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**States' Alternative Dispute Resolution Statutes
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States' Alternative Dispute Resolution Statutes

WASHINGTON D.C.

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Arbitration

Division II, Title 16, Chapter 43

Current through December of 2008

§ 16-4301. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives.

§ 16-4302. Proceedings to compel or stay arbitration

(a) On application of a party showing an agreement described in section 16- 4301, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if opposing party denies the existence of the agreement to arbitrate the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the Court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the Court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a Court other than the Superior Court of the District of Columbia, having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

§ 16-4303. Appointment of arbitrators by Court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the Court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

§ 16-4304. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

§ 16-4305. Hearing

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives any defect of such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Court on application may direct the arbitrators to proceed promptly with the hearing and determination of controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

§ 16-4306. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this chapter.

A waiver thereof prior to the proceeding or hearing is ineffective.

§ 16-4307. Witnesses, subpoenas, depositions

(a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths and affirmations and take acknowledgments. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit written interrogatories and prehearing documents to be obtained and/or a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the Court.

§ 16-4308. Award

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

§ 16-4309. Change of award by arbitrators

On application of a party or, if an application of the Court is pending under section 16-4310, 16-4311, or 16-4312 on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award on the grounds stated in section 16-4312(a)(1) and (3), or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of sections 16- 4310, 16-4311, and 16-4312.

§ 16-4310. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the Award. Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the

award, in which case the Court shall proceed as provided in sections 16-4312 and 16-4313.

§ 16-4311. Vacating an award

(a) Upon application of a party, the Court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 16-4315, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 16-4312 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a Court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection (a) of this section the Court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with section 16-4303, or if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) of this section the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 16-4303. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

§ 16-4312. Modification or correction of award

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

- (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (2) The arbitrators have awarded upon matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to

vacate the award.

§ 16-4313. Judgment or decree on award

Upon granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court.

§ 16-4314. Docketing of judgments

A judgment or decree entered pursuant to this chapter shall be docketed according to the appropriate rules of the Court.

§ 16-4315. Applications to Court

Except as otherwise provided, an application to the Court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of Court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

§ 16-4316. Court

The term "court" means the Superior Court of the District of Columbia.

§ 16-4317. Appeals

(a) For purposes of writing an appeal, the following orders shall be deemed final:

- (1) An order denying an application to compel arbitration made under section 16-4302;
- (2) An order granting an application to stay arbitration made under section 16-4302(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award; and
- (5) An order vacating an award without directing a rehearing.

(b) An appeal from an order or judgment entered pursuant to this chapter shall be taken in the manner and to the same extent as from any other order or judgment in a civil action.

§ 16-4318. Prospective applicability to agreements

The provisions of this chapter shall only apply to agreements made subsequent to its enactment.

§ 16-4319. Construction

This chapter shall be construed as to effectuate its general purpose of making uniform the law of the District of Columbia and those states which enact it.

§ 16-4401. Definitions

For the purposes of this chapter, the term:

- (1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
- (2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
- (3) "Consumer" means a party to an arbitration agreement who, in the context of that arbitration agreement, is an individual, not a business, who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, healthcare services, or real property.
- (4) "Consumer arbitration agreement" means a standardized contract, written by one party, with a provision requiring that disputes arising after the contract's signing shall be submitted to binding arbitration, and the other party is a consumer.
- (5) "Court" means the Superior Court of the District of Columbia.
- (6) "Financial interest" means:
 - (A) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management of the business; or
 - (B) Ownership of more than 5% interest in a business.
- (7) "Knowledge" means actual knowledge.
- (8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 16-4402. Notice

- (a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
- (b) A person has notice if the person has knowledge of the notice or has received notice.
- (c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 16-4403. When chapter applies

- (a) This chapter governs an agreement to arbitrate made on or after [February 27, 2008].
- (b) This chapter governs an agreement to arbitrate made before [February 27, 2008] if all the parties to

the agreement or to the arbitration proceeding so agree in a record.

(c)(1) Any provision in an insurance policy with a consumer that requires binding arbitration is void and unenforceable.

(2) An insurance policy with a consumer may permit the resolution of disputes through arbitration; provided, that:

(A) The decision to arbitrate is made by the parties at the time a dispute arises; and

(B) The decision whether to arbitrate is not a condition for continued policy coverage under the same terms that otherwise would apply.

(3) If the parties to an insurance policy with a consumer elect to arbitrate, the provisions of this chapter shall apply.

(d) A provision for mandatory binding arbitration within a consumer arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.

(e) On or after July 1, 2009, this chapter governs an agreement to arbitrate whenever made.

(f)(1) This chapter does not apply to any arbitrator or any arbitration organization in an arbitration proceeding governed by rules adopted by a securities self-regulatory organization; provided, that the rules are approved by the United States Securities and Exchange Commission under federal law.

(2) For the purposes of this paragraph, the term "securities self-regulatory organization" means:

(A) A securities exchange registered under the federal Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. § 78a et seq.) ("Securities Exchange Act");

(B) A national securities association of broker-dealers registered under the Securities Exchange Act;

(C) A clearing agency registered under the Securities Exchange Act; or

(D) The Municipal Securities Rulemaking Board established under the Securities Exchange Act.

