



# HAMPDEN COUNTY BAR ASSOCIATION ARBITRATION & MEDIATION SERVICES

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## ARBITRATION RULES

The Hampden County Bar Association maintains, for the convenience of the bar, a roster of lawyers and retired judges who are willing and available to serve as arbitrators to assist in the resolution of civil disputes. Upon the request of the parties to any such dispute, the Administrator of the Arbitration and Mediation Service will endeavor to arrange a time and place for an arbitration session with any member of the roster designated by the parties. In any case in which a member of the roster has been appointed by a justice of any of the trial courts to serve as an arbitrator in a particular case, the Administrator will, upon request, endeavor to arrange a time and place for an arbitration session before the appointed arbitrator.

### 1. Application

Except as otherwise provided by law or agreed in writing, these Rules, in the form in effect at the time of the execution of an Agreement to Arbitrate, shall be deemed to be part of the parties' Agreement to Arbitrate, and shall govern all arbitrations and ancillary administration conducted under the auspices of the Hampden County Bar Association Arbitration & Mediation Service.

### 2. Fees

The fee of the arbitrator is **\$300.00** per hour and the administrative fee of the Arbitration/Mediation Service is **\$100.00** per attending representative.

Arbitrations can be scheduled from one (1) hour to one (1) day. The fee of the arbitrator shall be divided equally between the parties (i.e. if there is one plaintiff and two defendants and the hearing is scheduled for one hour, the parties will each pay one-third (1/3) of the hourly fee or \$100.00). The fees shall be payable prior to the commencement of the scheduled hearing and should be paid to the Case Coordinator of the Arbitration & Mediation Service.

Requests for cancellations made with less than three (3) business days notice are subject to cancellation fees as follows: \$300.00 payable to the arbitrator; and, \$100.00 payable to Hampden County Bar Association. Cancellations made within one (1) hour of the scheduled hearing time will be charged the full fee based on the amount of time reserved for said hearing.

### 3. Agreement to Arbitrate

In all cases in which a member of the roster has been designated to serve as an arbitrator for the resolution of an existing dispute, the parties shall execute a written Agreement to Arbitrate in substantially the following form before the hearing commences.

**AGREEMENT TO ARBITRATE**

\_\_\_\_\_ Court  
Docket No.:

In the matter of \_\_\_\_\_ (hereinafter Plaintiff/Claimant) v.  
\_\_\_\_\_, (hereinafter Defendant/Insured Party) the parties hereto do hereby agree as follows:

The Defendant/Insured Party is insured by \_\_\_\_\_ (hereinafter the insurer); and the Plaintiff/Claimant and the Defendant/Insured Party disagree as to liability and/or damages for which the Defendant/Insured Party may be liable. The parties agree to submit this dispute to \_\_\_\_\_ as Arbitrator to resolve the issues pursuant to the Arbitration Rules of the Hampden County Bar Association Mediation & Arbitration Service.

1. The parties agree that \_\_\_\_\_ shall act as Arbitrator in this matter, that his/her decision shall be binding upon the parties in all respects and may be entered in any court of competent jurisdiction as a Judgment.
2. The Arbitrator's decision in this matter shall be made and mailed to the parties or to the Insurer's claim representative or legal counsel on or before \_\_\_\_\_.
3. The parties agree that the Arbitrator's award shall be (a) a gross award; or (b) a net award after deduction of PIP benefits/or bodily injury payments in the amount of \$\_\_\_\_\_.  
*(Strike out (a) or (b) as appropriate)*

In consideration of the foregoing, the parties hereto have affixed their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Plaintiff/Claimant

\_\_\_\_\_  
Insurer's Claim Representative

\_\_\_\_\_  
Plaintiff/Claimant's Legal Counsel

\_\_\_\_\_  
Insurer's Legal Counsel

Witness: \_\_\_\_\_  
Arbitrator -

If a case involves multiple claims, the Agreement to Arbitrate shall specify which of those claims are being submitted to the arbitrator or separate Agreements to Arbitrate shall be executed for each of the claims being submitted.

#### 4. Applicable Law

These Rules shall be subject to and, insofar as applicable, shall be deemed to incorporate the provisions of Chapter 251 of the General Laws of Massachusetts (the Uniform Arbitration Act).

#### 5. Hearings

##### (a) **Date, Time and Place of Hearing**

The Administrator, with the concurrence of the parties, shall set the date, time and place for the initial hearing. The Administrator shall send a notice of hearing to the parties at least ten (10) days in advance of the hearing date unless otherwise agreed by the parties. The notice shall specify the number of hours reserved for the initial hearing.

In the event that the hearing is not completed on the date of the initial hearing, the hearing shall be continued by the arbitrator to the earliest feasible date with the concurrence of the parties and the Administrator.

##### (b) **Case Overview**

At least one day prior to the initial date of hearing, the parties shall each provide the arbitrator with a Case Overview and List of Damages setting forth the party's position with regard to the issues in dispute.

