

Rule 1311. Procedure on Appeal. Generally

- (a) The trial shall be de novo.

NOTE: Except as otherwise provided by Rule 1311.1, [T]the provisions of Rule 1305 governing conduct of hearing shall not apply on appeal.

- (b) An arbitrator may not be called to testify as to what transpired before the arbitrators.

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence

(a) The plaintiff may stipulate to \$15,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The stipulation shall be filed and served upon every other party at least thirty days from the date the appeal is first listed for trial.

(b) If the plaintiff has filed and served a stipulation as provided in subdivision (a), any party may offer at trial the documents set forth in Rule 1305(b)(1). The documents offered shall be admitted if the party offering them has provided written notice to every other party of the intention to offer the documents at trial at least twenty days from the date the appeal is first listed for trial. The written notice shall be accompanied by a copy of each document to be offered.

NOTE: The deadline for providing notice of the intention to use the procedures of this subdivision may be altered by the court upon

cause shown, provided that no party is prejudiced.

The term "plaintiff" includes a defendant who is the plaintiff in a counterclaim.

(c) A document which is received into evidence under subdivision (b) may be used for only those purposes which would be permissible if the person whose testimony is waived by this rule were present and testifying at the hearing. The court shall disregard any portion of a document so received that would be inadmissible if the person whose testimony is waived by this rule were testifying in person.

(d) Any other party may subpoena the person whose testimony is waived by this rule to appear at or serve upon a party a notice to attend the trial and any adverse party may cross-examine the person as to the document as if the person were a witness for the party offering the document. The party issuing the subpoena shall pay the reasonable fees and costs of the person subpoenaed to testify, including a reasonable expert witness fee if applicable.

(e) The stipulation required by subdivision (a) shall be substantially in the following form:

(Caption)

Stipulation to Limitation of Monetary Recovery

Pursuant to Rule 1311.1

To: _____
(Name of Party/Parties)

_____, plaintiff, stipulates to \$15,000.00 as the maximum amount of damages recoverable upon the trial of the appeal from the award of arbitrators in the above captioned action.

(Name of Plaintiff)

(Attorney for Plaintiff)

Date

NOTE: The term "plaintiff" includes a defendant who is the plaintiff in a counterclaim.

A plaintiff may include in a single document the stipulation and the notice of intent to offer documents.

(f) The notice required by subdivision (b) shall be substantially in the following form:

(Caption)

**Notice of
Intent to Offer Documentary Evidence
Pursuant to Rule 1311.1**

To: _____
(Name of Party/Parties)

_____, (Plaintiff, Defendant, Additional Defendant), intends to offer the documents attached hereto at the trial of the appeal from the award of arbitrators, in the manner provided by Rule of Civil Procedure 1311.1. The following documents are attached (list all documents to be offered):

1. _____.
2. _____.

(Name of Party)

(Attorney for Party)

Date

Explanatory Comment

New Rule 1311.1 introduces a new practice with respect to the admission of documentary evidence at the trial of an appeal from the award of arbitrators in compulsory arbitration. The new rule incorporates the concept of Rule 1305 which permits specified documents to be admitted into evidence at the arbitration hearing upon notice by the party offering the documents to every other party accompanied by a copy of the documents.

The new procedure is limited to cases in which the “plaintiff stipulates to \$15,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators.” Subdivision (a) authorizes this stipulation and subdivision (f) provides a form of “Stipulation to Limitation of Monetary Recovery Pursuant to Rule 1311.1”.

Once the plaintiff has filed and served the stipulation, subdivision (b) of the new rule provides that “any party may offer at trial the documents set forth in Rule 1305(b)(1).” In so providing, subdivision (b) is substantially similar to the introductory language of Rule 1305(b)(1). The admission of the documentary evidence is conditioned upon notice to every other party accompanied by a copy of each document to be offered. Subdivision (g) contains a form of “Notice of Intent to Offer Documentary Evidence Pursuant to Rule 1311.1”.

Rule 1311.1 draws upon Rule 1305 in two other respects as well. First, subdivision (c) of the new rule tracks Rule 1305(b)(3) stating the purposes for which the documents admitted into evidence may be used and directing the court to disregard “any portion of a document so received that would be inadmissible if the person whose testimony is waived by this rule were testifying in person.” Second, subdivision (d) is substantially similar to Rule 1305(b)(4) governing the right of any other party to subpoena the person whose testimony is waived by the rule. Both subdivisions (c) and (d) vary from their counterparts

in Rule 1305 only to accommodate the procedural posture of a trial rather than an arbitration hearing.

Rule 1311 governing the procedure on appeal from the award of arbitrators is amended to conform to the new rule by revising the title to read “Procedure on Appeal. Generally” and by adding to the note a cross-reference to the new rule.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair