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States' Alternative Dispute Resolution Statutes
State of Maryland

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States' Alternative Dispute Resolution Statutes

STATE OF MARYLAND

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Arbitration and Award

Title 3, Subtitle 2.

Current through all chapters of the 2008 Regular Session

§ 3-201. Definitions

- (a) In this subtitle the following terms have the meanings indicated.
- (b) "Court" means a court of equity.
- (c) "Guardian" means a person appointed by a court as guardian of the person or property or both of a disabled person.
- (d) "Personal representative" means an executor, administrator, or special administrator.

§ 3-202. Jurisdiction of court

An agreement providing for arbitration under the law of the State confers jurisdiction on a court to enforce the agreement and enter judgment on an arbitration award.

§ 3-203. Filing of initial petition

- (a) An initial petition shall be filed with the court in the county:
- (1) As provided by the agreement; or
 - (2) Where the arbitration hearing was held.
- (b) If the agreement does not provide for a county in which the petition shall be filed or if the hearing has not been held, the petition shall be filed with the court in:
- (1) The county where the adverse party resides;
 - (2) The county where the adverse party has a place of business; or
 - (3) If the adverse party has neither a residence nor a place of business in the State, any county.
- (c) A subsequent petition shall be filed with the court hearing the initial petition unless the court directs otherwise.

§ 3-204. Determination by court

The court shall make any determination provided for in this subtitle without a jury.

§ 3-205. Notice and petition

- (a) Except as otherwise provided, a petition under this subtitle shall be heard in the manner and upon the notice provided by law or rule of court for the procedures when a petition is filed in an action.
- (b) Unless the parties agree otherwise, notice of the initial petition for an order shall be served in the manner provided by law or rule of court for the service of summons in an action.

§ 3-206. Validity of arbitration agreement

- (a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy arising between the parties in the future is valid and enforceable, and is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract.
- (b) This subtitle does not apply to an arbitration agreement between employers and employees or between their respective representatives unless it is expressly provided in the agreement that this subtitle shall apply.

§ 3-207. Demand to arbitrate

- (a) If a party to an arbitration agreement described in § 3-202 of this subtitle refuses to arbitrate, the other party may file a petition with a court to order arbitration.
- (b) If the opposing party denies existence of an arbitration agreement, the court shall proceed expeditiously to determine if the agreement exists.
- (c) If the court determines that the agreement exists, it shall order arbitration. Otherwise it shall deny the petition.

§ 3-208. Petition to stay arbitration

(a) If a party denies existence of the arbitration agreement, he may petition a court to stay commenced or threatened arbitration proceedings.

(b)(1) A petition to stay arbitration shall be filed with the court where a petition to order arbitration has been filed.

(2) If a petition for order to arbitrate has not been filed, the petition to stay arbitration may be filed in any court subject to venue provisions of Title 6 of this article.

(c) If the court determines that existence of the arbitration agreement is in substantial and bona fide dispute, it shall try this issue promptly and order a stay if it finds for the petitioner. If the court finds for the adverse party, it shall order the parties to proceed with arbitration.

§ 3-209. Stay pending arbitration

(a) A court shall stay any action or proceeding involving an issue subject to arbitration if:

- (1) A petition for order to arbitrate has been filed; or
- (2) An order for arbitration has been made.

(b) If the issue subject to arbitration is severable, the court may order the stay with respect to this issue only.

(c) If a petition to stay has been filed with a court where any action or proceeding concerning arbitration is pending, the court's order to arbitrate shall include the stay.

§ 3-210. Order not to be rejected

An order for arbitration shall not be refused or an arbitration proceeding stayed:

- (1) On the ground that the claim in issue lacks merit or bona fides; or
- (2) Because a valid basis for the claim sought to be arbitrated has not been shown.

§ 3-211. Selection of arbitrators

(a) If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed.

(b) In the absence of a provision in the agreement, a party may file a petition with a court to appoint one or more arbitrators.

(c) A court shall appoint one or more arbitrators if:

- (1) The arbitration agreement does not provide a method of appointment;
- (2) The agreed method fails or for any reason cannot be followed; or
- (3) An appointed arbitrator fails or is unable to act and his successor has not been appointed.

(d) A court appointed arbitrator has all the powers of an arbitrator specifically named in the agreement.

