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States' Alternative Dispute Resolution Statutes

State of New Jersey

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States' Alternative Dispute Resolution Statutes

STATE OF NEW JERSEY

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Alternative Procedure for Dispute Resolution Title 2A, Subtitle 6, Chapter 23A.

Current through End of 2007 Regular Session

2A:23A-1. Short title

This act shall be known and may be cited as “The New Jersey Alternative Procedure for Dispute Resolution Act.”

2A:23A-2. Contracts to submit; enforcement of submission; waiver of right to trial by jury and appeal

a. Any provision in a written contract whereby the parties agree to settle by means of alternative resolution, as provided in this act, (1) any controversy that may arise from the contract or from a refusal to perform the contract or (2) any written agreement whereby the parties to an existing controversy agree to use alternative resolution as provided in this act, whether the controversy arose out of a contract or otherwise, is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of a contract. In order for the provisions of this act to be applicable, it shall be sufficient that the parties signify their intention to resolve their dispute by reference in the agreement to “The New Jersey Alternative Procedure for Dispute Resolution Act” (P.L.1987, c. 54; C. 2A:23A-1 et seq.).

b. Any contract provision or agreement described in subsection a. of this section shall be construed as an implied consent by the parties to the jurisdiction of the Superior Court to enforce that provision or agreement pursuant to the provisions set forth in this act and to enter judgment thereon. The contract

provision or agreement shall constitute a waiver by the parties of the right to trial by jury and to appeal or review, except as specifically provided for in this act.

2A:23A-3. Consolidated alternative resolution proceeding or court proceedings

- a. When parties have agreed to alternative resolution proceedings under separate agreements under this act, and the claims to be resolved may involve evidence, witnesses and testimony reasonably necessary to resolve issues and facts arising out of a related project or series of agreements, then these proceedings may be held in a consolidated alternative resolution proceeding. Whenever reasonably possible, the same umpire shall be designated to hear and determine these claims.
- b. Whenever the claims to be resolved in an alternative resolution proceeding may involve evidence, witnesses and testimony reasonably necessary to resolve issues and facts arising out of a related project or series of agreements, which are the subject of litigation in any court of this State, the court may authorize consolidation of the alternative resolution proceeding and the court proceedings to advance expeditious use of court time; provided, however, that consolidation shall not be permitted to unduly delay the expeditious resolution of the alternative resolution proceedings provided for by this act.
- c. The provisions of subsections a. and b. of this section shall be liberally construed to effectuate the remedial purpose of this act to provide for the expeditious resolution of disputes arising out of a related project or series of agreements.

2A:23A-4. Demand for alternative resolution; action for order for alternative resolution

- a. Any party to an agreement which provides for alternative resolution under this act shall institute a proceeding pursuant to that agreement by:
 - (1) Giving written notice to all other parties of the party's demand for resolution, which notice shall set forth concisely the claims, and where appropriate the defenses, in dispute between the parties and the relief sought, including the amount of liquidated damages demanded, if any; and
 - (2) Initiating the procedure for selecting the umpire or, if no procedure is provided in the agreement, by initiating a summary action as provided in this act to have an umpire appointed.
- b. When a party is aggrieved by the failure, neglect or refusal of another to perform under a written agreement providing for alternative resolution that party may apply to the Superior Court for an order directing that alternative resolution proceed in the manner provided for in the agreement. The court shall proceed in a summary action to determine whether there has been an agreement in writing for alternative resolution or whether there has been a failure to comply with a demand for alternative resolution.

2A:23A-5. Jurisdiction of umpire; review

- a. Whenever an alternative resolution is properly demanded, the umpire designated therein shall have full jurisdiction to provide all relief and to determine all claims and disputes arising thereunder, including whether the particular issue or dispute is covered by the agreement for alternative resolution, and whether there was fraud in the inducement of the entire agreement which provides for alternative resolution; however, the umpire shall not have jurisdiction with regard to a claim that an alternative resolution clause was procured by fraud. Whenever possible, all requests for relief ancillary to the claims and disputes covered by the agreement for alternative resolution shall first be addressed to the

umpire for determination.

b. There shall be no review of any intermediate ruling or determination made by the umpire during the course of alternative resolution proceedings, except as provided in this act. An appeal from a final award decision by the umpire may be obtained only as provided in section 13 of this act.

2A:23A-6. Provisional remedies

a. Whenever an umpire acts upon an application for relief in the nature of a civil provisional remedy under any applicable law, including the civil remedies of attachment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action, the umpire shall have full authority to act thereon. Whenever any of these remedies are applied for during an alternative resolution proceeding, the umpire shall promptly rule on that application. Any determination reached before a final award shall be considered an intermediate ruling as provided for in subsection b. of section 5 of this act. Any party may apply at any time to the Superior Court or any other court of competent jurisdiction for an order enforcing the determination of the umpire directing relief in the nature of any of the provisional remedies provided for in this section. Whenever enforcement of an order is sought pursuant to this subsection, review of the validity of the order may be had by way of defense to enforcement.

b. Where reasonably required by the circumstances, a party may apply to the Superior Court or any other court of competent jurisdiction for an order granting any of the provisional remedies or other relief set forth in this section, before the umpire provided for in the agreement, or designated by the court, is authorized or able to act on the request for relief.

2A:23A-7. Limited intermediate review

a. In exceptional circumstances, to prevent a manifest denial of justice, or when it clearly appears that a party will suffer irreparable harm or that damages may not be reasonably calculated or, if capable of calculation, that they will not be collectible, a party who is aggrieved by any intermediate ruling, except intermediate rulings made pursuant to section 6 of this act, or the failure to rule by an umpire may move before the Superior Court for an expedited summary review under procedures adopted by the Supreme Court. The alternative resolution proceeding shall not be abated, stayed or delayed by the application for an intermediate review unless the umpire or the court, in exceptional cases or circumstances, so rules. The ruling on a summary intermediate review application by the court shall thereafter govern the parties in the alternative resolution proceeding, provided, however, that this ruling may be later modified or vacated by the umpire or the court where specific facts are thereafter determined that would make the continuance of the court ruling manifestly unfair, unjust or grossly inequitable. When it appears that resort to the court to review an intermediate ruling has been abused by any party, the court may award reasonable counsel fees without regard to the ultimate outcome of the alternative resolution proceeding.

b. The signature of an attorney or party to an intermediate appeal, or in opposition thereto, constitutes a certification by him:

(1) That he has read the pleadings and all supporting papers relating to the intermediate appeal;

(2) That to the best of his knowledge, information and belief, formed after reasonable inquiry, the appeal or opposition is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(3) That it is not interposed for any improper purpose, such as to cause unnecessary delay or a needless increase in the cost of litigation.

If such a pleading, application or other paper is filed in violation of this subsection, the court by summary review, upon motion by one of the parties or upon its own initiative, may impose upon the party causing the summary review, reasonable expenses, including a reasonable attorney's fee, incurred because of the filing of the pleading, application or other paper.

2A:23A-8. Stay of court action of proceeding subject to alternative resolution

In an action brought in any court upon an issue arising out of an agreement providing for alternative resolution under this act, the court, when satisfied that the issue involved is referable to alternative resolution, shall stay the action until the alternative resolution proceeding has been conducted in accordance with the terms of the agreement, unless the party seeking the stay is already in default.

2A:23A-9. Umpires; designation or appointment; fee; competence to testify in subsequent proceedings; immunity

a. An alternative resolution proceeding shall be conducted by a single umpire unless otherwise expressly provided for in the agreement. If the agreement designates a person or persons, the person or persons named shall conduct the proceeding. If a method is provided in the agreement for appointing one or more umpires to conduct the alternative resolution proceeding, it shall be followed; but, if no method is provided, or if a method is provided and a party fails to avail himself of that method, or if for other reasons there is a lapse in the naming of an umpire or in filling a vacancy, the Superior Court shall in a summary action appoint the umpire. Any umpire so appointed shall serve with the same powers as if specifically designated.

b. Unless otherwise provided for in the agreement, or set by the parties at the commencement of the proceeding, the court shall set the umpire's hourly fee.

c. An umpire is not competent to testify in any subsequent proceeding arising out of or related to an alternative resolution proceeding in which the umpire served, except for an action brought against the umpire pursuant to subsection d. of this section.

d. An umpire shall be immune from any claim for damages arising out of a proceeding in which the umpire served unless the award is overturned for the reasons set forth in paragraph (1) of subsection c. of section 13 of this act and there is a finding that the umpire participated in such wrongful conduct. Upon such a finding, a separate civil action or proceeding may be instituted against an umpire.

e. A finding that an umpire participated in wrongful conduct proscribed in paragraph (1) of subsection c. of section 13 of this act which results in the award being overturned, shall not be admissible as evidence in any subsequent action against the umpire, nor shall it establish any fact as a claim of res judicata. The wrongful conduct shall be proved de novo in any subsequent action or proceeding where the issue arises.

2A:23A-10. Discovery

- a. Each party shall be entitled to discovery by way of oral deposition, including videotape deposition, inspection and copying of all relevant documents within the care, custody or control of a party or witness, and interrogatories when authorized by leave of the umpire. Except as provided herein, the rules of the Supreme Court governing discovery shall be applicable.
- b. All discovery shall be completed within 60 days following receipt of the demand for alternative resolution or the entry of a final order compelling alternative resolution. The umpire shall have the authority to extend the time for completion of permitted discovery or to limit or terminate any permitted discovery upon application which can be heard in any suitable way, including telephone conference or on submitted papers. The decision of the umpire shall be subject to modification upon review by the Superior Court in a summary review as provided for by rules of the New Jersey Supreme Court when the umpire is shown to have improperly exceeded his discretion.
- c. Reasonable production of documents at any oral deposition upon notice in lieu of subpoena given to a party may be required.
- d. A notice for inspection and copying of documents provided for in this act may require that the same shall be produced no sooner than 15 days after receipt of service. The cost of copying shall be paid by the party demanding the inspection.

2A:23A-11. Hearing; multiple umpires; witnesses and books or instruments; subpoenas; rules of evidence; factual and legal contentions; expert evidence; conduct of hearing

- a. When more than one umpire is agreed upon, all the umpires shall sit at the hearing of the case, unless by written consent, all parties agree to a lesser number.
- b. The umpire conducting an alternative resolution proceeding may require the attendance of any person as a witness and the production of any book or written instrument. The fees for the attendance shall be those allowed witnesses in a civil action.
- c. Subpoenas shall issue in the name of and be signed by the umpire, or if there is more than one umpire, by a majority of them, and shall be directed to the person therein named and served in the same manner as a subpoena to testify before a court of record. If a person subpoenaed to testify refuses or neglects to obey a subpoena, the Superior Court, upon application, may compel his attendance before the umpire or hold the person in contempt as if the person had failed to respond to a subpoena issued by the court.
- d. In alternative resolution proceedings held under this act, parties shall not be bound by the statutory and common law rules of evidence, except as provided for conduct of contested cases under the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.); provided, however, that all statutes and common law rules relating to privilege shall remain in effect. In any case when no rule, procedure or practice applies to the offer of evidence or procedure to be adopted, the umpire shall proceed so that the informality of the proceedings is assured.
- e. Each party to an alternative resolution proceeding shall submit to the umpire and his adversary a

statement of the party's factual and legal position with respect to the issues to be resolved, at a date fixed by the umpire to permit proper preparation for all hearings. The submitted statement shall govern, control and limit the facts and legal issues to be determined in the alternative resolution proceeding. Amended or supplemental legal and factual statements may be filed as permitted by the umpire where the same will not unduly prejudice the other party to the proceeding.

f. In an alternative resolution proceeding when the umpire is of the opinion that evidence by impartial experts would be of assistance, the umpire may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the umpire.

g. Unless otherwise provided by the agreement for alternative resolution:

(1) The umpire shall appoint a time and place for the hearing and cause notification to the parties by personal service or by certified mail, with return receipt requested, not less than five days before the hearing. Appearance at the hearing waives the notice requirement. The umpire 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 umpire may determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The Superior Court, on application in any pending summary proceeding, may direct the umpire to proceed promptly with the hearing and determination of the controversy.

