

## Possible Revisions to Pa.R.C.P. 1311.1

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

(a) The plaintiff may ~~stipulate~~elect to 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 The election may be withdrawn at any time: (i) by agreement of the parties; or (ii) upon plaintiff's motion to withdraw the election which the court shall grant unless the defendant demonstrates prejudice from the withdrawal of the election. Nothing herein shall preclude the court from granting such relief, including, but not limited to a continuance, to avoid manifest injustice.

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

(i) If another party subpoenas 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 had

not been subpoenaed by another person. After cross-examination by the party subpoenaing the person, the plaintiff may conduct a redirect examination of the witness.

(ii) 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~~Election~~ to Limitation of 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 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