University of Arkansas School of Law

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Arizona

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States' Alternative Dispute Resolution Statutes

STATE OF ARIZONA

Index

Arbitration

Title 12, Chapter 9, Article 1.

Current through the end of the Second Regular Session of 2008

§ 12-1501. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 12-1502. Proceedings to compel or stay arbitration

A. On application of a party showing an agreement described in § 12-1501, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party. Otherwise, the application shall be denied.

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

C. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection A of this section, the application shall be made therein. Otherwise and subject to § 12-2101, the application may be made in any court of competent jurisdiction.

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

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

§ 12-1503. Appointment of arbitrators by court

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

§ 12-1504. Majority action by arbitrators

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

§ 12-1505. Hearing

Unless otherwise provided by the agreement:

1. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of 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 arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

§ 12-1506. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this article. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 12-1507. Witnesses; subpoenas; depositions

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

B. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

C. All provisions of law compelling a person under subpoena to testify are applicable.

D. Fees for attendance as a witness shall be the same as for a witness in the superior courts of the state of Arizona.

§ 12-1508. Award

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

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

§ 12-1509. Change of award by arbitrators

On application of a party or, if an application to the court is pending under §§ 12-1511, 12-1512, or 12-1513, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs 1 and 3 of subsection A of § 12-1513, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of §§ 12-1511, 12-1512 and 12-1513.

§ 12-1510. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

§ 12-1511. Confirmation of an award

A party seeking confirmation of an award shall file and serve an application therefor in the same manner in which complaints are filed and served in civil actions. Upon the expiration of twenty days from service of the application, which shall be made upon the party against whom the award has been made, the court shall enter judgment upon the award unless opposition is made in accordance with § 12-1512.

§ 12-1512. Opposition to an award

A. Upon filing of a pleading in opposition to an award, and upon an adequate showing in support thereof, the court shall decline to confirm and award and enter judgment thereon where:

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

2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 12-1505, as to prejudice substantially the rights of a party; or

5. There was no arbitration agreement and the issue was not adversely determined in proceedings under § 12-1502 and the adverse party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

B. In declining to confirm an award on grounds other than stated in paragraph 5 of subsection A the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 12-1503, or if the court declines to confirm the award on grounds set forth in paragraphs 3 and 4 of subsection A the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 12-1503. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

§ 12-1513. Modification or correction of award

A. Upon application made within ninety days after delivery of a copy of the award to the applicant, if judgment has not been entered thereon, the court shall modify or correct the award where:

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

2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

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

B. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

C. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

D. After judgment, the award shall be subject to the powers of the court in the same manner as any other judgment which may be subject to review under Rule 60(c) of the Rules of Civil Procedure.

§ 12-1514. Judgment or decree on award

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

§ 12-1515. Applications to court

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

§ 12-1516. Court; jurisdiction and venue

The term “court”, as used in this article, means the superior courts of the state of Arizona, and venue of the appropriate superior court shall be determined as in any other civil action.

The initial application having been made to a court of appropriate venue, all subsequent applications shall be made to the same court unless that court otherwise directs.

§ 12-1517. Limited effect of article

This article shall have no application to arbitration agreements between employers and employees or their respective representatives.

§ 12-1518. State and political subdivisions; use of arbitration

A. In the discretion of any state agency, board or commission or any political subdivision of this state, the services of the American arbitration association, or any other similar body, may be used as provided by this article. Any agreement to make use of arbitration shall be made either at the time of entering into a contract or by written mutual agreement at a subsequent time prior to the filing of any civil action.

B. Notwithstanding subsection A of this section, a state agency, board or commission shall include an

agreement to make use of arbitration in all contracts which are subject to mandatory arbitration pursuant to rules adopted under § 12-133.

C. Notwithstanding subsection A or B of this section, a state agency, board or commission shall include an agreement to make use of arbitration as provided in this article in public works contracts if the amount in controversy is less than one hundred thousand dollars.

Courts and Civil Proceedings

Title 12, Chapter 12, Article 1.

Current through the end of the Second Regular Session of 2008

§ 12-2101.01. Appeals from arbitration awards

A. An appeal may be taken from:

1. An order denying an application to compel arbitration made under the terms of § 12-1502;

2. An order granting an application to stay arbitration made under the terms of subsection B of § 12-1502;

3. An order 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 judgment or decree entered pursuant to the provisions of article 1, chapter 9, of this title.

B. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Compulsory Arbitration

Current with amendments received through October of 2008

Rule 72. Compulsory Arbitration; Arbitration by Reference; Alternative Dispute Resolution; Determination of Suitability for Arbitration

(a) Decision to Provide for Compulsory Arbitration. Rules 72 through 77 of these rules shall apply when the Superior Court in a county, by a majority vote of the judges thereof, decides to provide for arbitration of claims and establishes jurisdictional limits by rule of court pursuant to A.R.S. § 12-133. Such decision to provide for arbitration shall be incorporated into a Superior Court order, which shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be filed with the Clerk of the Superior Court of the applicable county. All other provisions of the Arizona Rules of Civil Procedure

that are not inconsistent with Rules 72 through 77 shall be applicable to all cases in arbitration.

(b) Compulsory Arbitration. Civil cases which meet both of the following conditions, except appeals from municipal or justice courts, shall be submitted to arbitration in accordance with the provisions of A.R.S. § 12-133:
(1) No party seeks affirmative relief other than a money judgment; and
(2) No party seeks an award in excess of the jurisdictional limit for arbitration set by applicable local rule of the Superior Court.
For purposes of this provision, “award” and “affirmative relief” include punitive damages, but do not include interest, attorneys' fees or costs.

(c) Arbitration by Agreement of Reference. Any claim may at any time, whether or not suit has been filed, be referred to arbitration by Agreement of Reference signed by all parties or their counsel. If suit has not been filed, the Agreement of Reference shall define the issues involved for determination in the arbitration proceedings and may contain stipulations with respect to agreed facts, issues or defenses. In such cases, the Agreement of Reference shall take the place of the pleadings in the case and shall be filed and assigned a civil case number. Filing an Agreement of Reference shall not relieve any party from paying the required filing fee. Filing of an Agreement of Reference shall have the same effect on the running of the statute of limitations as the filing of a civil complaint.

(d) Alternative Dispute Resolution.
(1) Compulsory arbitration under A.R.S. § 12-133 and these rules is not binding. Any party may appeal and all appeals are de novo on the law and facts. Therefore, before a hearing in accordance with Rule 75 of these rules is held, counsel for the parties, or the parties if not represented by counsel, shall confer regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including but not limited to private mediation or binding arbitration with a mediator or arbitrator agreed to by the parties.
(2) The court shall waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method selected by the parties. The stipulation shall identify the specific alternative dispute resolution method selected. The court may waive the arbitration requirement for other good cause upon stipulation of all parties. If the alternative dispute resolution method selected under this Rule fails, the case shall be set for trial in accordance with Rule 38.1 of these Rules and shall not be subject to the rules governing compulsory arbitration.

(e) Procedure for Determining Suitability for Arbitration .
(1) At the time of filing the complaint, the plaintiff shall also file a separate certificate on compulsory arbitration with the Clerk of the Superior Court in the following form:
“The undersigned certifies that he or she knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this case (is) (is not) subject to compulsory arbitration, as provided by Rules 72 through 77 of the Arizona Rules of Civil Procedure.”
(i) The certificate on compulsory arbitration must be served upon the defendant at the time of service of the complaint. It, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's certificate on compulsory arbitration or controverting certificate.

(ii) The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of both the local rules of practice for the appropriate superior court and Rules 72 through 77; that the signer has read the certificate on compulsory arbitration or controverting certificate; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to arbitrability is not set forth for any improper purpose. The provisions of Rule 11(a) of these rules apply to every certificate on compulsory arbitration and controverting certificate filed under this rule.
(iii) The certificate on compulsory arbitration shall not be admissible at any hearing on the merits.
(2) If the defendant disagrees with the plaintiff's assertion as to arbitrability, the defendant shall file a controverting certificate that specifies the particular reason for the defendant's disagreement with plaintiff's certificate. The defendant's certificate shall be filed with the answer and a copy or copies shall be served upon the plaintiff.
(3) If conflicting certificates are filed, the matter shall be referred to the judge to whom the case has been assigned for determination of the issues raised thereby. If the judge determines that the case is subject to compulsory arbitration, it shall proceed to arbitration as provided in these rules.
(4) A party or attorney is under a duty to seasonably amend a prior certificate on compulsory arbitration if the party or attorney obtains information upon the basis of which (a) the party or attorney knows the certificate was incorrect when filed or (b) the party or attorney knows that the certificate, though correct when filed, is no longer true.
(5) The court may, on its own motion, or upon the motion of either party at any time after the close of pleadings, determine that the case is subject to compulsory arbitration, and in that event, the court may order that the case proceed to arbitration as provided in these rules.
(6) At such time as the arbitrator renders a decision, should the arbitrator find that the appropriate award exceeds the limit for compulsory arbitration set by local rule or statute, the arbitrator shall enter an award for the full amount.
(7) If the court finds that an attorney or party has made an allegation as to arbitrability which was not made in good faith or failed to amend seasonably as required, the court, upon motion or upon its own initiative, shall make such orders with regard to such conduct as are just, including, among others, any action authorized under Rule 11(a) of these Rules.