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

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

2A:23A-12. Determination of alternative resolution in writing and in accordance with applicable principles of law; application for modification of award by umpire; confirmation

a. The award in an alternative resolution proceeding shall be in writing and acknowledged or proved in the same manner as a deed for the conveyance of real estate and delivered personally or by certified mail, return receipt requested, or as provided in the agreement to each party or his attorney who has appeared in the proceeding. The award shall state findings of all relevant material facts, and make all applicable determinations of law.

b. An award shall be made within the time fixed by the agreement for alternative resolution or, if not fixed, within such time as the Superior Court orders on application of a party. The parties or the Superior Court upon application and for good cause shown may extend the time for making the award either before or after the expiration of that time. A party waives the right to object that an award was not made within the time required unless the party notifies the umpire of the party's objection prior to the delivery of the award.

c. The power of the umpires may be exercised by a majority of them unless otherwise provided by the

agreement for alternative resolution or by this act.

d. On written application of a party to the umpire within 20 days after delivery of the award to the applicant, the umpire may modify the award upon the grounds stated in subsection e. of section 13 of this act. Written notice of the application shall be given to other parties to the proceeding. Written objection to modification must be served on the umpire and other parties to the proceeding within 10 days of receipt of the notice. The umpire shall dispose of any application made under this section in writing, signed and acknowledged by him, within 30 days after either written objection to modification has been served or the time for serving an objection has expired, whichever is earlier. The parties may in writing extend the time for the disposition either before or after its expiration.

e. The umpire shall make the award on all issues submitted for alternative resolution in accordance with applicable principles of substantive law.

f. The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 13 of this act.

2A:23A-13. Application to court for review of award

a. A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection d. of section 12 of this act, [FN1] unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

b. In considering an application for vacation, modification or correction, a decision of the umpire on the facts shall be final if there is substantial evidence to support that decision; provided, however, that when the application to the court is to vacate the award pursuant to paragraph (1), (2), (3), or (4) of subsection c., the court shall make an independent determination of any facts relevant thereto de novo, upon such record as may exist or as it may determine in a summary expedited proceeding as provided for by rules adopted by the Supreme Court for the purpose of acting on such applications.

c. The award shall be vacated on the application of a party who either participated in the alternative resolution proceeding or was served with a notice of intention to have alternative resolution if the court finds that the rights of that party were prejudiced by:

- (1) Corruption, fraud or misconduct in procuring the award;
- (2) Partiality of an umpire appointed as a neutral;
- (3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;
- (4) Failure to follow the procedures set forth in this act, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or
- (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.

d. The award shall be vacated on the application of a party who neither participated in the proceeding nor was served with a notice of intention to have alternative resolution if the court finds that:

- (1) The rights of that party were prejudiced by one of the grounds specified in subsection c. of this section; or

- (2) A valid agreement to have alternative resolution was not made; or
- (3) The agreement to have alternative resolution had not been complied with; or
- (4) The claim was barred by any provision of this act.

e. The court shall modify the award if:

- (1) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;
- (2) The umpire has made an award based on a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted;
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy; or
- (4) The rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

f. Whenever it appears to the court to which application is made, pursuant to this section, either to vacate or modify the award because the umpire committed prejudicial error in applying applicable law to the issues and facts presented for alternative resolution, the court shall, after vacating or modifying the erroneous determination of the umpire, appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire. The court shall then confirm the award as modified.

2A:23A-14. Rehearing or confirmation

Upon vacating an award pursuant to section 13, except for the reasons stated in paragraph (5) of subsection c. of section 13, the court may order a rehearing and determination of all or any of the issues, either before the same umpire, having due regard for whether the award was vacated by reason of the actions of the umpire which were violative of paragraph (1), (2), (3), or (4) of subsection c. of section 13 or before a new umpire appointed in accordance with the alternative resolution agreement of this act. Time, in any provision limiting the time for a rehearing or an award, shall be measured from the date of the order or rehearing, whichever is appropriate, or from a time as may be specified by the court. Upon denial of a motion to vacate or modify, the court to which the application for that relief is directed shall confirm the award.

2A:23A-15. Death or incompetency of a party

When a party dies after making a written agreement to submit a controversy to alternative resolution, the proceedings may be initiated or continued upon the application of, or upon notice to, the party's executor or administrator or, when it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. When a custodian of the property or a guardian of the person of a party to an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the custodian or guardian. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate or modify the award or to stay alternative resolution must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as when a party dies after a verdict.

2A:23A-16. Limitation of time

If, at the time a demand for alternative resolution was made or served, the claims sought to be resolved would have been barred by a limitation of time had it been asserted in a court of this State, a party may assert the limitation as a bar to the alternative resolution to a court to which application has been made

to compel alternative resolution under this act. A party may also assert such bar before the umpire, who shall promptly rule upon that issue in a separate determination.

2A:23A-17. Expenses and fees

Unless otherwise provided in the agreement for alternative resolution, the expenses and fees of the umpire with other expenses, including, but not limited to, costs for the place where the hearings are held, deposition or hearing transcripts, expert fees, and copying of documents, incurred in the conduct of the proceeding, shall be paid as provided in the award. When the agreement for alternative resolution expressly provides, the umpire may provide for payment of attorney's fees.

2A:23A-18. Judgment on award

- a. Whenever a court shall vacate, modify or correct an award as provided for in this act and thereupon enter an award based on that determination, the court, upon application, shall in a summary proceeding as provided for herein determine all costs and expenses permitted by section 17 of this act. The court may thereupon include the costs and expenses in the final judgment entered confirming the award.
- b. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered by the court in conformity therewith and be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree.

2A:23A-19. Superior court jurisdiction or proceedings

Whenever a party to an agreement for alternative resolution has the right to apply to the Superior Court under this act, those proceedings shall be heard in accordance with any rules adopted by the New Jersey Supreme Court. These proceedings shall be summary in nature and expedited. This act shall be liberally construed to effectuate its remedial purpose of allowing parties by agreement to have resolution of factual and legal issues in accordance with informal proceedings and limited judicial review in an expedited manner.

Personal Injury Actions

2A:23A-20. Personal injury actions; submission to arbitration; amount; consent of parties

- a. Any civil action brought for personal injury, except for actions brought pursuant to the provisions of P.L.1972, c. 70 (C. 39:6A-1 et seq.), shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is \$20,000.00 or less, exclusive of costs.
- b. Notwithstanding that the amount in controversy is in excess of \$20,000.00, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the controversy does not involve novel legal or unduly complex factual issues.
- c. The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action. The provisions of this section shall apply to any cause of action, subject to this section, filed prior to the operative date of this act, if a pretrial conference has not

been concluded thereon.

2A:23A-21. Tolling of statute of limitations

Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with section 6 of this act.

2A:23A-22. Arbitrators number or selection; mutual consent of parties; judicial selection

a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with rules of court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years' negligence experience and recommended by the county or State bar association.