##### (c) **Representation**

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other parties and the Administrator at least three (3) days prior to the initial date of hearing of the name and address of the representative. When such a representative initiates an arbitration or responds for a party, notice shall be deemed to have been given.

##### (d) **Stenographic Record**

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator, to be the official record of the proceedings, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

**(e) Interpreters**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

**(f) Attendance at Hearings**

Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

**(g) Postponements**

The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant a postponement if all of the parties agree.

**(h) Oaths**

The arbitrator may require witnesses to testify under oath administered by the arbitrator or by any duly qualified person and, if required by law or requested by any party, shall do so.

**(i) Order of Proceedings**

A hearing shall be opened by the recording of the date, time and place of the hearing, the presence of the arbitrator, the parties and their representatives; by the execution by the parties and their representatives of an Agreement or Agreements to Arbitrate; and by a review by the arbitrator of the Case Overviews submitted in accordance with the provisions of Rule 5(b) above. The arbitrator may then permit the parties to make brief opening statements if they desire to do so. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved in the case.

The Plaintiff/Claimant shall then present evidence in support of his/her claim. The Defendant/Insured Party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or cross-examination by the opposing party or its counsel. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator. The names and addresses of all witnesses and a description of the exhibits shall be made a part of the record.

**(J) Communication with Arbitrator**

There shall be no direct communication between the parties and the arbitrator with regard to the matter in dispute other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the Administrator for transmittal to the arbitrator.

**(k) Arbitration in the Absence of a Party or Representative**

Unless the law provides to the contrary, arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

**(l) Evidence**

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses may do so upon the request of any party or independently in accordance with the provisions of G.L.c. 251, Section 7 and Rule 45 of the Massachusetts Rules of Civil Procedure.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties are absent in default or have waived the right to be present.

**(m) Evidence by Affidavit or Post-hearing Filing**

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to have after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after hearing, the documents or other evidence shall be filed with the Administrator for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

**(n) Inspection by Arbitrator**

If the arbitrator finds it necessary or desirable to make an inspection in connection with the arbitration, he/she shall direct the Administrator to notify the parties. The arbitrator shall set the date and time for the inspection and the Administrator shall notify the parties of that place and time. Any party who so desires may be present at the inspection, the arbitrator shall make a verbal or written report to the parties and afford each of them an opportunity to comment.

**(o) Closing of Hearing**

At the conclusion of the presentation of evidence, the arbitrator shall inquire of the parties whether they have any further proofs to offer or witnesses to be heard. If satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final day set by the arbitrator for the filing of briefs. If documents or other evidence are to be filed pursuant to the provisions of Rule 5(m) above and the date set for their receipt is later than the date set for the receipt of briefs, the later date shall be the date for the closing of the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements of the parties, upon the closing of the hearing.

**(p) Reopening of Hearing**

The hearing may be reopened on the arbitrator's initiative, or upon the application of a party, at any time before the award is made. If reopening the hearing would prevent the making of an award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen (if any), the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have thirty (30) days from the closing of the reopened hearing within which to make an award.

**6. Awards**

The Award shall be in writing and signed by the arbitrator or, in the event of an award by a panel of arbitrators, by the arbitrators concurring in the award. The award shall be filed by the arbitrator with the Administrator and the Administrator shall cause copies of the award to be delivered to the parties personally or by first class mail, postage prepaid, unless otherwise provided in the Agreement to Arbitrate.

The award shall be made within the time fixed therefor by the Agreement to Arbitrate or, if no time is so fixed, within thirty (30) days or within the time determined in accordance with the provisions of Rules 5(o) or 5(p) above.

The parties may by an agreement in writing extend the time for the making of the award either before or after the expiration thereof. A party shall be deemed to have waived the objection that an award was not made within the time required unless he notifies the arbitrator of his objection prior to the delivery of the award to him.

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. If the parties agree in writing to the making of a "Summary Award" by the arbitrator, the award may consist of no more than a general finding for or against one party or the other and, in the event of a finding of an entitlement to damages for the prevailing party, the amount of such damages.

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

#### **7. Judicial Proceedings**

The Administrator shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the Administrator's possession that may be required in judicial proceedings relating to the arbitration.

No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

Neither the Hampden County Bar Association, its officers or directors, the Administrator or any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

Parties agreeing to arbitrate under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal and state court having jurisdiction thereof.

#### **8. Waiver of Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

#### **9. Extensions of Time**

The parties may modify any period of time prescribed by these rules by mutual agreement. The Administrator or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The Administrator shall notify the parties of any such extension.

#### **10. Service of Notice**

Each party shall be deemed to have consented to the rule that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the Commonwealth of Massachusetts, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The Administrator and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

## 11. **Exclusion of Liability**

Neither the Hampden County Bar Association, its officers, directors or employees, the Administrator nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.