Rule 73. Appointment of Arbitrators

(a) Lawyer or Non-lawyer Arbitrators. The parties, by written stipulation and by written consent of the proposed arbitrator filed with the Clerk of the Superior Court with conformed copies to the Superior Court Administrator, may agree that the case be assigned to a single lawyer or non-lawyer arbitrator named in the stipulation. All other cases subject to arbitration shall be heard by an arbitrator selected as provided below.

(b) List of Arbitrators. Except as the parties may stipulate under the provisions of subdivision (a) of this rule, the arbitrator shall be appointed by the Court Administrator or Superior Court Clerk from a list of persons, as provided by local rule, which shall include the following:
(1) all residents of the county in which the court is located who, for at least four years, have been active members of the State Bar of Arizona.
(2) other active and inactive members of the State Bar of Arizona residing anywhere in Arizona, and members of any other federal court or state bar, who have agreed to serve as arbitrators in the county where the action is pending.

(c) Appointment of Arbitrators; Timing of Assignment; Notice of Appointment; Right to Peremptory Strike
(1) Appointment of Arbitrator from List. The Superior Court Administrator or Superior Court Clerk, under the supervision of the Presiding Judge or that judge's designee, shall prepare a list of arbitrators who may be designated as to the area of concentration, specialty or expertise. By means of a method of selecting names at random from the list of arbitrators, the Superior Court Administrator or Superior Court Clerk shall select and assign to each case one name from the list of arbitrators.
(2) Timing of Assignment. Assignment to arbitration shall take place as soon as is feasible after the answer and controverting certificate are filed and in any event no later than 120 days thereafter.
(3) Notice of Appointment of Arbitrator. The Superior Court Administrator or Superior Court Clerk shall promptly notify the parties of the name of the arbitrator by mailing written notice to the parties and the arbitrator. The notice from the Superior Court Administrator or Superior Court Clerk shall advise the parties that the time periods specified for placing a case on the inactive calendar in Rule 38.1(d) of these rules shall apply.
(4) Right to Peremptory Strike. Within ten days after the mailing of such notice, or within ten days after the appearance of a party, if the arbitrator was appointed before that party appeared, either side may peremptorily strike the assigned arbitrator and request that a new arbitrator be appointed. Each side shall have the right to only one peremptory strike in any one case. A motion for recusal or motion to strike for cause shall toll the time to exercise a peremptory strike.

(d) Disqualifications and Excuses.
(1) Upon written motion and a finding of good cause therefor, the Presiding Judge or that judge's designee may excuse a lawyer from the list.
(2) An arbitrator, after selection, may be disqualified from serving in a particular assigned case upon motion of either party to the judge assigned to the case, for an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.
(3) An arbitrator may be excused by the presiding judge or that judge's designee from serving in a particular assigned case upon a showing by the arbitrator that such individual has completed contested hearings and ruled as an arbitrator pursuant to these Rules in two or more cases assigned during the current calendar year or shall be excused on a detailed showing that such individual has an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.
(4) After an arbitrator has been disqualified or excused under these rules, a new arbitrator shall be appointed in accordance with the procedure set forth in subdivision (c) of this Rule.

Rule 74. Powers of Arbitrator; Scheduling of Arbitration Hearing; Permitted Rulings by Arbitrator; Time for Filing Summary Judgment Motion; Receipt of Court File; Settlement of Cases.

(a) Powers of Arbitrator. The arbitrator shall have the power to administer oaths or affirmations to witnesses, to determine the admissibility of evidence, and to decide the law and the facts of the case submitted.

(b) Scheduling of Arbitration Hearing. The arbitrator shall fix a time for hearing, which hearing shall commence not fewer than 60, nor more than 120 days after the appointment of the arbitrator. The arbitrator shall, unless waived by the parties, give at least 30 days' notice in writing to the parties of the time and place of the hearing. Subject to Rule 38.1 of these rules, the arbitrator may shorten or extend

these time periods for good cause. No hearings shall be held on Saturdays, Sundays, legal holidays, or evenings, except upon agreement by counsel for all parties and the arbitrator.