§ 16-4404. Effect of agreement to arbitrate; nonwaivable provisions

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of §§ 16-4403(d) and (e), 16-4405, 16-4406(a) or (c), 16-4408, 16-4409, 16-4412, 16-4417(a), 16-4417(b), 16-4421, 16-4426, or 16-4427; or

(2) Waive the right under § 16-4416 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or §§ 16-4403(a) or (c), 16-4407, 16-4414, 16-4418, 16-4419, 16-4420(d) or (e), 16-4422, 16-4423, 16-4424, 16-4425, and 16-4429, except that, if there is an agreement to arbitrate disputes over insurance obligations by and between 2 or more insurers, reinsurers, self-insurers, or reinsurance intermediaries, or any combination of them, the parties to the agreement may waive the right to vacate under § 16-4423.

§ 16-4405. Application for judicial relief

(a) Except as otherwise provided in § 16-4427, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases.

§ 16-4406. Validity of agreement to arbitrate

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§ 16-4407. Motion to compel or stay arbitration

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a party makes a motion to the court to order arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(f) If the court orders arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ 16-4408. Provisional remedies

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

§ 16-4409. Initiation of arbitration

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under § 16-4415(c) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

§ 16-4410. Consolidation of separate arbitration proceedings

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

- (2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
- (3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
- (4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation; provided, that nothing in this section is intended to prevent a party's participation in a class action lawsuit or arbitration.

§ 16-4411. Appointment of arbitrator; service as a neutral arbitrator

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§ 16-4412. Disclosure by arbitrator

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

- (1) A financial or personal interest in the outcome of the arbitration proceeding; and
- (2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under § 16-4423(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court, under § 16-4423(a)(2), may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under § 16-4423(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under § 16-4423(a)(2).

§ 16-4413. Action by majority

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under § 16-4415(c).

§ 16-4414. Immunity of arbitrator; competency to testify; attorney's fees and costs

(a) An arbitrator is immune from civil liability to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by § 16-4412 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under § 16-4423(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or if a person seeks to compel an arbitrator to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator is immune from civil liability or that the arbitrator is not competent to testify, the court shall award to the arbitrator reasonable attorney's fees and other reasonable expenses of litigation.

§ 16-4415. Arbitration process

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and,

among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c)(1) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection.

(2) Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time, as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date.

(3) The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear.

(4) The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with § 16-4411 to continue the proceeding and to resolve the controversy.

§ 16-4416. Representation by lawyer

A party to an arbitration proceeding may be represented by a lawyer.

§ 16-4417. Witnesses; subpoenas; depositions; discovery

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) To make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may:

- (1) Order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders;
- (2) Issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding; and
- (3) Take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in the District of Columbia.

(g)(1) The court may enforce a subpoena or discovery-related order for the attendance of a witness within the District of Columbia and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective.

(2) A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in the District of Columbia and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in the District of Columbia.

§ 16-4418. Judicial enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under § 16-4419. A prevailing party may make a motion to the court for an expedited order to confirm the award under § 16-4422, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under § 16-4423 or 16-4424.

§ 16-4419. Award

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice, as provided for in § 16-4409, of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ 16-4420. Change of award by arbitrator

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under § 16-4422, 16-4423, or 16-4424, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to §§ 16-4419(a), 16-4422, 16-4423, and 16-4424.

§ 16-4421. Remedies; fees and expenses of arbitration proceeding

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under § 16-4422 or for vacating an award under § 16-4423.

(d) An arbitrator's reasonable expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§ 16-4422. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to § 16-4420 or 16-4424 or is vacated pursuant to § 16-4423.

§ 16-4423. Vacating award

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-4409 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) The court may vacate an award made in the arbitration proceeding on other reasonable ground.

(c) A motion under this section shall be filed within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(d) If the court vacates an award on a ground other than that set forth in subsection (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in § 16-4419(b) for an award.

(e) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§ 16-4424. Modification or correction of award

(a) Upon motion made within 90 days after the movant receives notice of the award pursuant to § 16-

4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, the court shall modify or correct the award if:

- (1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
- (2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
- (3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

(d) Irrespective of the time periods established in subsection (a) of this section and § 16-4423(c), a consumer may also seek to modify or vacate an award issued pursuant to a consumer arbitration agreement within 30 days of receiving notice of a motion to confirm the award.

§ 16-4425. Judgment on award; attorney's fees and litigation expenses

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under § 16-4422, 16-4423, or 16-4424, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 16-4426. Jurisdiction

(a) A court of the District of Columbia having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in the District of Columbia confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

§ 16-4427. Appeals

(a) An appeal may be taken from:

- (1) An order denying or granting a motion to compel arbitration;
- (2) An order granting a motion to stay arbitration;
- (3) An order confirming or denying confirmation of an award;

- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A final judgment entered pursuant to this chapter.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

§ 16-4428. Uniformity of application and construction

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 16-4429. Relationship to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 et. seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U. S.C. § 7003(b)).