§ 3-212. Majority action by arbitrators

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

§ 3-213. Arbitration hearing; notice

(a)(1) Unless the agreement provides otherwise, the arbitrators shall designate a time and place for hearing and notify the parties, personally or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, not less than five days before the hearing.

(2) Appearance at the hearing waives the notice.

(b)(1) Except as provided in § 3-215(b) of this subtitle, the arbitration hearing shall be conducted by all the arbitrators.

(2) The arbitrators may adjourn the hearing from time to time as necessary.

(3) Upon request of a party and for good cause shown or on their own motion, the arbitrators may postpone the hearing to a time not later than the date set by the agreement for the award, unless the parties consent to a later date.

(c) The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(d) On petition of a party, the court may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

§ 3-214. Arbitration hearing; rights of parties

(a) At an arbitration hearing, the parties have the right:

(1) To be heard;

(2) To present evidence material to the controversy; and

(3) To cross examine witnesses who appear at the hearing.

(b) Arbitrators are not bound by the technical rules of evidence.

§ 3-215. Decision of arbitrators

(a) The majority of the arbitrators may determine any question and render a final award.

(b) If an arbitrator for any reason ceases to act during the course of the arbitration hearing, the remaining arbitrators or arbitrator appointed to act as neutral, may continue with a hearing and the determination of the controversy.

§ 3-216. Representation by attorney

(a) A party has the right to be represented by an attorney at any proceeding or hearing under this subtitle.

(b) A waiver of the right to be represented by an attorney prior to the proceeding or hearing is ineffective.

§ 3-217. Subpoena power of arbitrators

(a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and have the power to administer oaths.

(b) At the arbitration hearing a witness shall be sworn:

- (1) At the request of a party; or
- (2) At the request of a majority of the arbitrators.

(c)(1) A party or the arbitrators may file a petition with a court to enforce a subpoena.

(2) A subpoena shall be enforced in the manner provided by law or rule for the enforcement of subpoenas in a civil action.

(d) All provisions of law which compel a person under subpoena to testify apply to proceedings under this subtitle.

§ 3-218. Taking of depositions

On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken in the manner and upon the terms designated by the arbitrators, if:

- (1) The witness cannot be subpoenaed; or
- (2) The witness is unable to attend a hearing.

§ 3-219. Award

(a) The arbitration award shall be in writing and signed by the arbitrators who joined in the award.

(b)(1) The arbitration award shall be made within the time set by the agreement.

(2) If the agreement does not set a time, a party may petition a court to set the time.

(3) The parties may extend the time for making an award in writing at any time.

(c) The arbitrators shall deliver a copy of the award to each party:

- (1) As provided in the agreement;
- (2) Personally; or
- (3) By certified mail, return receipt requested, bearing a postmark from the United States Postal Service.

(d) 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.

§ 3-220. Transcript

(a) The arbitrators may, and on application of a party shall, order that part or all of the proceedings be transcribed.

(b) The record made from the transcript shall be available to either side for purpose of appeal or otherwise.

§ 3-221. Fees and expenses of arbitration

(a) Unless the arbitration agreement provides otherwise, the award shall provide for payment of the arbitrators' expenses, fees, and any other expense incurred in the conduct of the arbitration.

(b) Unless the arbitration agreement provides otherwise, the award may not include counsel fees.

§ 3-222. Modification or correction of award

(a) A party may apply to the arbitrators to modify or correct an award within 20 days after delivery of the award to the applicant.

(b) A written notice of an application to modify or correct the award shall be given to the opposing party, stating that he shall serve any objection to the application within ten days.

(c) The arbitrators may modify or correct an award:

(1) On the grounds stated in § 3-223(b)(1), (2), or (3) of this subtitle; or

(2) For the purpose of clarity.

(d) The arbitrators shall modify or correct an award consistent with the order of court, if a petition under § 3-223, § 3-224, or § 3-227 of this subtitle is pending.

(e) The modified or corrected award is subject to the provisions of §§ 3- 223, 3-224, and 3-227 of this subtitle.

§ 3-223. Adjustment of award by court

(a) A petition to modify or correct the award shall be filed within 90 days after delivery of a copy of the award to the applicant.

(b) The court shall modify or correct the award if:

(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 a 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.

(c) If the petition is granted, the court shall modify or correct the award to effect its intent and confirm the award as modified or corrected. Otherwise, the court shall confirm the award as made.

(d) An application to modify or correct an award may be joined, in the alternative, with an application to vacate the award.

