



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Relating to the**

### **Alternative Procedure for Dispute Resolution Act (N.J.S. 2A:23A-13(a))**

**September 11, 2017**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.  
Please consult the New Jersey statutes in order to determine the law of the State.

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## Executive Summary

A party to an alternative dispute resolution proceeding may, by statute, commence a summary application to the Superior Court for the vacation, modification, or correction of an award.<sup>1</sup> Currently, New Jersey statute 2A:23A-13 subsection a. provides:

A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection d. of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

Thus, N.J.S. 2A:23A-13 subsection a. mandates that the parties have 45 days after delivery of the award by the umpire to commence a summary action in the Chancery Division of the Superior if they seek to vacate, correct, or modify the award. If the award is modified by an umpire, parties have 30 days after delivery of the award in which to commence such an action.

In *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists* the Appellate Division addressed two, “unsettled” time periods in subsection a. of N.J.S. 2A:23A-13.<sup>2</sup> In its decision the Court, set forth the time period a party has to commence a summary action after the denial of an application to modify an award under N.J.S. 2A:23A-12(d) (a “12(d) application”).<sup>3</sup> In addition, the Court delineated the amount of time a party has to challenge an award when the application to modify is made pursuant to the rules adopted by an arbitrating organization and not pursuant to N.J.S. 2A:23A-12 subsection d.<sup>4</sup> Contained in this Report is a proposal to modify the statutory language accordingly.

## Background

The Alternative Procedure for Dispute Resolution Act (APDRA) was enacted in 1987. The purpose of the Act was to create a new procedure for dispute resolution for the civil justice and arbitration systems.<sup>5</sup> The general purpose of APDRA is to provide parties with a forum for both expeditious dispute resolution and judicial review.<sup>6</sup> To eliminate any confusion, the statute

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<sup>1</sup> N.J. Stat. Ann. § 2A:23A-13(a).

<sup>2</sup> *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371 (App. Div. 2016).

<sup>3</sup> *Id.* at 378.

<sup>4</sup> *Id.* at 381-382.

<sup>5</sup> N.J. Stat. Ann. § 2A:23A-1

<sup>6</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 380.

defines the method and the means by which an award must be delivered to the parties.<sup>7</sup> The award of the alternative resolution proceeding must be in writing and acknowledged or proved in the same manner as a deed for the conveyance of real estate.<sup>8</sup> In addition, the award must be delivered personally; sent by certified mail, return receipt requested; or as provided in the agreement to each party.<sup>9</sup>

If a party to the arbitration is not satisfied with the award issued by the umpire they may commence a summary application in the Superior Court seeking to vacate, modify, or correct the arbitration award.<sup>10</sup> Specifically, N.J.S. 2A:23A-13 subsection a. provides:

A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection (d) of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

After the delivery of an award by the umpire, N.J.S. 2A:23A-13 subsection a. affords the parties 45 days within which to commence a summary action in the Chancery Division of the Superior Court seeking to vacate, correct, or modify the award. If the award is modified by an umpire, parties have 30 days after delivery of the award to commence their Superior Court action. The statute does not, however, provide for the following: (1) the time within which to commence a summary action where the umpire issues an “order” denying modification of the award<sup>11</sup>; and (2) the amount of time a party has to challenge an award when the application to modify is made not pursuant to N.J.S. 2A:23A-12 subsection d., but rather under the rules adopted by the arbitrating organization.

In 2009, a passenger sustained personal injuries in a vehicle insured by Citizens United Reciprocal Exchange (“CURE”).<sup>12</sup> Defendant, Northern NJ Orthopedic Specialists (“Orthopedic”), performed spinal surgery on the passenger in 2011.<sup>13</sup> Orthopedic subsequently submitted a bill for \$89,266 to CURE, and the claim was denied.<sup>14</sup> Orthopedic sought PIP

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<sup>7</sup> See N.J. Stat. Ann. § 2A:23A-12(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> N.J. Stat. Ann. § 2A:23A-13(a).

<sup>11</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 379. The Appellate Division refers to the delivery vehicle for a decision pursuant to N.J.S.A 2A:23A-13(a) as an “order.”

<sup>12</sup> *Id.* at 374.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

arbitration to be conducted by dispute resolution professionals, Forthright Solutions (“Forthright”).<sup>15</sup> Orthopedic claimed \$55,410.29 of PIP benefits.<sup>16</sup> On April 8, 2013, Forthright granted Orthopedic \$16,433.05, together with counsel fees, costs, and interest.<sup>17</sup> In response, Orthopedic filed a summary action in the Law Division challenging the award.<sup>18</sup> The Court entered a consent judgment vacating the award and remanding back to Forthright for further consideration of evidence, pursuant to N.J.S. 2A:23-13 subsection c.(5).<sup>19</sup> After the second hearing, Forthright awarded \$31,939.99 plus counsel fees to Orthopedic in a letter dated March 31, 2014.<sup>20</sup>

In accordance with Rule 24(a) of Forthright’s governing rules<sup>21</sup>, CURE made an application seeking modification/clarification of the award.<sup>22</sup> Pursuant to this rule, “[...]any party may submit **one** request to (a) clarify the Award and/or (b) correct any clerical, typographical or computational errors, and/or (c) consider claims presented to the DRP at the time of the hearing for in-person cases, or in the parties’ submissions for on-the-papers cases, but omitted from the Award.”<sup>23</sup> Rule 24(a) provides that a party seeking to clarify an award must submit a written application to Forthright “within 35 days after the date of Forthright’s letter sending the award to the parties.”<sup>24</sup> On June 20, 2014, Forthright denied CURE’s application for clarification, finding that the issues were “sufficiently addressed.”<sup>25</sup> Forty-five days later, on August 4, 2014, CURE filed both a complaint and request for an Order to Show Cause demanding the DRP’s award be vacated pursuant to N.J.S.A. 2A:23A-13.<sup>26</sup>

On September 11, 2014, the trial court judge dismissed CURE’s filings, with prejudice, finding that N.J.S. 2A:23A-13 subsection a. required CURE to file the complaint within 30 days, not 45 days, after receiving the denial of the “modification/clarification” order.<sup>27</sup> Accordingly, CURE filed an appeal to the Appellate Division arguing that N.J.S. 2A:23A-13 subsection a. allowed it to file its summary action within 45 days of its receipt of Forthright’s Clarification

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<sup>15</sup> *Id.*

<sup>16</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 374.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 376. *See also* N.J. Stat. Ann. § 39:6A-5.1(b) requiring a PIP dispute resolution organization to provide the Commissioner of the Department of Banking and Insurance with a dispute resolution plan which includes procedures and rules governing the dispute resolution process. *See also* N.J.A.C. 11:3-5.6(g) necessitating a dispute resolution organization to maintain, periodically review and publish its rules.

<sup>22</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 374.

<sup>23</sup> Forthright, New Jersey No-Fault PIP Arbitration Rules – March 2013 §24. (Emphasis added). *See also* N.J. Stat. Ann. § 2A:23A-12(d) and N.J. Stat. Ann. § 2A:23A-13(e) setting forth the grounds upon which an umpire may modify an award in the context of a 12(d) application.

<sup>24</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 374.

<sup>25</sup> *Id.* at 375.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Denied Order, but that the Order is not “the award.”<sup>28</sup> Orthopedic argued the statute mandates a 30-day time limit applies, and that the order is not an award modified pursuant to N.J.S. 2A:23A-12 subsection d.<sup>29</sup> Ordinarily, under APDRA, a party is not entitled to further appeal or review of the judgment or decree.<sup>30</sup>

Although the language of the APDRA clearly restricts parties’ rights to appeal beyond the trial court, case law has recognized that in limited circumstances, including the dismissal of an action on timeliness grounds, an appeal is permissible.<sup>31</sup> In this case, the Appellate Division, found that it had the authority to consider the appeal, noting that “[s]uch review is particularly appropriate here because “[t]he unsettled questions of statutory interpretation” here have “yet to be resolved in a published opinion,” and “[t]he repeat players in the PIP system—claimants, insurers, DRPs, lawyers, and trial judges—all can benefit from definitive precedential guidance.”<sup>32</sup> In its decision, the Appellate Division identified two “unsettled” issues in the construction of the relevant statute, and found guidance from the general purpose of the APDRA and its emphasis on “the expeditious resolution of...alternative resolution proceedings.” The Appellate Division recognized the purpose of APDRA is to establish “an efficient and expeditious procedure for resolution of civil disputes.”<sup>33</sup>

The plain language of N.J.S. 2A:23A-13 subsection a. clearly addresses two scenarios. First, if a 12(d) application is not filed, a party must file a summary action challenging the award within 45 days after delivery of the award to the applicant.<sup>34</sup> Second, if a party files a 12(d) application, and the umpire issues a modified award, a party must file a summary action challenging the modified award within 30 days after receipt of an award modified pursuant to N.J.S. 2A:23A-12(d).<sup>35</sup> The statutory language, however, is silent on the filing deadlines when a party files a 12(d) application but the umpire denies modification of the award. Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree will be entered by the trial court.<sup>36</sup>

The Appellate Division in *Citizens United* considered the guidance provided by the existing statutory language and its purposes, and held that if an application to modify is filed under N.J.S. 2A:23A-12 subsection d.; or, an application to modify or clarify is made under the

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<sup>28</sup> *Id.*

<sup>29</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 375.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 376-377.

<sup>32</sup> *Id.* citing *Kimba Med. Supply v. Allstate Ins. Co.*, 431 N.J. Super. 463, 482–83 (App.Div.2013), *certif. granted*, 217 N.J. 286, *certif. disp’d as improvidently granted*, 223 N.J. 347 (2014).

<sup>33</sup> *Id.* citing *Sponsor’s Statement Appended to Assemb. B. No. A296*, at 12–13 (Jan. 14, 1986); *Assemb. Judiciary Comm. Statement to Assemb. B. No. A296*, at 1–2 (June 16, 1986); *Senate Judiciary Comm. Statement to Assemb. B. No. A296*, at 1–2 (Oct. 27, 1986); *see also Draftsman’s Legis. History*, reprinted before N.J.S. 2A:23A–1.

<sup>34</sup> *Id.* at 379 (Emphasis added).

<sup>35</sup> *Id.* (Emphasis added); *see also* footnote 38 *infra*.

<sup>36</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. at 375-76.

rules of the PIP dispute organization, a party must file any summary action “within 30 days after receipt” of the order granting or denying the application.<sup>37</sup>

## **Discussion / Recommendation**

In its current form, N.J.S. 2A:23A-13 subsection a. does not address the applicable time frame within which to commence an action after the denial of an application to modify an award under N.J.S. 2A:23A-12(d). Further, the statute does not address the amount of time a party has to challenge an award when the application to modify the award is made pursuant to the rules adopted by the arbitrating organization and not the statute.

During the course of outreach, a commenter brought to the Commission’s attention that other rule-making authorities may use some, or part, of the act by reference or incorporation. The New Jersey Department of Banking and Insurance (NJDOBI) is one such agency whose rules directly reference N.J.S. 2A:23A-13.

In Title 11, Chapter 3, Subchapter 5, the Administrative Code sets forth the regulations regarding the conduct of “Personal Injury Protection Dispute Resolution.”<sup>38</sup> Pursuant to subchapter 5, of this regulation,

[t]he final determination of the dispute resolution professional shall be binding upon the parties, but subject to clarification/ modification and/or appeal as provided by the rules of the dispute resolution organization, and/or vacation modification or correction by the Superior Court in an action filed pursuant to N.J.S.A. 2A:23A-13 for review of the award.<sup>39</sup>

Against the back-drop of prompt and efficient resolution of disputes, the goal of APDRA is to provide limited judicial review of arbitration decisions from other dispute resolution plans, such as the PIP program. The language of N.J.S. 2A:23A-13 subsection a. can be modified to accomplish these goals.

The Commission proposes a revision to N.J.S. 2A:23A-13 subsection a. intended to clarify the time applicable time frame within which to commence an action after a party has received a decision in response to an application to modify an award under N.J.S. 2A:23A-12 subsection d.

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<sup>37</sup> *Id.* at 382-83 (“[W]e hold that the thirty-day deadline under N.J.S. 2A:23A-13(a) and N.J.A.C. 11:3-5.6(g) for filing a summary action in a PIP arbitration also applies when a party has filed an application for modification or clarification under the rules of the organization.”)

<sup>38</sup> N.J.A.C. 11:3-5.

<sup>39</sup> N.J.A.C. 11:3-5.6(g).

The Appendix contains proposed language to address the unsettled issues noted in *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371 (App. Div. 2016).

## Appendix A

### Proposed Change(s) to the Statute

The full text of N.J.S. 2A:23A-13 subsection a., including proposed modifications (shown with underline and ~~strikeout~~), is as follows:

#### Statute

N.J. Stat. Ann. § 2A:23A-13(a)

Unless the parties shall extend the time in writing, a party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within:

(1) 45 days after the award is delivered to the applicant; ~~or~~

(2) ~~within~~ 30 days after a denial or an amended award ~~after receipt of an award modified~~ <sup>40</sup> is delivered ~~to the applicant, if any request for modification of the award was sought~~ pursuant to subsection d. of section 12 of this act, or the rules of a dispute resolution organization. ~~unless the parties shall extend the time in writing.~~

The award of the umpire shall become final unless the action is commenced as required by this subsection.

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<sup>40</sup> The time-frame to commence a summary action in the Superior Court is 45 days after the award is “delivered” to the applicant. The word “delivered” is used in subsection (2) rather than “*after receipt*” to keep the sections consistent. *See also* N.J. Stat. Ann. § 2A:23A-12(a) *defining* the term delivery.