§ 16-4430. Regulation of arbitration organizations

(a) Any arbitration organization that administers or otherwise is involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable database that permits searching with multiple search terms in the same search, and is accessible at the Internet website of the arbitration organization, if any, and on paper, upon request, all of the following information regarding each consumer arbitration it has administered or otherwise been involved in within the preceding 5 years:

- (1) The name of any corporation or other business entity that is party to the arbitration.
- (2) The type of dispute involved, including goods, banking, insurance, health care, debt collection, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges:
 - (A) Less than \$100,000;
 - (B) From \$100,000 to \$250,000, inclusive; and
 - (C) More than \$250,000;
- (3) Whether the consumer was the prevailing party;
- (4) The number of occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitration organization;
- (5) Whether the consumer party was represented by an attorney and, if so, the identifying information for that attorney, including the attorney's name, the name of the attorney's firm, and the city in which the attorney's office is located;
- (6) The date the arbitration organization received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization;
- (7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing;
- (8) The amount of the claim, the amount of the award, and any other relief granted, if any; and
- (9) The name of the arbitrator, the arbitrator's fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) If the information required by subsection (a) of this section is provided by the arbitration organization in a computer-searchable format at the company's Internet website and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the required information is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(c) No arbitration organization shall have any liability for collecting, publishing, or distributing the information in accordance with this section.

(d)(1) All fees and costs charged to or assessed in the District of Columbia upon a consumer by an arbitration organization in a consumer arbitration shall be waived for any person having a gross monthly income that is less than 300% of the federal poverty guidelines issued annually by the United States Department of Health and Human Services.

(2) Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitration organization indicating the consumer's monthly income and the number of persons living in the household. No arbitration organization may require a consumer to provide any further statement or evidence of indigence. The form, and the information contained therein, shall be confidential and shall not be disclosed to any adverse party or any nonparty to the arbitration.

(3) An arbitration organization shall not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(e) Nothing in the section shall affect the ability of an arbitration organization to shift fees that would otherwise be charged or assessed upon a consumer party to another party.

(f) Before requesting or obtaining any fee, an arbitration organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(g) No neutral arbitrator or arbitration organization shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by any opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(h) No arbitration organization may administer a consumer arbitration to be conducted in the District of Columbia, or provide any other services related to such a consumer arbitration, if:

(1) The arbitration organization has, or within the preceding year has had, a financial interest in any party or attorney for a party; or

(2) Any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the arbitration organization.

(i) Where this section is violated, any affected person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the arbitration organization from violating the

section and order such restitution as appropriate. The arbitration organization shall be liable for that person or entity's reasonable attorney fees and costs where that person or entity prevails or where, after the action is commenced, the arbitration organization voluntarily complies with the section.

§ 16-4431. Disclosure of arbitration costs

(a) A party drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:

(1) The filing fee;

(2) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;

(3) Other charges that the arbitrator or arbitration organization will assess in conjunction with an arbitration where the consumer appears in person; and

(4) The proportion of these costs which each party bears in the event that the consumer prevails, and in the event that the consumer does not prevail.

(b) The costs specified in subsection (a) of this section need not include attorney fees, and, to the extent that, with regard to the disclosures required by subsection (a) of this section, a precise amount is not known, the disclosures may be based on reasonable, good-faith estimates. A party providing a reasonable, good-faith cost estimate shall not be liable in any manner for the fact that the actual cost of a particular arbitration varies from the estimate provided.

(c)(1) Failure to comply with this section is not grounds to refuse to enforce an arbitration agreement, but may constitute a violation of § 28-3904.

(2) The information provided in the disclosure can be considered in a determination of whether an arbitration agreement is unconscionable or otherwise is not enforceable under other law.

(d) Where this section is violated, any person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the drafting party from violating this section as to agreements it enters into in the future. The drafting party shall be liable to the person or entity bringing such an action for that person or entity's reasonable attorney fees and costs where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with the section.

§ 16-4432. Savings clause

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter. Subject to § 16-4403, an arbitration agreement made before the effective date of this chapter is governed by §§ 16-4301 to 16-4319.

Superior Court Rules of Civil Procedure

Current with amendments received through October of 2008

VIII. Rule 70-I. Applications Regarding Proceedings Under the Uniform Arbitration Act

(a) Form and Service of Applications. Applications to the Court under D.C.Code 16-4315 shall be in the form of a motion and be accompanied by a proposed order. The motion and a summons shall be served in accordance with SCR Civil 4, except that service of the motion may be made in accordance with SCR Civil 5 on any party over whom the Court has already acquired jurisdiction.

(b) Confirmation of Arbitration Awards. An arbitration award, the judicial confirmation of which is authorized by statute or other applicable principles of law, may be confirmed as a judgment by filing a motion setting forth that (1) there was a written agreement or order to arbitrate, (2) there was an award rendered pursuant to the arbitration, and (3) there are annexed to the pleading copies of the following:

(A) The agreement or order to arbitrate;

(B) The selection or appointment, if any, of any arbitrator or umpire other than that designated in the agreement or order;

(C) Each written extension of time, if any, within which to make the award;

(D) The award;

(E) Each notice, affidavit or other paper used upon any application to confirm, modify, or correct the award; and

(F) A copy of each order upon such an application.

(c) Summary Proceedings. Proceedings upon such motion shall be summary with discovery permitted only upon a showing of good cause.

(d) Objections. All objections to the motion at law or in equity shall be in the form of an opposition to the motion and stated with particularity. The opposition shall be served within 20 days (60 days if opponent is the District of Columbia, the United States or an officer or agency of either) after service of the motion.

(e) Rehearing. Where the Court vacates an award, it may in its discretion, and upon a finding that such re-hearing is not contrary to law or equity, direct an arbitration re-hearing.