2A:23A-23. Compensation for arbitrators

Compensation for arbitrators shall be set by the rules adopted by the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings subject to the provisions of N.J.S. 59:9-5. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the Rules Governing The Courts of the State of New Jersey for the purpose of determining a reasonable fee in light of all the circumstances.

The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made but refused by the other party to the controversy.

2A:23A-24. Subpenas

The arbitrators may, at their initiative or at the request of any party to the arbitrators, issue subpenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpenas shall be served and shall be enforceable in the manner provided by law.

2A:23A-25. Amount of award; written decision

Notwithstanding that a controversy was submitted pursuant to subsection a. of section 1 of this act, the arbitration award may exceed \$20,000.00. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

2A:23A-26. Confirmation by court of arbitration decision; trial de novo; modification or vacation

The court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action; unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial de novo or for modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings.

2A:23A-27. Payment of arbitrators fees by trial de novo petitioner

Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

2A:23A-28. Evidence at trial de novo; exception for reduction of assessment

No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to section 10 of this act.

2A:23A-29. Costs of trial de novo; exception; waiver

The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.

2A:23A-30. Rules of court; impact statement

The Supreme Court of New Jersey shall adopt rules of court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on insurance settlement practices and costs, and on court calendars and workload.

Arbitration Agreements
Title 2A, Subtitle 6, Chapter 23B.

Current through End of 2007 Regular Session

2A:23B-1. Definitions

For the purposes of this act:

“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.

“Arbitrator” means an individual appointed either as a neutral arbitrator or as a party arbitrator to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

“Court” means the Superior Court of New Jersey.

“Court rules” means the Rules Governing the Courts of the State of New Jersey.

“Knowledge” means actual knowledge.

“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.

“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.

2A:23B-2. Notice

a. Except as otherwise provided in this act, 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 a notice.

2A:23B-3. When act applies

a. This act governs all agreements to arbitrate made on or after January 1, 2003 with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

b. This act governs an agreement to arbitrate made before January 1, 2003 if all the parties to the agreement or to the arbitration proceeding so agree in a record with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

c. On or after January 1, 2005, this act governs an agreement to arbitrate whenever made with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

d. This act shall not apply to agreements to arbitrate made before July 4, 1923.

2A:23B-4. 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 act to the extent permitted by law.

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

(1) waive or agree to vary the effect of the requirements of section 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

(2) agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding pursuant to section 9 of this act;

(3) agree to unreasonably restrict the right to disclosure of any facts by an arbitrator pursuant to section 12 of this act; or

(4) waive the right of a party to an agreement to arbitrate to be represented by a lawyer pursuant to section 16 of this act at any proceeding or hearing pursuant to this act.

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 section 3a., 3c., 7, 14, 18, 20d., 20e., 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that nothing in this act shall preclude the parties from expanding the scope of judicial review of an award by expressly providing for such expansion in a record.

2A:23B-5. Application for judicial relief

a. Except as otherwise provided in section 28 of this act, an application for judicial relief pursuant to this act shall be made upon commencement of a summary action with the court and heard in the manner provided for in such matters by the applicable court rules.

b. Unless a civil action involving the agreement to arbitrate is pending, notice of commencement of a summary action pursuant to this act shall be served in the manner provided by the court rules for serving process in summary actions.

2A:23B-6. Agreement to arbitrate; validity

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.

2A:23B-7. Application to compel or stay arbitration

a. On filing a summary action with the court by 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 summary action, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the summary action, 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 filing a summary action with the court by 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 proceeding involving a claim referable to arbitration pursuant to an alleged agreement to arbitrate is pending in court, an application pursuant to this section shall be made in that court. Otherwise, an application pursuant to this section may be made in any court as provided in section 27 of this act.

f. If a party commences a summary action 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 pursuant to this section.

g. 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.

2A:23B-8. Provisional remedies

a. Before an arbitrator is appointed and is authorized and able to act, the court, in such summary action upon application 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 pursuant to 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 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 pursuant to 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 an application pursuant to subsection a. or b. of this section.

2A:23B-9. Initiation of proceedings; notice

a. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the manner agreed between the parties or, in the absence of agreement, 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 pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to the lack or insufficiency of notice.

2A:23B-10. Consolidation of separate arbitration proceedings

a. Except as otherwise provided in subsection c. of this section, upon application 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.

2A:23B-11. Appointment of arbitrator; conflict of interest

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 application 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.

c. 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 a party arbitrator if such information has not been disclosed pursuant to section 12 of this act.

d. An individual appointed as a party arbitrator may be predisposed toward the appointing party. From and after the commencement of an arbitration, an arbitrator shall act in good faith and exercise the arbitrator's responsibilities in a manner consistent with the authority placed in the arbitrator by the courts of this State and this act.

2A:23B-12. Disclosure by arbitrator; effect of failure to disclose

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, subject to the provisions of section 11d. of this act, the objection may be a ground pursuant to paragraph (2) of subsection a. of section 23 of this act 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 pursuant to paragraph (2) of subsection a. of section 23 may vacate an award.

e. An individual appointed as an 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 pursuant to paragraph (2) of subsection a. of section 23 of this act.

f. An individual appointed as a party arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding is presumed to act with evident partiality pursuant to paragraph (2) of subsection a. of section 23 of this act.

g. 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 summary action to vacate an award on that ground pursuant to paragraph (2) of subsection a. of section 23 of this act.

h. Should an individual designated as an arbitrator make full disclosure as required by this section and a party fails to object within a reasonable time, the party receiving such information shall be held to have waived any right to object to the designation of the arbitrator on the grounds so revealed.

2A:23B-13. Multiple arbitrators

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 pursuant to subsection c. of section 15 of this act.

2A:23B-14. Immunity; competency to testify; attorney's fees and costs

a. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

b. The immunity afforded by this section supplements any immunity pursuant to other law.

c. The failure of an arbitrator to make a disclosure required by section 12 of this act does not cause any loss of immunity pursuant to this section.

d. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization 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 this State acting in a judicial capacity. This subsection does not apply:

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

(2) to a hearing in a summary action to vacate an award pursuant to paragraph (1) or (2) of subsection a. of section 23 of this act 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, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection d. of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

2A:23B-15. 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. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection due to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. 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. 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. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

d. At a hearing pursuant to 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 section 11 of this act to continue the proceeding and to resolve the controversy.

