

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. No. 1311.1

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 1311.1 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by **September 24, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

John J. Hare
Chair

PUBLICATION REPORT

Pursuant to a request, the Civil Procedural Rules Committee is considering proposing the amendment of Pa.R.C.P. No. 1311.1 governing the limit a party may elect as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. Rule 1311.1 currently sets the maximum amount recoverable at \$25,000. The proposed amendment would establish the maximum amount of damages recoverable equal to the jurisdictional limit of compulsory arbitration in the judicial district in which the action was brought.

Section 7361 of the Judicial Code, 42 Pa.C.S. § 7361(b) sets the jurisdictional limit for compulsory arbitration: “No matter shall be referred [to compulsory arbitration]...where the amount in controversy, exclusive of interests and costs, exceeds \$50,000.” *Id.* Rule 1311.1 waives the necessity of testimony by a witness as a prerequisite to the admission of documentary evidence in an arbitration proceeding under Rule 1305(b). The rule applies to arbitration appeals in which the “plaintiff elects 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 Committee observed that not every judicial district sets its compulsory arbitration limit at \$50,000 - approximately 15 judicial districts use a lower amount. In practice, the disconnect between the jurisdictional limit for arbitration and the maximum amount of damages permitted under Rule 1311.1 creates an unfair advantage to a defendant who appeals an award of arbitrators to the trial court knowing that the award on appeal will be lower than the award of the arbitrators. The proposed amendment of Rule 1311.1 is intended to eliminate this advantage by establishing that the maximum amount of damages is equal to the compulsory arbitration limit in each judicial district.

Accordingly, subdivision (a) would be amended to replace the current \$25,000 limit with “an amount equal to the jurisdictional limit for compulsory arbitration of the judicial district in which the action was filed...” A note would also be added to cross-refer to Section 7361(b) of the Judicial Code providing for the jurisdictional limit for compulsory arbitration and to Rule 1301 to indicate that the limit for a judicial district is set by local rule. In addition, some minor stylistic revisions are also proposed.

The Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence.

(a) The plaintiff may elect **[a limit of \$25,000.00] an amount equal to the jurisdictional limit for compulsory arbitration of the judicial district in which the action was filed** as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The election shall be filed and served upon every other party at least **[thirty] 30** 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.

Note: The jurisdictional limit for compulsory arbitration is set forth in Section 7361 of the Judicial Code, 42 Pa.C.S. § 7361. Each judicial district is required pursuant to Rule 1301 to specify in a local rule the jurisdictional amount for actions that are submitted to compulsory arbitration.

(b) If the plaintiff has filed and served 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] 20** 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 usual

and customary fees and costs of the person subpoenaed to testify, including a 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 may 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.] Rule 4020(a)(5)**. The party issuing the subpoena shall pay the witness's usual and customary fee for such testimony.

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

(Caption)

**Election to Limit Monetary Recovery
Pursuant to Rule 1311.1**

To: _____
(Name of Party/Parties)

_____, plaintiff, elects \$[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 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