Rules of the Civil Arbitration Program

Current with amendments received through October of 2008

Introduction

The Superior Court of the District of Columbia has adopted the Civil Arbitration Rules in order to provide a Court-sponsored arbitration program for parties with lawsuits pending in the Civil Division. The Arbitration Program is an integral component of the Court's Civil Delay Reduction project. The rules authorize the Court to assign certain actions filed in the Civil Division to the Arbitration Program.

The Court-sponsored program is not intended to supersede or modify the provisions of the D.C. Uniform Arbitration Act, D.C.Code 1981, Title 16, Chapter 42 or the Federal Arbitration Act, 9 U.S.C. Section 1, both of which apply when the parties themselves make a written contractual agreement to submit their dispute to arbitration rather than resort to the Court's system. The Superior Court Arbitration Program is intended to operate exclusively and independently of the procedures set forth in the D.C. Uniform Arbitration Act and the Federal Arbitration Act.

Rule I. Eligibility of Cases for and Assignment to Arbitration

(a) All cases filed in the Civil Division shall be eligible for assignment to the Superior Court Civil Arbitration Program, with the exception of (1) actions in the Small Claims and Conciliation Branch, (2) actions in the Landlord and Tenant Branch, (3) actions seeking only equitable or declaratory relief, (4) class actions and (5) cases in which one of the parties is incarcerated. Any case so assigned shall be governed by these rules.

(b) The individual calendar Judge may assign a case to arbitration at any time.

(c) Arbitration is non-binding unless otherwise agreed to in writing by the parties. The parties may agree to binding arbitration at any time by filing with the Multi-Door Dispute Resolution Division (hereinafter referred to as the Multi-Door Division) a written praecipe to that effect signed by counsel for each party and by any unrepresented party. Parties to a binding arbitration waive their right to appeal the arbitrator's decision on any grounds except those listed under Rule XII.

(d) The parties may submit a case to binding arbitration before an arbitrator other than one assigned under this program by filing a praecipe with the Court indicating this fact. These Rules shall not apply to any case so submitted.

(e) Where cases are consolidated, if the oldest case was assigned to arbitration then all of the consolidated cases shall be assigned to arbitration, unless otherwise ordered by the Judge to whom the case has been assigned.

Rule II. Removal of Cases From the Arbitration Program

(a) For good cause the arbitrator may recommend, or any party may move, that the Court remove the case from the Arbitration Program. If a party files such a motion with the arbitrator, the arbitrator shall attach a recommended decision to the motion. The arbitrator shall file a copy of such a motion (and a recommended decision on the motion) with the Multi-Door Division. The arbitrator shall stay the arbitration proceeding pending a ruling by the Court on the recommendation or motion. A motion to remove shall only be granted for good cause.

(b) The individual calendar Judge shall submit to the Multi-Door Division a copy of his or her decision. The Clerk of the Multi-Door Division shall notify the arbitrator and the parties of that decision.

(c) An individual calendar Judge may order removal of a case on his or her calendar from the Arbitration Program.

(d) A case that is stayed pursuant to court order shall be removed from the arbitration program.

Rule III. Qualifications and Service of Arbitrators

(a) Anyone who seeks to be considered for the position of arbitrator shall certify in writing that he or she (1) is an active or inactive member of the District of Columbia Bar who has been licensed to practice law in any jurisdiction for at least 5 years and (2) has participated as lead attorney in at least 3 civil trials of over 4 hours in length in a court of record or in at least 3 hearings of over 4 hours in length before an administrative law judge. The Multi-Door Division shall select and train arbitrators from applicants so qualified, or who are otherwise certified by the Director of the Multi-Door Division as being authorized to arbitrate.

(b) The Multi-Door Division shall maintain a file, open to public inspection, containing current information about the arbitrators.

(c) The Director of the Multi-Door Division may remove an arbitrator from a case for administrative reasons, and the Director may recommend to the Chief Judge or the Chief Judge's designee that an arbitrator be removed from the program for non-performance, inadequate performance or other good cause.

Rule IV. Assignment of Arbitrators

(a) The Court shall provide one arbitrator for each case assigned to arbitration. The parties shall forward to the arbitrator or panel of arbitrators a copy of the complaint and answer within 14 days of the assignment of the arbitrator.

(b) The parties may agree among themselves to select a particular arbitrator from a roster of eligible arbitrators provided by the Multi-Door Division. Otherwise, when a Judge assigns a case to arbitration an arbitrator shall be assigned pursuant to procedures designated by the Presiding Judge of the Civil Division. The Multi-Door Division shall make available to the public copies of the current assignment procedures.

(c) Parties may have their case decided by a panel of 3 arbitrators if all parties so request at the time of assignment to arbitration and pay the fee established by the Chief Judge of the Superior Court for each additional arbitrator. The Multi-Door Division shall distribute the current fee schedule upon request. The parties shall deposit with the Civil Finance Office a check to cover the additional arbitrators' fees within 10 days of assignment of their case to arbitration. The parties shall submit a receipt for payment of this fee to the Multi-Door Division. The Director of the Multi-Door Division shall designate one arbitrator to preside, who shall be responsible for scheduling and coordinating all proceedings.