§ 3-224. Vacating an award

- (a)(1) Except as provided in paragraph (2), a petition to vacate the award shall be filed within 30 days after delivery of a copy of the award to the petitioner.
- (2) If a petition alleges corruption, fraud, or other undue means it shall be filed within 30 days after the grounds become known or should have been known to the petitioner.
- (b) The court shall vacate an award if:
- (1) An award was procured by corruption, fraud, or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, 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 for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or
 - (5) There was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3- 208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.
- (c) The court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief.

§ 3-225. Procedure for rehearing

- (a) If any award is vacated on grounds other than those stated in § 3- 224(b)(5) of this subtitle, the court may order a rehearing before new arbitrators selected by the parties as provided by the agreement, or by the court in the absence of an agreement as provided in § 3-211 of this subtitle.
- (b) If the award is vacated on grounds set forth in § 3-224(b)(3) and (4) of this subtitle, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 3-211 of this subtitle.
- (c) 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 or at a time specified by the court.

§ 3-226. Refusal of application to vacate

If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 3-227. Confirmation of award

- (a) A party may petition the court to confirm the award.
- (b) The court shall confirm the award, unless the other party has filed an application to vacate, modify, or correct the award within the time provided in §§ 3-222 and 3-223 of this subtitle.

(c) If an application to vacate, modify, or correct the award has been filed, the court shall proceed as provided in §§ 3-223 and 3-224 of this subtitle.

§ 3-228. Entering of judgment; costs

(a)(1) If an order confirming, modifying, or correcting an award is granted, a judgment shall be entered in conformity with the order.

(2) The judgment may be enforced as any other judgment.

(b) A court may award costs of the petition, the subsequent proceedings, and disbursements.

§ 3-229. Death or disability of party

(a) Notwithstanding the death of a party who made a written agreement to submit a controversy to arbitration, the arbitration proceedings may begin or continue if an application has been filed by or notice given to his personal representative.

(b) If a guardian has been appointed, the proceedings may be continued:

(1) Upon the application of the guardian; or

(2) Upon the notice to the guardian.

(c) Upon the death or incompetence of a party, the court may extend the time within which a petition to confirm, vacate, or modify the award, or to stay arbitration, must be made.

(d) If a party dies after an award was delivered, the subsequent proceedings are the same as where a party dies after a verdict.

§ 3-230. Death of party; proceedings

(a) If a party dies before an award is returned and judgment rendered, the cause does not abate and the arbitrators shall give a reasonable notice of the pending proceedings to the personal representative.

(b) Notwithstanding the death of a party, the arbitrators shall proceed with a determination and return their award upon which judgment may be entered.

§ 3-231. Subtitle not retroactive

This subtitle applies only to agreements made after May 31, 1965.

§ 3-232. Uniformity of interpretation

This subtitle shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 3-234. Short title

This subtitle may be cited as the Maryland Uniform Arbitration Act.

Application of Uniform Arbitration Act to Certain Proceedings
Title 15, Chapter 100.

Current with amendments received through September 2008

RULE 15-101. APPLICATION OF UNIFORM ARBITRATION ACT TO CERTAIN PROCEEDINGS

(a) Binding Arbitration While Court Action Pending.

(1) Not Applicable to Certain Actions. This Rule does not apply to actions for judicial review of an order or action of an administrative agency.

(2) Consent; Order of Referral. If before trial all parties agree on the record or file a written stipulation agreeing to binding arbitration of the action or any issue, the court shall enter an order of referral to arbitration.

(3) Maryland Uniform Arbitration Act. Except to the extent provided otherwise in the order of referral, the Maryland Uniform Arbitration Act applies to the arbitration.

(b) Court Proceedings Regarding Binding Arbitration Not Governed by Uniform Arbitration Act. In connection with a binding arbitration conducted or sought to be conducted under common law or under a statute other than the Maryland Uniform Arbitration Act, unless otherwise required by applicable law, (1) court proceedings to confirm, vacate, modify, or enter judgment on a final written award are governed by the provisions of the Maryland Uniform Arbitration Act and (2) to the extent practicable, the procedure for obtaining other judicial relief shall be the same as the procedure in connection with an arbitration under the Maryland Uniform Arbitration Act.

International Commercial Arbitration
Title 3, Subtitle 2B.