2A:23B-16. Representation by lawyer

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

2A:23B-17. 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 filing a summary action with the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in any civil action.

b. In order 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 pursuant to 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 pursuant to subsection c. of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

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 this State.

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 this State.

g. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State 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. 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 this State and, upon filing a summary action with the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in any civil action in this State.

2A:23B-18. Judicial enforcement of preaward ruling

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 pursuant to section 19 of this act. A prevailing party may file a summary action with the court for an expedited order to confirm the award pursuant to section 22 of this act, in which case the court shall summarily decide the application. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award pursuant to section 23 or 24 of this act.

2A:23B-19. 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 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.

2A:23B-20. Modification or correction of award

a. On application to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in paragraph (1) or (3) of subsection a. of section 24 of this act;

(2) if 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. An application pursuant to subsection a. of this section shall be made and notice given to all parties within 20 days after the aggrieved party receives notice of the award.

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

d. If a summary action with the court is pending pursuant to section 22, 23, or 24 of this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in paragraph (1) or (3) of subsection a. of section 24 of this act.

(2) if 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 sections 19a., 22, 23, and 24 of this act.

2A:23B-21. Damages; fees and expenses; other remedies

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 in accordance with 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 pursuant to section 22 of this act or for vacating an award pursuant to section 23 of this act.

d. An arbitrator's 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 pursuant to 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.

2A:23B-22. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may file a summary action with 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 section 20 or 24 of this act or is vacated pursuant to section 23 of this act.

2A:23B-23. Vacating award

a. Upon the filing of a summary action with 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) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or 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 section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

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

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

b. A summary action pursuant to this section shall be filed within 120 days after the aggrieved party receives notice of the award pursuant to section 19 of this act or within 120 days after the aggrieved party receives notice of a modified or corrected award pursuant to section 20 of this act, unless the aggrieved party alleges that the award was procured by corruption, fraud, or other undue means, in which case the summary action shall be commenced within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party.

c. If the court vacates an award on a ground other than that set forth in paragraph (5) of subsection a. of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph (1) or (2) of subsection a. of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in paragraph (3), (4), or (6) of subsection a. 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 subsection b. of section 19 of this act for an award.

d. If the court denies an application to vacate an award, it shall confirm the award unless an application to modify or correct the award is pending.

2A:23B-24. Grounds for modification or correction of award

a. Upon filing a summary action within 120 days after the party receives notice of the award pursuant to section 19 of this act or within 120 days after the party receives notice of a modified or corrected award pursuant to section 20 of this act, 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 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 an application made pursuant to subsection a. of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless an application to vacate is pending, the court shall confirm the award.

c. An application to modify or correct an award pursuant to this section may be joined with an application to vacate the award.

2A:23B-25. Judgment on award; reasonable fees and costs

a. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the arbitrator's award. 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 summary action and subsequent judicial proceedings.

c. On application of a prevailing party to a contested judicial proceeding pursuant to section 22, 23, or 24 of this act, 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, or substantially modifying or correcting an award.

2A:23B-26. Jurisdiction

a. A court of this State having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

b. An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award pursuant to this act.

c. Wherever reference is made to any procedural matter stated in this act, the New Jersey Supreme Court rules governing summary actions, or such other rules as may be adopted by the Supreme Court of New Jersey shall apply.

2A:23B-27. Venue

A summary action pursuant to section 5 of this act shall be commenced in the court of the county that would have venue if the matter were subject to Superior Court rules in civil actions, or to a court in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held.

2A:23B-28. Appeal

a. An appeal may be taken from:

(1) an order denying a summary action to compel arbitration;

- (2) an order granting a summary action 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 act.

b. An appeal pursuant to this section shall be taken as from an order or a judgment in a civil action.

2A:23B-29. Application and construction of uniform act

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.

2A:23B-30. Conformity with Electronic Signatures in Global National Commerce Act

The provisions of this act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of the “Electronic Signatures in Global and National Commerce Act,” 15 U.S.C. s.7002.

2A:23B-31. Actions or proceedings prior to effective date of act

This act does not affect an action or proceeding commenced or right accrued before this act takes effect. Subject to section 3 of this act, an arbitration agreement made before the effective date of this act is governed by N.J.S.2A:24-1 et seq. and P.L.1987, c. 54 (C.2A:23A-1 et seq.).

2A:23B-32. Statutes and procedures not affected

This act shall not apply to the substance and procedure of “The New Jersey Alternative Procedure for Dispute Resolution Act,” P.L.1987, c. 54 (C.2A:23A-1 et seq.), nor shall this act apply to arbitrations governed by P.L.1987, c. 329 (C.2A:23A-20 et seq.), P.L.1983, c. 358 (C.39:6A-24 et seq.) or section 24 of P.L.1998, c. 21 (C.39:6A-5.1); and, unless otherwise agreed by the parties, any other non-binding court annexed arbitration procedures authorized under court rules or where under existing statutes the application of N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

Mediation

Title 2A, Subtitle 6, Chapter 23C.

Current through End of 2007 Regular Session

2A:23C-1. Short title

This Act shall be known and may be cited as the “Uniform Mediation Act.”

2A:23C-2. Definitions

As used in this act:

“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.

“Mediation communication” means a statement, whether verbal or nonverbal or in a record, 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. A mediation communication shall not be deemed to be a public record under P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented by P.L.2001, c. 404 (C.47:1A-5 et seq.).

“Mediator” means an individual who conducts a mediation.

“Nonparty participant” means a person, other than a party or mediator, who participates in a mediation.

“Mediation party” means a person who participates in a mediation and whose agreement is necessary to resolve the dispute.

“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.

“Proceeding” means a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or a legislative hearing or similar process.

“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.

“Sign” means to execute or adopt a tangible symbol with the present intent to authenticate a record, or to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

2A:23C-3. Scope

a. Except as otherwise provided in subsection b. or c., this act shall apply to a mediation in which:

(1) the mediation parties are required to mediate by statute, court rule or administrative agency rule, or are 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 out as a mediator, or the mediation is provided by a person who holds itself out as providing mediation.

b. The act shall not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship or to any mediation conducted by the Public Employment Relations Commission or the State Board of Mediation;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the act applies to a mediation arising out of a dispute that has been filed with a court or an administrative agency other than the Public Employment Relations Commission or the State Board of Mediation;

(3) conducted by a judge who may make a ruling on the case; or

(4) conducted under the auspices of:

(a) a primary or secondary school if all the parties are students; or

(b) a juvenile detention facility or shelter if all the parties are residents of that facility or shelter.

c. If the parties agree in advance in a signed record, or a record of proceeding so reflects, that all or part of a mediation is not privileged, the privileges under sections 4 through 6 of P.L.2004, c.157 (C.2A:23C-4 through C.2A:23C-6) shall not apply to the mediation or part agreed upon. Sections 4 through 6 of P.L.2004, c.157 (C.2A:23C-4 through C.2A:23C-6) shall apply to a mediation communication made by a person who has not received actual notice of the agreement before the communication is made.

2A:23C-4. Privilege against disclosure; admissibility; discovery

a. Except as otherwise provided in section 6 of P.L.2004, c. 157 (C.2A: 23C-6), a mediation communication is privileged as provided in subsection b. of this section and shall not be subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5 of P.L.2004, c. 157 (C.2A:23C-5).

b. In a proceeding, the following privileges shall 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 shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

2A:23C-5. Waiver and preclusion of privilege

a. A privilege under section 4 of P.L.2004, c. 157 (C.2A:23C-4) 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 who discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 4 of P.L.2004, c. 157 (C.2A:23C-4), but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

c. A person who 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 section 4 of P.L.2004, c. 157 (C.2A:23C-4).

2A:23C-6. Exceptions to privilege

a. There is no privilege under section 4 of P.L.2004, c. 157 (C.2A:23C-4) for a mediation communication that is:

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

(2) made during a session of a mediation that 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 or commit a crime;

(4) intentionally used to plan a crime, attempt to 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 filed against a mediator arising out of a mediation;

(6) except as otherwise provided in subsection c., 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 child abuse or neglect in a proceeding in which the Division of Youth and Family Services in the Department of Children and Families is a party, unless the Division of Youth and Family Services participates in the mediation.

b. There is no privilege under section 4 of P.L.2004, c. 157 (C.2A:23C-4) 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 the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a crime as defined in the “New Jersey Code of Criminal Justice,” N.J.S. 2C:1-1 et seq.; or

(2) except as otherwise provided in subsection c., 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 paragraph (6) of subsection a. or paragraph (2) of subsection b.

d. If a mediation communication is not privileged under subsection a. or b., 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. does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

2A:23C-7. Prohibited mediator reports

a. Except as required in subsection b., a mediator may not make a report, assessment, evaluation, recommendation, finding, or other oral or written communication regarding a mediation to a court, administrative agency, 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; or

(2) a mediation communication as permitted under section 6 of P.L.2004, c. 157 (C.2A:23C-6);

c. A communication made in violation of subsection a. may not be considered by a court, administrative agency, or arbitrator.

2A:23C-8. Confidentiality

Unless made during a session of a mediation which is open, or is required by law to be open, to the public, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

2A:23C-9. 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 practicable before accepting a mediation.

b. If a mediator learns any fact described in paragraph (1) of subsection a. 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 who violates subsection a., b., or g. shall be precluded by the violation from asserting a privilege under section 4 of P.L.2004, c. 157 (C.2A:23C-4), but only to the extent necessary to prove the violation.

e. Subsections a, b, c., and g. do not apply to a judge of any court of this State acting as a mediator.

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

g. A mediator shall be impartial, notwithstanding disclosure of the facts required in subsections a. and b.

2A:23C-10. Participation in mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded.

2A:23C-11. Relation to Electronic Signatures in Global and National Commerce Act

This act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this act 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.

2A:23C-12. Uniformity of application and construction

In applying and construing this 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.

2A:23C-13. Severability clause

If any provision of P.L.2004, c.157 (C. 2A:23C-1 et seq.) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Arbitration of Collective Bargaining Agreements

Chapter 2A, Subtitle 6, Chapter 24

Current through End of 2007 Regular Session

2A:24-1. Arbitration provisions; validity and effect

A provision in a written contract to settle by arbitration a controversy that may arise therefrom or a refusal to perform the whole or a part thereof or a written agreement to submit, pursuant to section 2A:24-2 of this title, any existing controversy to arbitration, whether the controversy arise out of contract or otherwise, shall be valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of a contract.

2A:24-1.1. Applicability to collective bargaining agreements

N.J.S.2A:24-1 through N.J.S.2A:24-11 shall only apply to an arbitration or dispute arising from a collective bargaining agreement or a collectively negotiated agreement.

2A:24-2. Who may submit to arbitration; agreement for judgment upon award by specified court

Two or more persons by their agreement in writing may submit to arbitration a controversy existing between them at the time of the agreement, whether the controversy arises out of a contract or the refusal to perform the whole or a part thereof or out of any other matter. They may also agree in writing that a judgment of a court of record, chosen by them shall be rendered upon the award made pursuant to the submission.

2A:24-3. Nonperformance of agreement; action for order of arbitration

Where a party is aggrieved by the failure, neglect or refusal of another to perform under a written agreement providing for arbitration, the Superior Court may in a summary action direct that the arbitration proceed in the manner provided for in the agreement. The party alleged to be in default may demand a jury trial as to the issue that there has been no agreement in writing for an arbitration or that there has been no failure to comply therewith.

2A:24-4. Stay of action or proceeding subject to arbitration

In an action brought in any court upon an issue arising out of an agreement providing for the arbitration thereof, the court, upon being satisfied that the issue involved is referable to arbitration, shall stay the action, if the applicant for the stay is not in default in proceeding with the arbitration, until an arbitration has been had in accordance with the terms of the agreement.

2A:24-5. Naming arbitrators or umpire

If a method is provided in the agreement for naming or appointing an arbitrator or an umpire, it shall be followed; but if not so provided, or if one is provided and a party thereto shall fail to avail himself thereof, or for other reasons there shall be a lapse or failure in the naming of an arbitrator or an umpire

or in filling a vacancy, the Superior Court may in the summary action provided for in N.J.S.2A:24-3 or in another action, designate and appoint an arbitrator or an umpire, as the case may require, who shall act thereunder with the same force and effect as if specifically named therein. The arbitration shall be by a single arbitrator unless otherwise provided.

2A:24-6. Hearing by arbitrators; witnesses; fees; subpoena

When more than 1 arbitrator is agreed upon, all the arbitrators shall sit at the hearing of the case, unless by written consent, all parties agree to a lesser number.

The arbitrator so sitting or an attorney of record in the arbitration proceeding may require the attendance of any person as a witness and, in a proper case, to bring with him any book or written instrument. The fees for the attendance shall be those allowed witnesses in a civil action in the Superior Court.

An arbitrator, or where more than one arbitrator is sitting, a majority of them, or an attorney of record in the arbitration proceeding, may issue a subpoena. The subpoena shall issue in the name of the arbitrator. The subpoena shall be signed by an arbitrator, or a majority of them, or an attorney of record, as the case may be. The subpoena shall be directed to the person therein named and served in the same manner as a subpoena to testify before the Superior Court. If any person so subpoenaed to testify shall refuse or neglect to obey such subpoena, the court, upon motion, may compel his attendance before the arbitrator or punish him for contempt in the manner provided for the attendance of witnesses or their punishment in the Superior Court.

2A:24-7. Application for confirmation, vacation or modification of award

The award must be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate and delivered to one of the parties or his attorney.

A party to the arbitration may, within 3 months after the award is delivered to him, unless the parties shall extend the time in writing, commence a summary action in the court aforesaid for the confirmation of the award or for its vacation, modification or correction. Such confirmation shall be granted unless the award is vacated, modified or corrected.

2A:24-8. Vacation of award; rehearing

The court shall vacate the award in any of the following cases:

- a. Where the award was procured by corruption, fraud or undue means;
- b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
- c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
- d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and

definite award upon the subject matter submitted was not made.

When an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

2A:24-9. Modification or correction of award; order

The court shall modify or correct the award in any of the following cases:

- a. Where there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to therein;
- b. Where the arbitrators awarded upon a matter not submitted to them unless it affects the merit of the decision upon the matter submitted; and
- c. Where the award is imperfect in a matter of form not affecting the merits of the controversy.

The court shall modify and correct the award, to effect the intent thereof and promote justice between the parties.

2A:24-10. Force and effect of judgment

The judgment confirming, modifying or correcting an award or a judgment in any action under this chapter shall have the same effect, in all respects, as, and is subject to all the provisions of law relating to, a judgment in any other action and may be enforced as if rendered in any other action in the court in which it is entered.

2A:24-11. Contracts made before July 4, 1923, unaffected

This article shall not apply to contracts made prior to July 4, 1923; nor shall it apply to acts heretofore performed.

Agricultural Mediation Program

N.J. Admin. Code § 2:76-18.1

Current through August 2008

2:76-18.1 Applicability

(a) This subchapter establishes procedures to be followed by certified mediators, disputants and State Agriculture Development Committee staff for implementing the New Jersey Agricultural Mediation Program as administered by the State Agriculture Development Committee.

(b) The Committee's Agricultural Mediation Program is a certified mediation program, in that it meets the United States Department of Agriculture-Farm Service Agency's (USDA-FSA's) requirements for certification.

(c) The Committee shall offer the services of the Agricultural Mediation Program to disputants provided there is adequate funding for the program.

2:76-18.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement to Mediate" means a document wherein the assigned certified agricultural mediator and disputants are named, the nature of the dispute is identified and the terms and conditions of the mediation proceedings are outlined.

"Certified agricultural mediator" means an impartial third party neutral (mediator) who has satisfied the requirements of the Committee and facilitates communication between disputants for the purpose of assisting them in reaching a mutually acceptable agreement.

"Confidentiality" means the mediator and disputants shall not disclose any written or oral communication divulged during the mediation process, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. Unless the participants otherwise consent, no disclosure made by a party shall be admitted as evidence against the party in any such proceeding by independent evidence, and the mediator shall not be called as a witness in any subsequent proceedings.

"Disputant" means any person engaged in a dispute and, during a mediation proceeding, who is a primary decision maker.

"Dispute" means a disagreement between two or more parties who perceive incompatible goals and/or interference from the other party in achieving their goals with respect to one or more of the following issues:

1. Nuisance allegations;
2. Wetlands determinations;
3. Compliance with farm programs, including conservation programs;
4. Agricultural credit;
5. Rural water loan programs;
6. Pesticides; or
7. As concerns activities as addressed in N.J.S.A. 4:1C-9.

"Mediation" means a process including the intake and scheduling of cases, the provision of background information regarding the mediation process, financial advisory and counseling services (as

appropriate), and the mediation sessions in which a trained, neutral person assists disputants in voluntarily reaching their own settlement of issues, even for those cases that are resolved prior to a formal mediation session.

2:76-18.3 Certification and assignment of mediators

(a) Persons interested in becoming certified agricultural mediators shall contact the Committee in writing.

(b) In order to be qualified as an agricultural mediator, each mediator shall be certified as having satisfied the requirements of a Committee-approved agricultural mediation training session, which shall be a minimum of 18 hours of core mediator knowledge and skills training, including role-play simulations of mediated disputes, as provided by the Committee.

(c) The Committee shall certify each mediator who has satisfactorily completed the requirements of the Committee.

(d) Certified agricultural mediators shall be placed on the Committee's certified list according to where they reside, in alphabetical order based on their last names.

(e) The certified list shall be divided into three regions: Northern New Jersey (representing the counties of Bergen, Essex, Hudson, Passaic, Sussex and Warren), Central New Jersey (representing the counties of Hunterdon, Mercer, Middlesex, Monmouth, Morris, Somerset and Union) and Southern New Jersey (representing the counties of Atlantic, Burlington, Cape May, Camden, Cumberland, Gloucester, Ocean and Salem).

(f) Mediators shall be selected and assigned cases on a rotating basis from the certified list representing the geographic region where the dispute occurs.

1. In the event the selected mediator is unavailable for the assigned mediation, the next mediator on the certified list in the appropriate region shall be assigned to the case.

2:76-18.4 Duties of certified agricultural mediators

(a) Mediation is a voluntary process for settlement negotiation. In performing his or her duties, an agricultural mediator shall:

1. Act as a third party and not represent any disputant;
2. Not give legal advice in any capacity relating to or in the rendering of services;
3. Not have the power or the authority to compel or enforce settlements;
4. Not have conflicts of interest with respect to matters to be mediated or parties involved in mediation;
5. Not have subpoena power; and

6. Comply with this section.

2:76-18.5 Mediation initiation

(a) A request for voluntary mediation shall be submitted to the Committee in writing.

(b) In the event that a court of law mandates agricultural mediation, a copy of the document mandating mediation shall be submitted to the Committee by the appropriate court personnel or the disputants.

