules 237.1 and 1037.

(c)(1) If the defendant files an answer admitting that the claims are subject to arbitration, either party, within twenty days, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(2) If the defendant files either preliminary objections or an answer denying that the claims are subject to arbitration, the plaintiff may within twenty days file a motion for a rule to show cause why arbitration should not be compelled. Except as otherwise provided by subdivision (d), the motion shall be governed by Rule 208.1 et seq.

NOTE: Rule 208.1 et seq. governs motion practice.

(d)(1) The motion for a rule to show cause why arbitration should not be compelled shall begin with a notice substantially in the form prescribed by Rule 1330 and shall be served pursuant to Rule 440. In the absence of a court order otherwise, the timely filing of the motion stays proceedings pending resolution of the motion.

(2) A defendant shall file an answer to the motion within twenty days after service of the motion. The answer shall set forth all of the defendant's objections to the arbitration including absence of a valid agreement to arbitrate the claims, lack of jurisdiction over the person of the defendant, improper venue or improper service of original process.

(3) If the defendant does not file an answer to the motion, the plaintiff, after the answer was due, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(4) If the defendant files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions. If the court grants the motion to compel arbitration, the court shall enter an order compelling the parties to proceed with arbitration and staying proceedings pending arbitration.

(e)(1) Any party may file a motion to confirm an arbitration award entered following a court order or docket entry staying proceedings pending arbitration. The motion to confirm shall be filed as an ancillary proceeding to the pending civil action.

NOTE: The motion to confirm will be filed with the court at the number of the action required by Rule 1329.

(2) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served pursuant to Rule 440.

(3) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(4) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(5) If the responding party files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions.

Rule 1330. Notice Required by Rule 1329(d)(1). Form

The notice required by Rule 1329(d)(1) shall be substantially in the following form:

(Caption)

Notice to File Answer

The motion attached to this notice asks the court to enforce an agreement to submit claims to arbitration. If you oppose submission of this claim to arbitration, you must file an answer to the motion with the Prothonotary within thirty (30) days of mailing or other service of this notice. If you fail to respond, this case will proceed to arbitration and may result in the entry of a money judgment against you.

NOTE: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Rule 1331. Notice Required by Rules 1328(b) and 1329(e)(2). Form

The notice required by Rules 1328(b) and 1329(e)(2) shall be substantially in the following form:

(Caption)

Notice to File Answer

A party to these proceedings has filed a motion to confirm an arbitration award. If you oppose the motion, you are required to file an answer to the motion within thirty (30) days from the date below setting forth your objections to the motion. If you fail to file an answer, a money judgment based on the arbitration award may be entered against you without further notice. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

Date of mailing or other service:

Party Filing Motion

NOTE: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Explanatory Comment

The Supreme Court of Pennsylvania has promulgated new Rule of Civil Procedure 1326 *et seq.* to govern proceedings to compel arbitration and to confirm arbitration awards in consumer credit transactions.

Prior to the promulgation of these new rules, practice was based solely on the provisions of the Judicial Code governing statutory arbitration and common law arbitration which provide for the filing of an initial application to the court to compel arbitration (42 Pa.C.S. §7304(a)) and a second application to the court to confirm an arbitration award (42 Pa.C.S. §7313). These new rules create procedures that minimize court involvement and provide quicker and cheaper relief to the litigants. The rules are promulgated in response to the inclusion of an arbitration clause governing collection claims in consumer credit transactions.

There is no reason for a claim to be heard by an arbitrator pursuant to a motion to compel arbitration and to be returned to the court through a motion to confirm arbitration if the defendant will not be contesting the claim of the plaintiff. Thus, (1) new Rule 1329(a) provides for the plaintiff seeking to compel arbitration of a claim to commence a civil action against the defendant and to include in the complaint an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration and (2) new Rule 1329(b) permits the plaintiff to obtain a default judgment pursuant to Rules 237.1 and 1037 if defendant fails to file a responsive pleading to the complaint.

If the defendant files an answer to the complaint admitting that the claims are subject to arbitration, new Rule 1329(c)(1) permits either party to file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

If the defendant files preliminary objections or an answer which does not admit that the claims are subject to arbitration, new Rule 1329(c)(2) provides for the plaintiff to file a motion for a rule to show cause why arbitration should not be compelled. New Rule 1329(d)(2) requires the defendant to file within twenty days an answer to the plaintiff's motion, and new Rule 1329(d)(3) provides that if the defendant does not file an answer to the motion, the plaintiff may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

New Rules 1328(d) and (e) and 1329(e)(3) and (4) adopt similar procedures for the entry of a judgment based on an arbitration award by providing for the filing of a motion to confirm an award. A responding party who opposes the motion must file an answer within thirty days. If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

New Rule 1326 *et seq.* applies only to consumer credit transactions because it is not anticipated that there will be an increasing number of other cases raising arbitration issues in which the courts will be involved. In addition, procedures that work for consumer credit transactions may not work for all types of matters involving statutory and common law arbitration.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair