

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Proposed Recommendation No. 251

**Proposed Amendment of Rule 1311.1 Governing
Admission of Documentary Evidence upon the Trial of an Appeal
from the Award of Arbitrators in Compulsory Arbitration**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1311.1 governing admission of documentary evidence upon the trial of an appeal from the award of arbitrators in compulsory arbitration be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **June 7, 2011** to:

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Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence

(a) The plaintiff may **[stipulate to] elect a limit of** \$25,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The **[stipulation] election** shall be filed and served upon every other party at least thirty days from the date the appeal is first listed for trial. **The election may be withdrawn at any time by agreement of the parties. If the parties cannot agree, upon plaintiff's motion to withdraw the election, the court may grant the withdrawal of the election upon good cause shown.**

(b) If the plaintiff has filed and served **[a stipulation] an election** 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] usual and customary** fees and costs of the person subpoenaed to testify, including a **[reasonable] usual and customary** expert witness fee if applicable.

(1) If another party subpoenas or otherwise arranges for the attendance at trial of the person whose testimony is waived by this rule, the document shall be presented to the judge or jury as direct examination as if the person has not been subpoenaed by another person, or the plaintiff may conduct a direct examination of the witness.

(2) Any party, or the person subpoenaed, may require that the testimony be given by deposition pursuant to Pa.R.C.P. 4020(a)(5). The party issuing the subpoena shall pay the witness's usual and customary fee for such testimony.

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

(Caption)

[Stipulation to Limitation of] Election to Limit Monetary Recovery
Pursuant to Rule 1311.1

To: _____
(Name of Party/Parties)

_____, plaintiff, **[stipulates] elects** to **a limit of** \$25,000.00 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] election** 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

The Civil Procedural Rules Committee is proposing the amendment of Rule 1311.1 governing the admission of documentary evidence upon the appeal of an award of arbitrators in compulsory arbitration. It is proposed that the rule be amended in three respects. Currently, subdivision (a) of the rule provides for a party to stipulate to \$25,000 as the maximum amount recoverable. The rule was silent as to any procedure for withdrawing the stipulation. The proposed amendment will allow a plaintiff to elect, rather than stipulate, a limit of \$25,000. An election can subsequently be withdrawn upon agreement by the parties or pursuant to a court order upon good cause shown.

Subdivision (d) of the current rule provides that the expert witness be paid a reasonable fee for his or her testimony. The proposed amendment would change the reasonable fee to a usual and customary fee.

The amendment to subdivision (d) also provides a new procedure when another party subpoenas the witness whose testimony is waived under this rule. The amendment would allow the plaintiff to present the document to the judge or jury as direct examination as if the person has not been subpoenaed by another person, or allow the plaintiff to conduct a direct examination of the witness.

By the Civil Procedural
Rules Committee

Robert C. Daniels
Chair