(c) The Committee shall provide a standard request for voluntary mediation form to mediation requesters which shall require the following information:

1. Requesters' name(s), address(es) and telephone number(s);
2. A brief description of the dispute;
3. The nature of the requesters' relationship to the party(ies) with which the requester(s) has/have a dispute; and
4. The name(s), address(es) and telephone number(s) of the party(ies) with which the requester(s) has/have a dispute.

2:76-18.6 Agreement to Mediate

(a) Upon receipt of the completed standard form, the Committee shall forward copies of the standard form and an Agreement to Mediate provided by the Committee to the named disputants along with an explanation of the mediation process.

(b) No mediation shall be conducted until all participants sign the Agreement to Mediate as provided by the Committee, and the Committee is in receipt of same.

1. Additional parties may participate in a mediation proceeding by signing the Agreement to Mediate and by obtaining the consent of the parties signing the request for mediation.
2. The Committee shall be in receipt of the revised Agreement to Mediate prior to the commencement of the mediation session.

(c) The Agreement to Mediate shall contain the following:

1. The name of the mediator appointed by the Committee;
2. A brief statement of the issue to be mediated;
3. The names of the disputants;
4. An agreement not to subpoena either the mediator or data gathered for the mediation session to prove facts alleged in an action concerning the same subject matter;

5. A statement waiving participants' rights to take civil action against the Committee and the designated mediator or agent of the mediation program, and release the Committee and its designated mediator from civil liability within the scope of the mediation services; and

6. A statement agreeing to follow the written terms of any settlement agreement arising out of the mediation process.

2:76-18.7 Mediation Agreement

(a) Every mediator retained by the Committee shall enter into a Mediation Agreement with the Committee setting forth the terms and conditions for the mediation services to be provided for each mediation session.

(b) Mediators shall be compensated for their services at an agreed-upon rate which will be reflected in the Mediator Agreement between the mediator and the Committee.

1. Mediators shall receive compensation for travel expenses in an amount not to exceed the amount allowed State employees.

2. Mediators shall be reimbursed for other necessary expenses, including meals, tolls and parking, agreed to by the mediator and the Committee. Any expenses not agreed to by the mediator and the Committee shall not be reimbursed.

3. Mediators shall, at the termination of mediation, file with the Committee a statement on a form approved by the Committee listing the number of hours of mediation conducted, fee totals for mediation services, and any compensation for travel or other reimbursable expenses.

2:76-18.8 Mediation proceedings

(a) Mediation proceedings shall be conducted by the mediator at times and locations which are agreed upon by the parties and the mediator, and coordinated through the Committee.

(b) Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures for the process.

(c) The mediator may hold joint or separate meetings with the disputants, and the mediator may request other persons to participate in the mediation proceedings, upon written consent of the original disputants. Parties may have representatives present at mediation sessions. The mediator shall regulate the proceedings to prevent disruptions, and may terminate mediation sessions in his or her discretion.

(d) Absolute confidentiality of all material and information shall be strictly maintained. All statements made during the mediation process are deemed to be privileged and inadmissible for any purpose in any proceeding, unless it is expressly agreed upon by all parties to a mediation that such communications may be divulged. The parties shall not subpoena or otherwise require the mediator to testify or produce records, reports, notes or other documents reviewed, received, or prepared by the

mediator during the course of the mediation process.

(e) No stenographic record or tape recording of the mediation session shall be permitted.

(f) With respect to the parties to the mediation, no mediator shall:

1. Provide legal or other advice to the parties in a mediation proceeding, or offer or deliver services, other than mediation services on any issue raised in the mediation session;

2. Solicit or accept from any person or entity, either directly or indirectly, anything of value;

3. Disclose confidential information gained as a result of his or her service as a mediator, except upon agreement with the parties and the Committee;

4. Use information gained as a result of his or her service as a mediator in any way which could result in the receipt of anything of value by the mediator or any person or organization with which the mediator is associated; and

5. Use or attempt to use his or her position as a mediator to gain unlawful benefits, advantages or privileges for himself or herself, or for others.

(g) A mediator shall disclose to the Committee, and to the parties to a mediation session, every potential conflict of interest and every other matter which may affect the mediator's ability to act in a fair, diligent and impartial manner during the proceeding. A mediator shall withdraw from the proceeding if the mediator is unable to act in a fair and impartial manner.

(h) Interim and final agreements of the parties, if any, shall be reduced to writing and placed on a form provided by the Committee. The mediator shall assist in the preparation of the written agreement. The mediator shall forward the original, executed agreement to the Committee and it is the responsibility of the Committee to distribute copies of the agreements to all parties to the mediation.

(i) If an agreement is not reached, the mediator shall prepare a Notice of Termination of Mediation, on a form provided by the Committee, and have it executed by all parties. The mediator shall forward the Notice of Termination to the Committee and it is the responsibility of the Committee to distribute copies of the Notice of Termination to all parties to the mediation.

(j) Agreements may provide for continued mediation at a future date. The parties to a mediation proceeding are solely responsible for any agreement reached, and for the enforcement of any agreement. An agreement is subject to applicable laws and court orders, and is subject to the exercise of rights by persons not parties to the agreement. All agreements requiring acceptance by a party not participating in the process shall be considered tentative, non-binding agreements until such acceptance has been obtained.

2:76-18.9 Mediator and disputant withdrawal

(a) Any party shall have the right, upon written request, to direct the Committee to select a different mediator prior to the initial mediation meeting.

(b) Upon written agreement by the parties and the Committee, the mediation proceedings shall continue with a new mediator.

(c) In the case of a mediation with multiple disputants, a mediation session shall continue if one or more parties withdraw, upon agreement by the remaining parties.

(d) A party or a mediator may withdraw from mediation at any time. The party or mediator shall notify the Committee of his or her withdrawal and set forth the reasons for same.

2:76-18.10 Annual renewal of mediator certification

(a) The Committee shall annually review and renew the certificates of certified mediators to insure satisfactory performance of mediation responsibilities by June 30th of each year.

1. In order to have his or her certification renewed, a certified mediator, if assigned a case(s) during the fiscal year, must have satisfied the requirements of this subchapter.

2. If a certified agricultural mediator has not been assigned a case(s) during the fiscal year, his or her certification shall be renewed.

(b) The Committee shall schedule training courses as necessary to maintain a list of certified mediators to satisfy the requests for services.