Current through all chapters of the 2008 Regular Session

§ 3-2B-01. Definitions

(a) In this subtitle the following terms have the meanings indicated.

(b) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

(c)(1) "International commercial arbitration" means an arbitration in which:

(i) The relevant place of business of at least 1 of the parties to the agreement is in a country other than the United States; or

(ii) If none of the parties has a relevant place of business in a country other than the United States, the relationship between any of the parties to an arbitration agreement involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with 1 or more foreign countries.

(2)(i) If a party has more than 1 place of business, the relevant place of business shall be the place of business:

1. That has the closest relationship to the arbitration agreement; or
2. Designated by the agreement of the parties.

(ii) If a party does not have a place of business, the party's habitual residence shall be deemed the place of business.

§ 3-2B-02. Objective of subtitle

The purpose of this subtitle is to:

- (1) Promote international commercial arbitration in this State;
- (2) Enforce arbitration agreements by parties in international commercial transactions;
- (3) Facilitate the prompt and efficient resolution by arbitration of disputes in international commercial agreements and transactions; and
- (4) Promote uniformity in the law of international commercial arbitration in the United States.

§ 3-2B-03. Pertinent laws; interpretation

(a) In all matters relating to the process and enforcement of international commercial arbitration and awards, the laws of Maryland shall be the arbitration statutes and laws of the United States.

(b) This subtitle shall be interpreted and construed as to promote uniformity in the law of international commercial arbitration in the United States.

§ 3-2B-04. Circuit courts; jurisdiction

The circuit courts of this State shall have jurisdiction:

- (1) To enforce agreements and orders providing for international commercial arbitration;
- (2) To enter judgments on arbitration awards; and
- (3) To recognize and enforce in accordance with this subtitle arbitration awards rendered in foreign countries.

§ 3-2B-05. Method of filing complaints

(a) Any complaint filed in circuit court with respect to international commercial arbitration shall be filed with the court in the county:

- (1) As provided by the agreement; or
- (2) Where the arbitration hearing was held.

(b) If the agreement does not provide for a county in which a complaint shall be filed or if the hearing has not been held, the complaint shall be filed with the court:

- (1) In the county where the adverse party resides;

- (2) In the county where the adverse party has a place of business or owns real property; or
- (3) If the adverse party has neither a residence nor a place of business or property in the State, in Baltimore City.

§ 3-2B-06. Posting of security

(a) Unless the arbitration agreement provides otherwise, the arbitral tribunal in an international commercial arbitration in this State may, at the request of a party and after an opportunity for any other party to the arbitration agreement to be heard, order any party to post security or countersecurity in a form satisfactory to the arbitral tribunal in an amount not to exceed the amount of that party's claim, cross-claim, or counterclaim (excluding attorneys' fees) if:

(1) The party to be required to post security or countersecurity resides in a country that has not ratified and adopted the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and does not have sufficient assets in the United States to satisfy the amount of the claim or counterclaim; or

(2) The arbitral tribunal otherwise determines that there is good cause to require security or countersecurity.

(b)(1) On motion of a party to a circuit court to vacate or modify an order for security or countersecurity, a hearing shall be held promptly.

(2) Unless the party required to post security or countersecurity establishes that an order for security or countersecurity is an abuse of discretion by the arbitral tribunal, the courts of this State shall enforce orders for security or countersecurity.

§ 3-2B-07. Judicial intervention

(a) In an international commercial arbitration proceeding in this State, a court of this State may not intervene unless otherwise permitted by this subtitle and the statutes and laws incorporated by this subtitle.

(b) Notwithstanding any other provision of law, the court shall make any determination provided for in this subtitle without a jury.

§ 3-2B-08. Appeal of orders

(a) A party to an action involving international commercial arbitration may appeal:

(1) An order:

(i) Refusing a stay of any court action involving a matter referable to arbitration;

(ii) Denying a motion to order arbitration to proceed;

(iii) Denying application to compel arbitration;

(iv) Confirming or denying confirmation of an award or partial award; or

(v) Modifying, correcting, or vacating an award;

(2) An interlocutory order granting, continuing, or modifying an injunction against arbitration; or

(3) A final decision with respect to an arbitration that is subject to this subtitle.

(b) An appeal from the circuit court in an action involving international commercial arbitration may

not be taken from an interlocutory order:

- (1) Granting a stay of any court action involving a matter referable to arbitration;
- (2) Directing arbitration to proceed;
- (3) Compelling arbitration; or
- (4) Refusing to enjoin an arbitration.