(d) A party who objects to the assignment of an arbitrator must file a request for recusal with the arbitrator within 5 days of the arbitrator's assignment. The request for recusal shall be accompanied by an affidavit that states the facts and reasons for the request. An arbitrator may recuse himself or herself without stating the reasons for so doing. The arbitrator's decision on withdrawal shall be guided by the standards for recusal for a trial Judge of this Court. An arbitrator who withdraws shall immediately give written notice to the Multi-Door Division and all parties. The Multi-Door Division shall assign another arbitrator within 10 days of the arbitrator's notification of recusal. If an arbitrator does not withdraw in response to a party's request, the party may file a motion with the Multi-Door Division requesting that the individual calendar Judge remove the arbitrator. The moving party shall mail or electronically transmit copies of the motion for removal of the arbitrator to the arbitrator and all

parties. The Multi-Door Division shall forward the motion to the individual calendar Judge and reassign the case to another arbitrator if so ordered by the Judge. The arbitration proceedings shall be stayed pending the decision of the individual calendar Judge.

Rule V. Compensation of Arbitrators

The Court shall compensate each arbitrator according to a schedule established by the Chief Judge of the Superior Court. The fee shall be paid after the Arbitration Award is filed or the case is otherwise removed from arbitration.

Rule VI. Powers of the Arbitrator

(a) The arbitrator shall have the same authority to act in the arbitration proceedings as a Superior Court Judge assigned to hear a non-jury civil action, except that the arbitrator shall have no power to hold any person in contempt, but may so recommend to the calendar Judge to whom the case has been assigned. The arbitrator's authority shall include, but not be limited to, the power to place all witnesses under oath or affirmation pursuant to Rule IX(h)(3), the power to issue subpoenas, rule on evidentiary matters, decide discovery disputes, compel the production of documents, impose sanctions for failure to comply with orders compelling discovery, enter judgment by default or consent, and stay execution of such judgment conditioned upon the agreement in writing of all parties to pay certain express amounts over a stated period of time. However, only the calendar Judge to whom the case has been assigned may grant a subsequent request to vacate the stay of execution and enter judgment.

(b) The arbitrator shall have the exclusive power to decide all motions pending at the time of assignment to arbitration or filed after assignment to arbitration, with the following exceptions: (1) motions to remove a case from arbitration, (2) motions to remove the arbitrator from a case in accordance with Rule IV(d), (3) motions to consolidate cases and (4) motions to continue the arbitration hearing more than 60 days beyond the 120-day deadline for conducting an arbitration hearing. The arbitrator may grant or deny a motion without explaining the reasons for the decision. The arbitrator's rulings on motions are not appealable.

(c) In the case of motions listed in Rule VI(b)(1)-(4) above, the arbitrator shall file a copy of the motion and the recommended ruling with the Multi-Door Division within 15 days of the motion's receipt. Within 5 days thereafter, the Multi-Door Division shall transmit the motion and arbitrator's recommended ruling to the individual calendar judge. The arbitrator's recommended ruling shall be deemed an order of the Court unless the individual calendar judge orders otherwise within 15 days of his or her receipt of the arbitrator's ruling.

(d) The arbitrator may suspend particular requirements of Superior Court Rules of Civil Procedure 26-37 unless such a suspension would substantially prolong resolution of the case or impede a fair arbitration decision.

(e) All settlements and judgments involving minors must, in accordance with D.C. Code Section 21-120, be approved by the individual calendar Judge to whom the case has been assigned.

(f) The arbitrator's authority ends with the filing of the Arbitration Award, except that the arbitrator shall have the authority to rule on subsequent Bills of Costs. The arbitrator's decisions are not binding on the Court in the event of a trial de novo or removal of the case from the arbitration program.

Rule VII. Discovery

(a) Formal discovery is permitted in arbitration cases but informal discovery is encouraged. Discovery must be completed 15 days prior to the arbitration hearing. Discovery may be used in any subsequent Court proceeding if permitted by the Superior Court Rules of Civil Procedure.

(b) The deadline for the completion of any subsequent discovery after the filing of a demand for trial de novo is the 60th day after any party has filed a timely demand for a trial de novo.

Rule VIII. Filing Procedures

(a) Every motion shall be in writing and served on all other parties or their counsel and transmitted to the arbitrator to ensure receipt at least 10 days prior to the arbitration hearing, except motions made before the arbitrator in the presence of affected opposing parties or their counsel and motions made under emergency conditions.

(b) Parties shall file any of the following motions or papers with the Multi-Door Division: (1) a demand for trial de novo, (2) objections to the arbitration proceedings or award or (3) motions to request removal of an arbitrator in accordance with Rule IV(d). A party shall mail or electronically transmit copies of all motions and associated papers to all other parties.

(c) Parties shall file with the Civil Clerk's Office all papers as required under the Superior Court Rules of Civil Procedure, except for motions, oppositions and responses thereto filed prior to the filing of an arbitration award. Parties shall mail or electronically transmit a copy of each paper to the arbitrator and all parties.

(d) The arbitrator shall mail or electronically transmit any arbitration orders and recommended rulings to the parties. The arbitrator shall file with the Multi-Door Division any of the following documents: (1) recommended rulings attached to motions to consolidate cases or to remove the case from arbitration, (2) a ruling to extend the arbitration proceedings up to 60 days beyond the deadline for conducting an arbitration hearing, (3) a recommendation to extend the arbitration proceedings more than 60 days beyond the deadline for conducting an arbitration hearing, (4) notification of recusal as the assigned arbitrator or reason(s) for a decision not to recuse, (5) the Arbitration Award and (6) other forms as required by the Multi-Door Division.

(e) The Multi-Door Division shall forward to the individual calendar Judge copies of any of the following: (1) an arbitrator's recommended ruling attached to a motion to consolidate cases or to remove a case from arbitration, (2) a party's motion requesting removal of an arbitrator from the case in accordance with Rule IV(d), (3) an arbitrator's recommendation to extend the arbitration proceedings more than 60 days beyond the 120-day deadline for conducting an arbitration hearing and (4) parties' objections to the arbitration proceedings or to an award.

(f) The deadline for filing motions addressed to the Court is the fifteenth day after the close of discovery in accordance with Rule VII(b). Previous rulings of the arbitrator are not binding on the Judge. All motions papers filed after a demand for a trial de novo shall be filed with the Civil Clerk's office and a chambers' copy submitted to the assigned Judge.

Rule IX. Arbitration Hearing

(a) Date. The arbitrator shall conduct the hearing within 120 days of his or her assignment as arbitrator and, unless consent is granted by all parties or the case has been reassigned to another arbitrator in accordance with Rule XII(f), no earlier than 60 days after the date the case was assigned to arbitration. The arbitrator shall give the Multi-Door Division and the parties written notice of the hearing at least 30 days prior to the hearing date. In the event a defendant is added to the case after the arbitrator has set a hearing date, the arbitrator shall set a new hearing date which is at least 60 days after the date the motion to add a defendant is granted.

(b) Time and Location. After consultation with counsel and unrepresented parties, the arbitrator shall fix a time and place for the hearing which, to the extent practicable, will be convenient for the hearing participants. Hearings shall take place within the District of Columbia unless the arbitrator and all parties agree to a different location.

(c) Attendance. All parties and their attorneys must attend the arbitration hearing unless excused by the arbitrator.

(d) Continuances.

(1) The arbitrator may continue the hearing upon request by any party and a showing of good cause, so long as the hearing is held within the 120-day period required by Rule IX(a). The arbitrator's decision to grant or deny a continuance is not appealable.

(2) The arbitrator may grant a continuance of up to 60 days beyond the 120-day period upon a showing by a party of exceptional circumstances. The arbitrator shall promptly notify the Multi-Door Division in writing of the reasons for granting such a continuance and of the new hearing date. The arbitrator's decision to grant or deny a continuance is not appealable.

(3) If the arbitrator believes good grounds exist to continue the hearing more than 60 days beyond the 120-day period, he or she must file a recommendation to that effect with the Multi-Door Division. The arbitrator's decision not to recommend a continuance is not appealable. The Multi-Door Division shall forward such a recommendation to the individual calendar Judge, who shall approve or disapprove the continuance based solely upon the arbitrator's recommendation. The Multi-Door Division shall notify the arbitrator of the Court's decision.

(4) Arbitration hearings that are subsequently continued may be held upon 10 days written notice, unless the parties agree on an earlier date.

(e) Nonappearance of Party. The arbitrator may conduct an arbitration hearing in the absence of any party who, after due notice, fails to appear. The arbitrator may impose liability or determine damages against an absent defendant based upon evidence presented by the plaintiff but not solely upon the absence of the defendant. A decision for the defendant on the plaintiff's claim may be based solely upon the absence of the plaintiff.

(f) Evidence. Formal rules of evidence shall guide the arbitration hearing, but strict adherence is not required. Generally, rules of evidence should be liberally construed to promote the ends of justice. Relevance, fairness and reliability shall be the primary considerations in the admission of evidence.

(1) In actions involving personal injury and/or property damage, the arbitrator may receive in evidence doctors' and dentists' reports and the bills or estimates listed in subsections A-E below without further proof, provided that at least 2 weeks written notice shall have been given to all adverse parties accompanied by a copy of any bills, estimates or reports to be offered in evidence. Any objection to the use or authenticity of such bills, estimates or reports must be made at least one week in advance of the hearing.

(A) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized;

(B) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor;

(C) Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor;

(D) Bills for medicine, eye glasses, hearing aids, prosthetic devices, or similar items, when dated and itemized;

(E) Property repair bills or estimates, when identified, dated and itemized, setting forth the charges for labor and material used in the repair of the property. In the case of an estimate, the party intending to offer the estimate shall include with the notice and copy of the estimate sent to the adverse party, a statement indicating whether or not the property was repaired, and if so, whether the estimated repairs were made in full or in part, attaching a copy of the receipted bill showing the items of repair made and the amount paid. Estimates shall bear a statement of the issuer that they are true and correct, and that the charges appearing therein are fair, reasonable, and those customarily charged to members of the public.

(2) The arbitrator may receive the testimony of a witness without requiring the witness' presence if the testimony is presented by signed affidavit, provided that at least 2 weeks written notice shall have been given to all adverse parties accompanied by a copy of such affidavit. Any objection to the use or authenticity of such affidavits must be made one week in advance of the arbitration hearing.

(g) Recording of the Hearing. The Court will not provide or pay for a record of the arbitration hearing, but any party may record the hearing and shall notify all other parties in advance of the intent to record. If a party intends to tape record the hearing, the party shall allow any other party to examine, duplicate and transcribe the record at that party's own expense. If a party intends for a court reporter to be present and transcribe the hearing, all other parties may arrange to secure a copy of the transcript from the court reporter. The recording or its transcription shall not be admitted as evidence in any subsequent proceeding in Superior Court, except as provided for by Rule XI(f) below.

