

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 1300]

Amendment of Rule 1305 Governing Compulsory Arbitration; No. 286; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 5th day of September, 1997, Pennsylvania Rule of Civil Procedure 1305 governing compulsory arbitration is amended to read as follows.

This Order shall be effective January 1, 1998 and shall be processed in accordance with Pennsylvania Rule of Judicial Administration 103(b).

Mr. Justice Zappala files a dissenting statement in which Mr. Justice Castille joins.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1300. COMPULSORY ARBITRATION

#### Subchapter A. RULES

I. Rule 1305 is amended to read as follows:

#### Rule 1305. Conduct of Hearing. Evidence.

(a) Except as prescribed by this rule, the rules of evidence shall be followed in all hearings before arbitrators. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by a majority of the board.

(b)(1) [If at least twenty days' written notice of the intention to offer the following documents in evidence was given to every other party accompanied by a copy of the document, a party may offer in evidence, without further proof, ] The following documents shall be admitted into evidence if at least twenty days' notice of the intention to offer them was given to every other party accompanied by a copy of each document to be offered:

[ (1) ](i) bills [ , records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers, ] or other documents evidencing charges incurred;

**Official Note:** The board of arbitrators may find a bill authentic, necessary and reasonable without extrinsic evidence but is not required to do so.

[ (2) ](ii) [ bills for drugs, medical appliances and prostheses, ] records of businesses, government departments, agencies or offices, subject to statutory restrictions, provided that these are records which would otherwise be admissible if authenticated by a custodian of records;

**Official Note:** The restrictions on the admissibility of evidence under this subparagraph are

unique to the records specified and are not found elsewhere in subdivision (b).

(iii) records and reports of hospitals and licensed health care providers;

(iv) expert reports and descriptions of expert qualifications;

[ (3) bills for or ] (v) written estimates of value, damage to, cost of repair of or loss of property[ , ]; and

[ (4) a ] (vi) [ report ] reports of rate of earnings and time lost from work or lost compensation prepared by an employer.

(2) If twenty days' advance notice of intention to offer documents in evidence was not given but copies of the documents were provided to the other parties at least twenty days in advance of the hearing or during discovery, the admissibility of the documents without authentication shall be in the discretion of the arbitrators upon a finding of the absence of prejudice.

(3) A document which is received into evidence under subparagraphs (1) or (2) 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 arbitrators 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.

(4) 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 hearing and any adverse party may cross-examine [ him ] the person as to the document as if [ he ] 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.

(c) A written estimate of value, damage to, cost of repair of or loss of property shall be accompanied by a statement of the party offering it whether the property was repaired and, if it was, whether the repairs were made in full or in part and by whom, together with the bill therefor.

(d) A party may offer in evidence, without the certification required by Sections 5328 and 6103 of the Judicial Code, an official weather or traffic signal report or a standard United States Government life expectancy table. A party may also offer any other official record kept within the Commonwealth without such certification if the provisions of subdivision (b) are followed.

II. The 1981 Explanatory Note to Rule 1305 is deleted and the following Explanatory Comment is added:

#### Explanatory Comment

The Supreme Court of Pennsylvania has amended in several respects Rule 1305(b) which relaxes the rules of evidence as to the introduction of certain types of written evidence at a hearing before a board of arbitrators in compulsory arbitration. First, the rule has been clarified by providing that, if twenty days notice of the intention to offer certain types of documents into evidence is given to every other party and if the notice is accompanied by

copies of the documents, the documents "shall be admitted into evidence." Second, the categories of such evidence have been broadened to include business and governmental records (subdivision (b)(1)(ii)) and expert reports and qualifications (subdivision (b)(1)(iv)). Third, new subdivision (b)(2) provides for the instance in which the required notice is not given but the other parties have received copies of the documents at least twenty days prior to the hearing or during discovery. Finally, new subdivision (b)(3) directs the board of arbitrators in its consideration and use of the documents admitted into evidence.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

### Dissenting Statement

Mr. Justice Zappala

September 5, 1997

The amendment to Rule 1305(b) expand the categories of documents that may be admitted into evidence without further proof when notice of the intention to offer them at an arbitration hearing is given to every other party with copies of the documents to be offered. Rule 1305(b) permits a party to introduce records of businesses, government departments, agencies or offices, records and reports of hospitals and licensed health care providers, expert reports and descriptions of expert qualifications without requiring the custodian of the reports or the expert to appear.

While I am not opposed to the admission of such documents upon compliance with the notice requirements, I must object to the provision of Rule 1305(b)(4) that imposes the fees and costs of an expert witness, or witness whose testimony is waived by the rule, on the party who subpoenas the witness to attend the arbitration hearing. This is an onerous burden to place on a party who wishes to challenge the admissibility of the evidence or to cross-examine an expert witness as to opinions or other information contained in a report. The party who seeks to introduce and rely on expert testimony need only submit a report in advance of the hearing. The opposing party must either subpoena the expert witness, thereby incurring fees and costs for the attendance of the expert witness, or allow the expert's report and documents to be admitted as substantive evidence.

The party who secures the expert's report enjoys the advantage of introducing expert testimony without the cost of producing the witness. As amended, Rule 1305(b)(4) unfairly restricts an opposing party's ability to cross-examine an expert witness or to challenge the admissibility of documents. Furthermore, it may prove to

be counter-productive since an opposing party may find it less costly to appeal from an arbitration decision than to pay the fees and expenses of an expert witness.

Mr. Justice Castille joins in this Dissenting Statement.

[Pa.B. Doc. No. 97-1498. Filed for public inspection September 19, 1997, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

### Mental Health Procedures Act; Appointment of Counsel for All Persons Indigent; Administrative Doc. No. 003 of 1997

#### Order

*And Now*, this 5th day of September, 1997, *It Is Hereby Ordered, Adjudged and Decreed* that pursuant to the Mental Health Procedures Act of 1976, as amended, and Phila.Civ.P. No. 7109 the Defender Association is appointed to represent all persons who may be subject to involuntary medical examination and treatment, under the Mental Health Procedures Act unless it appears that any such person can afford and desires to have, private representation.

This Order shall remain in effect until June 30, 1998 unless otherwise provided by this Court.

This Order is issued in accordance with 50 P. S. § 7101 et seq; Phila.R.Civ.P. No. 7109, Phila.R. Civ.P. No. ★51 and Pa.R.C.P. No. 239. As required by Pa.R.C.P. No. 239, the original Order shall be filed with the Prothonotary in an Administrative Docket maintained for Orders issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts and the Legislative Reference Bureau. Copies of the Order shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

*By the Court*

ALEX BONAVIDACOLA,  
*President Judge*

[Pa.B. Doc. No. 97-1499. Filed for public inspection September 19, 1997, 9:00 a.m.]