§ 3-2B-09. Short title

This subtitle may be cited as the Maryland International Commercial Arbitration Act.

Alternative Dispute Resolution

Title 17, Chapter 100.

Current with amendments received through September 2008

RULE 17-101. APPLICABILITY

- (a) Generally. The rules in this Chapter apply to all civil actions in circuit court except (1) they do not apply to actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution and (2) other than Rule 17-104, they do not apply to health care malpractice claims.
- (b) Rules Governing Qualifications and Selection. The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, or auditor appointed under Rules 2-541, 2-542, or 2-543.

RULE 17-102. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

- (a) Alternative Dispute Resolution. "Alternative dispute resolution" means the process of resolving matters in pending litigation through a settlement conference, neutral case evaluation, neutral fact-finding, arbitration, mediation, other non-judicial dispute resolution process, or combination of those processes.
- (b) Arbitration. "Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that is not binding, unless the parties agree otherwise in writing.
- (c) Fee-For-Service. "Fee-for-service" means that a party will be charged a fee by the person or persons conducting the alternative dispute resolution proceeding.
- (d) Mediation. "Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and

options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.

(e) Mediation Communication. "Mediation communication" means speech, writing, or conduct made as part of a mediation, including communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator.

(f) Neutral Case Evaluation. "Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action is tried.

(g) Neutral Fact-Finding. "Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present evidence and arguments supporting their respective positions as to particular disputed factual issues, and (2) the impartial person makes findings of fact as to those issues. Unless the parties otherwise agree in writing, those findings are not binding.

(h) Settlement Conference. "Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement.

RULE 17-103. GENERAL PROCEDURES AND REQUIREMENTS

(a) In General. A court may not require a party or the party's attorney to participate in an alternative dispute resolution proceeding except in accordance with this Rule.

(b) Minimum Qualifications Required For Court Designees. A court may not require a party or the party's attorney to participate in an alternative dispute resolution proceeding conducted by a person designated by the court unless (1) that person possesses the minimum qualifications prescribed in the applicable rules in this Chapter, or (2) the parties agree to participate in the process conducted by that person.

(c) Procedure.

(1) Inapplicable to Child Access Disputes. This section does not apply to proceedings under Rule 9-205.

(2) Objection. If the court enters an order or determines to enter an order referring a matter to an alternative dispute resolution process, the court shall give the parties a reasonable opportunity (A) to object to the referral, (B) to offer an alternative proposal, and (C) to agree on a person to conduct the proceeding. The court may provide that opportunity before the order is entered or upon request of a

party filed within 30 days after the order is entered.

(3) Ruling on Objection. The court shall give fair consideration to an objection to a referral and to any alternative proposed by a party. The court may not require an objecting party or the attorney of an objecting party to participate in an alternative dispute resolution proceeding other than a non-fee-for-service settlement conference.

(4) Designation of Person to Conduct Procedure. In an order referring an action to an alternative dispute resolution proceeding, the court may tentatively designate any person qualified under these rules to conduct the proceeding. The order shall set a reasonable time within which the parties may inform the court that (A) they have agreed on another person to conduct the proceeding, and (B) that person is willing and able to conduct the proceeding. If, within the time allowed by the court, the parties inform the court of their agreement on another person willing and able to conduct the proceeding, the court shall designate that person. Otherwise, the referral shall be to the person designated in the order. In making a designation when there is no agreement by the parties, the court is not required to choose at random or in any particular order from among the qualified persons. Although the court should endeavor to use the services of as many qualified persons as possible, the court may consider whether, in light of the issues and circumstances presented by the action or the parties, special training, background, experience, expertise, or temperament may be helpful and may designate a person possessing those special qualifications..

RULE 17-104. QUALIFICATIONS AND SELECTION OF MEDIATORS

(a) Qualifications in General. To be designated by the court as a mediator, other than by agreement of the parties, a person must:

(1) unless waived by the court, be at least 21 years old and have at least a bachelor's degree from an accredited college or university.

(2) have completed at least 40 hours of mediation training in a program meeting the requirements of Rule 17-106;

(3) complete in every two-year period eight hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-106;

(4) abide by any standards adopted by the Court of Appeals;

(5) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(6) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court.