(h) Conduct of the Hearing. The arbitrator has wide latitude in conducting the arbitration hearing, but at a minimum shall incorporate the following events in sequence:

(1) The arbitrator shall make a written record of the date, time and location of the hearing and the names of all parties, counsel and witnesses in attendance. The arbitrator shall attach this record to the arbitration award.

(2) The arbitrator shall decide all pending pre-hearing motions before the plaintiff presents his or her case, unless the arbitrator expressly defers a decision until issuance of the award or sooner.

(3) The arbitrator or other duly-qualified officer shall place all witnesses under oath or affirmation. See D.C.Code, Section 16-4307.

(4) The plaintiff shall present his or her claims, proof and witnesses. The defendant shall present his or her claims, proof and witnesses. The arbitrator may accept appropriate rebuttal evidence. All witnesses shall be subject to cross-examination by the parties and to questions by the arbitrator.

(5) The arbitrator shall inquire of all parties whether they have any further proof or witnesses to be heard. At this time the arbitrator may continue or conclude the hearing.

(i) Witness Fees. Witness fees in any case referred to arbitration shall be the same as those now or hereafter provided for in trials in the Civil Division of Superior Court, and shall be paid by the same party who would have paid had the case been tried in Superior Court.

Rule X. Arbitration Award and Judgment

(a) The arbitrator shall file an Arbitration Award, as to each party and on a form provided by the Multi-Door Division, with the Multi-Door Division and shall mail or electronically transmit it to all parties, within 15 days after the arbitration hearing. The arbitrator may provide findings of fact and conclusions of law, but they are not required.

(b) If the time for filing a demand for trial de novo expires without such action, the Clerk of the Civil Division shall enter the Award as a judgment of the Court as to each party. This judgment shall have the same force and effect as a final judgment of the Court in a civil action, but may not be appealed nor be the subject of a motion under Superior Court Rules of Civil Procedure 59 or 60(b).

(c) Rules 54 and 54-I of the Rules of Civil Procedure govern the award of costs on arbitration awards entered as final judgments of the court.

Rule XI. Trial De Novo

(a) Parties who agreed to submit their case to binding arbitration shall be deemed to have waived their right to file a request for a trial de novo.

(b) Any party to a non-binding arbitration may file a demand for trial de novo with the Multi-Door Division within 15 days after the filing of the Arbitration Award. In the event any party objects to the Award pursuant to Rule XII below, a demand for trial de novo must be made within 15 days after denial of the objection.

(c) A demand for a trial de novo by any party returns the case to the trial calendar as to all parties.

(d) If any party files a demand for trial de novo, the Director of the Multi-Door Division or the Director's designee shall notify the Clerk of the Civil Division who shall schedule the case for a pre-trial hearing with the individual calendar Judge.

(e) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the Arbitration Award in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor shall a jury be informed that there has been an arbitration proceeding.

(f) Sworn testimony of a witness given during the arbitration proceeding is admissible in subsequent proceedings to the extent allowed by court rules and District of Columbia law, except that the

testimony shall not be identified as having been given in an arbitration proceeding. The arbitrator shall not be called as a witness at the trial de novo.

Rule XII. Objections to Arbitration Proceeding and Award

(a) A party may file objections to the binding or non-binding arbitration proceeding or Award for any of the following reasons and no other:

(1) the Award was procured by corruption, fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in the arbitrator or misconduct prejudicing the rights of any party; or

(3) the arbitrator exceeded his or her powers.

(b) A party shall file any such objections with the Multi-Door Division within 15 days of the filing of the Arbitration Award and shall mail or electronically transmit copies of the objections to the arbitrator and all parties.

(c) A party may file an opposition to the objections with the Multi-Door Division within 15 days of the filing of the objections and shall mail or electronically transmit copies of the opposition to the arbitrator and all parties.

(d) An arbitrator may file a response to the objections with the Clerk of the Multi-Door Division within 15 days of the filing of the objections and shall mail or electronically transmit copies of the response to all parties.

(e) The Multi-Door Division shall forward the objections and any oppositions or responses to the individual calendar Judge no later than 30 days after the filing of the objections.

(f) The individual calendar Judge may dismiss or sustain the objections. In the event the Judge sustains the objections, he or she shall vacate the Arbitration Award. The Multi-Door Division shall assign a new arbitrator to the case and shall ensure that a new hearing is held within 60 days of assignment of the case to the new arbitrator, unless otherwise directed by the individual calendar Judge.

Rule XIII. Modification or Correction of Award

(a) A party may apply to modify or correct the Arbitration Award within 60 days after its filing.

(b) A party shall file an application to modify or correct the Award with the Multi-Door Division and shall mail or electronically transmit copies of the application to the arbitrator and all parties.

(c) The Multi-Door Division shall forward the application to the individual calendar Judge to whom the case is assigned no later than 5 days after receipt of the application.

(d) The Judge shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the Award;

(2) The arbitrator rendered an award upon a matter not submitted to him or her and the Award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The Award is imperfect in a matter of form, not affecting the merits of the controversy.

(e) If the application is granted, the Judge shall (1) modify and correct the award so as to effect its intent, (2) confirm the Award as so modified and corrected, and (3) vacate any judgment incorporating the Award and issue a new judgment incorporating the corrected Award. Otherwise, the Judge shall confirm the Award as made.

