



## NEW JERSEY LAW REVISION COMMISSION

### Draft Tentative Report

### Relating to the Time Frame within which to Commence an Action Pursuant to the Alternative Procedure for Dispute Resolution Act (N.J.S. 2A:23A-13(a))

**May 08, 2017**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8.*

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **July 21, 2017**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

Samuel M. Silver, Counsel  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [sms@njlrc.org](mailto:sms@njlrc.org)  
Web site: <http://www.njlrc.org>

## 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(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(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.

The statute does not, however, identify the time-frame within which to commence a summary action after the denial of application to modify an award. Also absent from the statute is the amount of time a party has to commence an action when the application is made by an arbitrating organization.

In *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists* the Appellate Division addressed two, “unsettled” time periods in section (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(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> Pursuant to the APDRA, a party to arbitration can commence a summary application in the Superior Court to seek a vacation, modification, or correction of an

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<sup>1</sup> N.J.S. 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

arbitration award.<sup>6</sup> Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree will be entered by the trial court.<sup>7</sup> Under APDRA a party is not entitled, except in rare circumstances, to further appeal or review of the judgment or decree.<sup>8</sup>

Specifically, N.J.S. 2A:23A-13(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(a) provides the parties with 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. The statute does not, however, provide for the following: (1) the amount of time a party has to challenge an award when the application to modify has been denied; 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(d), 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>9</sup> Defendant, Northern NJ Orthopedic Specialists (“Orthopedic”), performed spinal surgery on the passenger in 2011.<sup>10</sup> Orthopedic subsequently submitted a bill for \$89,266 to CURE, and the claim was denied.<sup>11</sup> Orthopedic sought PIP arbitration to be conducted by dispute resolution professionals, Forthright Solutions (“Forthright”).<sup>12</sup> Orthopedic claimed \$55,410.29 of PIP benefits.<sup>13</sup> On April 8, 2013, Forthright granted Orthopedic \$16,433.05, together with counsel fees, costs, and interest.<sup>14</sup> In response, Orthopedic filed a summary action in the Law Division challenging the award.<sup>15</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(c)(5).<sup>16</sup> After the second hearing,

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<sup>6</sup> N.J. Stat. Ann § 2A:23A-13(a)

<sup>7</sup> *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371, 375-76 (App. Div. 2016).

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

<sup>9</sup> *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371, 374 (App. Div. 2016).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

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

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

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

<sup>16</sup> *Id.*

Forthright awarded \$31,939.99 plus counsel fees to Orthopedic in a letter dated March 31, 2014.<sup>17</sup>

In accordance with Rule 24(a) of Forthright’s governing rules, CURE made an application seeking clarification of the award.<sup>18</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>19</sup> On June 20, 2014, Forthright denied CURE’s application for clarification, finding that the issues were “sufficiently addressed.”<sup>20</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>21</sup>

On September 11, 2014, the trial court judge dismissed CURE’s filings, with prejudice, finding that N.J.S. 2A:23A-13(a) required CURE to file the complaint within 30 days, not 45 days, after receiving the denial of the “modification/clarification” order.<sup>22</sup> Accordingly, CURE filed an appeal to the Appellate Division arguing that N.J.S. 2A:23A-13(a) allowed it to file its summary action within 45 days of its receipt of Forthright’s Clarification Denied Order, but that the Order is not “the award.”<sup>23</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(d).<sup>24</sup>

The plain language of N.J.S. 2A:23A-13(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>25</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>26</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.

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>27</sup> The Appellate Division, however, found 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>28</sup> In its decision, the Appellate Division identified two “unsettled” issues in the

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

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

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

<sup>20</sup> *Id.* at 375.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 379.

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

<sup>27</sup> *Id.* at 376-377.

<sup>28</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. dism’d as improvidently granted*, 223 N.J. 347 (2014).

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>29</sup>

Accordingly, 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(d); or, an application to modify or clarify is made under the 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>30</sup>

## Conclusion

As noted above, in its current form, N.J.S. 2A:23A-13(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.

The Appendix on the following page proposes changes to the statute consistent with the determination of the Court in *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371 (App. Div. 2016).

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<sup>29</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>30</sup> *Citizens United Reciprocal Exch.*, 445 N.J. Super. 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.”)

## Appendix—Proposed Change to the Statute

The full text of N.J.S. 2A:23A-13(a), including the proposed modifications (shown with underlining), 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 receipt of an order granting, or denying the modification of an award modified pursuant to subsection d. of section 12 of this act, or the rules of the 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.