(b) Additional Qualifications--Child Access Disputes. To be designated by the court as a mediator with respect to issues concerning child access, the person must:

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) have completed at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106; and
- (3) have observed or co-mediated at least eight hours of child access mediation sessions conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(c) Additional Qualifications--Business and Technology Case Management Program Cases. To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) within the two-year period preceding application for approval pursuant to Rule 17-107, have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity (A) at least two of which are among the types of cases that are assigned to the Business and Technology Case Management Program or (B) have co-mediated an additional two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases;
- (3) agree to serve as co-mediator with at least two mediators each year who seek to meet the requirements of subsection (c)(2)(B) of this Rule; and
- (4) agree to complete any continuing education training required by the Circuit Administrative Judge or that judge's designee.

(d) Additional Qualifications--Marital Property Issues. To be designated by the court as a mediator in divorce cases with marital property issues, the person must:

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) have completed at least 20 hours of skill-based training in mediation of marital property issues; and
- (3) have observed or co-mediated at least eight hours of divorce mediation sessions involving marital property issues conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(e) Additional Qualifications--Health Care Malpractice Claims. To be designated by the court as a mediator of health care malpractice claims, other than by agreement of the parties, the person must:

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity;

(3) be knowledgeable about health care malpractice claims because of experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

RULE 17-105. QUALIFICATIONS AND SELECTION OF PERSONS OTHER THAN MEDIATORS AND NEUTRAL EXPERTS

(a) Generally. Except as provided in section (b) of this Rule, to be designated by the Court to conduct an alternative dispute resolution proceeding other than mediation, a person, unless the parties agree otherwise, must:

(1) abide by any standards adopted by the Court of Appeals;

(2) submit to periodic monitoring of court-ordered alternative dispute resolution proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience in the active practice of law as (i) a judge, (ii) a practitioner, (iii) a full-time teacher of law at a law school accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) unless waived by the court, have completed a training program that consists of at least eight hours and has been approved by the county administrative judge.

(b) Judges and Masters. A judge or master of the court may conduct a non-fee-for-service settlement conference.

RULE 17-105.1. NEUTRAL EXPERTS

(a) Definition. A "neutral expert" means a person who has special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.

(b) Selection. When a court-appointed alternative dispute resolution practitioner or one or both of the parties believe that it would be helpful to have the assistance of a neutral expert, the practitioner may select a neutral expert, with the consent of the parties and at their expense, to be present at or participate in the mediation at the request of the practitioner.

(c) Confidentiality.

(1) Mediation Proceedings. In a mediation, the provisions of sections (a), (b), and (e) of Rule 17-109 apply to the neutral expert.

(2) Other Alternative Dispute Resolution Proceedings. In all other alternative dispute resolution proceedings, the parties and the alternative dispute resolution practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the alternative dispute resolution proceeding in any judicial, administrative, or other proceedings. Communications related to the alternative dispute resolution proceeding that are confidential under an agreement allowed by this subsection are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use related to the alternative dispute resolution proceeding.

RULE 17-106. MEDIATION TRAINING PROGRAMS

(a) In General. To qualify under Rule 17-104(a)(2), a mediation training program must include the following:

- (1) conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;
- (2) mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues, and power balancing;
- (3) mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, and standards of practice;
- (4) rules, statutes, and practice governing mediation in the circuit courts; and
- (5) simulations and role-playing, monitored and critiqued by experienced mediator trainers.

(b) Child Access Mediation Training. To qualify under Rule 17-104(b)(2), a mediation training program must include the following:

- (1) Maryland law relating to separation, divorce, annulment, child custody and visitation, child and spousal support;
- (2) emotional aspects of separation and divorce on adults and children;
- (3) screening for and addressing domestic violence;
- (4) introduction to family systems and child development theory; and
- (5) inter-relationship of custody and child support.

RULE 17-107. PROCEDURE FOR APPROVAL

(a) Generally.

(1) Filing Application. A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 in actions other than those assigned to the Business and Technology Case Management Program shall file an application with the clerk of the circuit court from which the person is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104. If the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-105 (a). The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(2) Action on Application. After any investigation that the county administrative judge deems appropriate, the county administrative judge shall notify each applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Approved Lists. The clerk shall prepare a list of mediators found by the county administrative judge to meet the qualifications required by Rule 17-104 and a list of persons found by the county administrative judge to meet the qualifications required by Rule 17-105 (a). The lists, together with the applications of the persons on the lists, shall be kept current by the clerk and be available in the clerk's office to the public.