Rule XIV. Appearance and Withdrawal of Attorneys

(a) The provisions of Rule 101 of the Superior Court Rules of Civil Procedure apply to all matters assigned to arbitration. No corporation may appear in any arbitration proceedings except through a person authorized by Superior Court Civil Rule 101 to appear in this Court in a representative capacity.

(b) If an attorney's appearance at a previously-scheduled arbitration hearing conflicts with a later-scheduled trial or other Court proceeding that does not involve an incarcerated or detained person, the attorney must notify the Judge in the trial or other proceeding. The Judges of this Court shall defer to the arbitration hearing.

Rule XV. Applicability of Superior Court Rules of Civil Procedure

Except as otherwise provided herein, the Superior Court Rules of Civil Procedure shall apply to all proceedings under the Arbitration Program. In the event of a conflict between an Arbitration Rule and a Rule of Civil Procedure, the Arbitration Rule shall control.

Mediation; Uniform Act

Division II, Title 16, Chapter 42

Current through December of 2008

§ 16-4201. Definitions.

For the purposes of this chapter, the term:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

- (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.
- (7) "Proceeding" means:
- (A) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
- (B) A legislative hearing or similar process.
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) "Sign" means:
- (A) To execute or adopt a tangible symbol with the present intent to authenticate a record; or
- (B) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

§ 16-4202. Scope.

- (a) Except as otherwise provided in subsection (b) or (c) of this section, this chapter applies to a mediation in which:
- (1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
- (2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
- (3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.
- (b) The chapter does not apply to a mediation:
- (1) Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
- (2) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
- (3) Conducted by a judge who might make a ruling on the case; or
- (4) Conducted under the auspices of:
- (A) A primary or secondary school, if all the mediation parties are students;
- (B) A correctional institution for youths, if all the mediation parties are residents of that institution; or
- (C) The Office of the Attorney General for the District of Columbia or the Mayor, if the mediation arises from a consumer complaint under authority of Chapter 39 of Title 28 of the District of Columbia Official Code, and one of the mediation parties is the consumer complainant.
- (c) If the mediation parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under §§ 16-4203 through 16-4205 shall not apply to the mediation or part agreed upon; provided, that §§ 16-4203 through 16-4205 shall apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 16-4203. Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in § 16-4205, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by § 16-4204.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 16-4204. Waiver and preclusion of privilege.

(a) A privilege under § 16-4203 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under § 16-4203, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity, is precluded from asserting a privilege under § 16-4203.

§ 16-4205. Exceptions to privilege.

(a) There is no privilege under § 16-4203 for a mediation communication that is:

(1) In an agreement evidenced by a record signed by all parties to the agreement;

(2) Available to the public under § 1-207.42, or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) A threat or statement of a plan to inflict bodily injury as defined by § 22-407, or commit a crime of violence as defined by § 22-4501(f) and § 23-1331.

(4) Intentionally used to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) Except as otherwise provided in subsection (c) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under § 16-4203 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:

(1) The evidence is not otherwise available;

(2) There is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and

(3) The mediation communication is sought or offered in:

(A) A court proceeding involving a felony or misdemeanor; or

(B) Except as otherwise provided in subsection (c) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(3)(B) of this section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 16-4206. Prohibited mediator reports.

(a) Except as permitted in subsection (b) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, arbitrator, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted under § 16-4205; or

(3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) of this section may not be considered by a court, administrative agency, arbitrator, or other authority that may make a ruling on the dispute that is the subject of the mediation.

§ 16-4207. Confidentiality.

Unless subject to § 1-207.42, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of the District of Columbia.

§ 16-4208. Mediator's disclosure of conflicts of interest; background.

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:
(1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
(2) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) of this section is precluded by the violation from asserting a privilege under § 16-4203.

(e) Subsections (a), (b), (c), and (g) of this section do not apply to an individual acting as a judge or administrative law judge.

(f) This chapter does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) of this section to be disclosed, the parties agree otherwise.

§ 16-4209. Participation in mediation.

(a) An attorney or other individual designated by a mediation party may accompany the party to and participate in a mediation.

(b) A waiver of participation given before the mediation may be rescinded.

§ 16-4210. International commercial mediation.

(a) For the purposes of this section, the term:

(1) "International commercial mediation" means an international commercial conciliation as defined in Article 1 of the Model Law.

(2) "Model Law" means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on June 28, 2002 and recommended by the United Nations General Assembly in a resolution (A/RES/57/18) dated November 19, 2002.

(b) Except as otherwise provided in subsections (c) and (d) of this section, if a mediation is an international commercial mediation, the mediation is governed by the Model Law.

(c) Unless the mediation parties agree in accordance with § 16-4202(c) that all or part of an

international commercial mediation is not privileged, §§ 16-4203, 16-4204, and 16-4205 and any applicable definitions in § 16-4201 also apply to the mediation and nothing in Article 10 of the Model Law derogates from §§ 16-4203, 16-4204, and 16-4205.

(d) If the parties to an international commercial mediation agree under Article 1, subsection (7) of the Model Law that the Model Law does not apply, this chapter applies.

§ 16-4211. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

§ 16-4212. Uniformity of application and construction.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 16-4213. Application to existing agreements or referrals.

On or after January 1, 2007, this chapter governs a mediation pursuant to a referral or an agreement to mediate, whenever made.