(4) Removal from List. After notice and a reasonable opportunity to respond, the county administrative judge shall remove a person from a list for failure to maintain the applicable qualifications of Rule 17-104 or Rule 17-105 (a) or for other good cause.

(b) Business and Technology Case Management Program.

(1) Filing Application. A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 in actions assigned to the Business and Technology Case Management Program shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104. If the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-105 (a). The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(2) Action on Application. After any investigation that the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved, and if disapproved, shall state the reasons for the disapproval. The Administrative Office of the Courts shall notify each applicant of the action of the Committee and the

reasons for a disapproval.

(3) Approved Lists. The Administrative Office of the Courts shall prepare a list of mediators found by the Committee to meet the qualifications required by Rule 17-104 and a list of persons found by the Committee to meet the qualifications required by Rule 17-105 (a). The Administrative Office of the Courts shall (A) attach to the lists such additional information as the State Court Administrator specifies; (B) keep the lists current; and (C) transmit a copy of each current list to the clerk of each circuit court, who shall make them available to the public.

(4) Removal from List. After notice and a reasonable opportunity to respond, the Committee of Program Judges shall remove a person from a list for failure to maintain the applicable qualifications of Rule 17-104 or Rule 17-105 (a) or for other good cause.

RULE 17-108. FEE SCHEDULES

Subject to the approval of the Chief Judge of the Court of Appeals, the circuit administrative judge of each circuit court may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis. In developing the fee schedules, the circuit administrative judge shall take into account the availability of qualified persons willing to provide those services and the ability of litigants to pay for those services. A person designated by the court, other than with the agreement of the parties, to conduct an alternative dispute resolution proceeding under Rule 2-504 may not charge or accept a fee for that proceeding in excess of that allowed by the applicable schedule. Violation of this Rule shall be cause for removal from all lists.

RULE 17-109. MEDIATION CONFIDENTIALITY

(a) Mediator. Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties. Subject to the provisions of sections (c) and (d) of this Rule, (1) the parties may enter into a written agreement to maintain the confidentiality of all mediation communications and to require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of mediation communications and (2) the parties and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(c) Signed Document. A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree in writing otherwise.

Cross reference: See Rule 9-205 (d) concerning the submission of a memorandum of the points of agreement to the court in a child access case.

(d) Permitted Disclosures. In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe necessary to help:

- (1) prevent serious bodily harm or death,
- (2) assert or defend against allegations of mediator misconduct or negligence, or
- (3) assert or defend against a claim or defense that because of fraud, duress, or misrepresentation a contract arising out of a mediation should be rescinded.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, § 5-705.

(e) Discovery; Admissibility of Information. Mediation communications that are confidential under this Rule are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Agricultural Mediation Program

Title 1, Subtitle 1A.

Current through all chapters of the 2008 Regular Session

§ 1-1A-01. Definitions

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Agricultural mediation" means a voluntary process in which a mediator helps private parties or government agencies resolve agriculturally related disputes in a confidential and nonadversarial setting.
- (c) "Mediator" means an impartial person who is trained to help people find mutually acceptable solutions to shared problems and has no power to impose a solution.

§ 1-1A-02. Establishment of program

- (a) The Secretary may establish a federally certified State agricultural mediation program in the Department.
- (b) The purpose of the program is to provide eligible persons and government agencies with a voluntary and low-cost process to settle agriculturally related disputes.

§ 1-1A-03. Powers of Secretary

- (a) The Secretary may:
 - (1) Establish qualifications for a person requesting agricultural mediation services from the Department;

- (2) Establish qualifications for an individual applying to serve as a mediator in the State agricultural mediation program;
- (3) Contract with any qualified individual to provide mediation services for qualified mediation applicants; and
- (4) Receive grants for purposes of defraying the costs of the State agricultural mediation program.

(b) The Secretary may adopt regulations to:

- (1) Meet the requirements of the United States Department of Agriculture for establishing a federally certified State agricultural mediation program; and
- (2) Implement the provisions of this subtitle.

§ 1-1A-04. Confidentiality of mediation records

Except for purposes of meeting the reporting requirements of the United States Department of Agriculture for a federally certified State agricultural mediation program, the Department shall maintain the confidentiality of all mediation records.

Farm Sense-Agricultural Mediation Program

Md. Code Regs. Title 15 Subtitle 09

Complete through November 2008.

01 Scope.

A. This chapter describes the policies and procedures for the Department's administration of the Farm Sense Agricultural Mediation Program.

B. This Program is intended to provide persons and government agencies with a voluntary and low-cost process for settling agriculturally related disputes.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Department" means the Maryland Department of Agriculture.
- (2) "Mediation" means a voluntary process under the Farm Sense Agricultural Mediation Program in which a mediator assists in the resolution of agriculturally related disputes involving persons, government agencies, or both, in a confidential and nonadversarial setting.
- (3) "Mediation coordinator" means the individual or individuals responsible for the administration, reporting, and oversight of the Farm Sense Agricultural Mediation Program.
- (4) "Mediator" means an impartial individual who:

(a) Is trained to assist participants in finding mutually acceptable solutions to shared problems; and

(b) Has no authority to impose a solution.

(5) "Producer" means a person who:

TEXT B (5) (a)

(a) Grows or produces food, fiber, planting material, or feed; or

(b) Breeds, stables, or raises livestock, equine, or ratites.

(6) "USDA" means the United States Department of Agriculture.

03 Who May Apply.

A. At least one of the parties participating in mediation shall be a:

(1) Maryland agricultural producer;

(2) Creditor of a Maryland agricultural producer; or

(3) Person directly affected by the actions of the Department or the USDA.

B. All requests for mediation shall be considered by the Department. Participants in mediation shall:

(1) Express an interest in developing a mutually agreeable and durable solution; and

(2) Have the authority to make decisions for themselves individually or for the organizations they represent.

.04 Mediator Qualifications.

To act as a mediator, a mediator shall:

A. Complete a 40-hour basic mediation training course;

B. Maintain mediator liability insurance; and

C. Agree to comply with continuing training and evaluation requirements as determined by the Department.

.05 Application and Eligibility.

A. A person interested in receiving mediation services shall submit a written request to the Department. This request shall contain the following:

- (1) Name and contact information of the requesting party;
- (2) Contact information for other parties involved; and
- (3) A brief description of the issues to be addressed during mediation.

B. After initial consultation with all necessary parties, the mediation coordinator shall determine if the parties and issues for discussion are eligible for mediation. Factors the mediation coordinator shall consider include:

- (1) The authority of each party to finalize an agreement, if a resolution is reached during the mediation process;
- (2) The existence of issues involving violence or likely to give rise to violence;
- (3) A conflict of interest between the Department and any party;
- (4) Any other reason as determined by the mediation coordinator; and
- (5) Whether the issues surrounding the request for mediation meet the criteria of 7 CFR §785.2 of the USDA's Certified Mediation Program guidelines.

C. Upon the mediation coordinator's determination that each party is eligible for mediation, a form shall be sent to each party. The form shall be completed and returned to the Department before mediation. If a party declines to participate in mediation, the mediation coordinator shall inform all other parties within 5 business days.

D. If all parties agree to mediation, the mediation coordinator shall arrange for an appropriate location, time, and mediator within 45 days of the mediation request.

E. All individuals present at the mediation, including the parties, the mediator, and any observers, shall sign an "Agreement to Begin Voluntary Mediation". The mediation process may not begin if an individual present does not sign the agreement.

.06 Fees.

A. The fee for each participant in a mediation session is \$50. This fee shall be paid to the mediator at the beginning of a session. Additional fees may be required for multiple sessions.

B. The mediation fee may be waived for good cause shown.

.07 Conclusion of Mediation Session.

A. Any agreement reached by all parties shall be voluntary. Any signed agreement is legally binding on all signatories to the extent that any signed agreement is contractually binding.

B. If the parties fail to reach an agreement, the mediator shall indicate this decision on a form. The

form shall be signed by all parties.

.08 Confidentiality.

A. Mediation shall be confidential pursuant to the terms of the Federal Dispute Resolution Act, 5 U.S.C. §574.

B. In addition to the exceptions in 5 U.S.C. §574, a mediator may disclose information conveyed during the mediation that indicates:

- (1) Intent to commit a crime;
- (2) Intent to inflict bodily harm on another; or
- (3) A threat to the safety of a child.

C. Documents. Except for purposes of meeting reporting and evaluation requirements of the USDA Mediation Program, the Department shall maintain the confidentiality of all mediation records.