(c) Rulings by Arbitrator.
(1) Authorized Rulings. After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, except:
(A) motions to continue on the inactive calendar or otherwise extend time allowed under Rule 38.1 of these rules;
(B) motions to consolidate cases under Rule 42 of these rules;
(C) motions to dismiss;
(D) motions to withdraw as attorney of record under Rule 5.1 of these rules; or
(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party.
(2) Procedure. The parties shall serve upon the arbitrator copies of documents requiring the arbitrator's consideration. Telephonic motions and testimony are acceptable and appropriate.
(3) Discovery Motions. In ruling on motions pertaining to discovery, the arbitrator shall consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of small claims and shall limit discovery whenever appropriate to insure compliance with the purposes of compulsory arbitration.
(4) Interlocutory Appeal of Discovery Ruling. If an arbitrator makes a discovery ruling requiring the disclosure of matters that a party claims are privileged or otherwise protected from disclosure under applicable law, the party may appeal the ruling by filing a motion with the assigned trial judge within ten days after the arbitrator transmits the ruling to the parties. No party shall be required to respond to the motion unless ordered to do so by the court. No such motion, however, shall be granted without the court first providing an opportunity for response. The arbitrator's ruling shall be subject to de novo review by the court. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court shall impose sanctions on the party filing the motion, including an award of reasonable attorneys' fees incurred in responding to the motion. The time for conducting an arbitration hearing set forth in Rule 74(b) shall be tolled during the pendency of any such motion.
(d) Time for Filing Summary Judgment Motion. If a motion for summary judgment is filed, the original shall be filed no fewer than 20 days prior to the date for hearing. A copy of the motion shall be served upon the arbitrator and trial judge. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court shall impose sanctions on the party filing the motion, including an award of reasonable attorneys' fees incurred in responding to the motion. The time for conducting an arbitration shall be tolled during the pendency of any such motion.

(e) Receipt of Court File. If the arbitrator believes that the file contains materials needed to conduct the arbitration hearing, the arbitrator shall, within four days prior to the date of the hearing, sign for and receive from the Superior Court Clerk the original superior court file. If the clerk maintains an electronic court record, the arbitrator shall have access to the original if available, or to a certified copy of the file either by print-outs of said documents or on alternative media. The clerk may deliver the documents electronically to any arbitrator who files a consent, either traditionally or electronically. Alternatively, the arbitrator may order the parties to provide the arbitrator with those pleadings and other documents the arbitrator deems necessary to complete the arbitration hearing.

(f) Settlement of Cases Assigned to Arbitration. If the parties to a case assigned to arbitration settle, they shall file with the court an appropriate stipulation and order for dismissal and shall mail a copy to

the arbitrator. Upon entry of the order the arbitration is terminated.

Rule 75. Hearing Procedures

(a) Issuance of Subpoenas. The Clerk of the Superior Court shall issue subpoenas in matters assigned to an arbitrator, and the subpoenas shall be served and enforceable as provided by law.

(b) Initial Disclosure. Within 30 days of service of an answer, the plaintiff and answering defendant shall make the initial disclosure required by Rule 26.1.

(c) Pre-hearing Statement. Not fewer than ten days before the date set for hearing, counsel who will present the case at the arbitration hearing shall, after conferring, prepare and submit to the arbitrator a joint written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. In preparing the pre-hearing statement required by this rule, counsel shall consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of claims. Agreement on facts and issues is encouraged. No witness or exhibit shall be used at the hearing other than those listed and exchanged, except for good cause shown or upon written agreement of the parties.

(d) Evidence. The Arizona Rules of Evidence shall apply to arbitration hearings.

(e) Documentary Evidence. The arbitrator shall admit into evidence without further proof the following documents, if relevant, and if listed in the pre-hearing statement, unless it is shown that any such document is not what it appears to be and the objection is set forth in the pre-hearing statement:
(1) hospital bills on the official letterhead or billhead of the hospital, when dated and itemized;
(2) bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor;
(3) bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor;
(4) bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized;
(5) property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material (in the case of an estimate, the party intending to offer the estimate shall serve upon the adverse party a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs were made in full or in part and the cost thereof);
(6) testimony of any witness given in a deposition taken pursuant to these rules, whether or not such witness is available to appear in person;
(7) a sworn written statement by an expert, other than a doctor's medical report, whether or not such expert is available to appear in person, provided that such statement is signed by the expert and contains a summary of the expert's qualifications (if any such statement contains the expert's opinions, it shall also state the grounds for each such opinion, including a summary of the facts upon which each opinion is based);
(8) in actions involving personal injury, doctors' medical reports, which shall be given the weight to which the arbitrator deems them entitled, provided that a copy of said report has been previously disclosed at least 20 days prior to the date of the hearing, except for good cause shown;

(9) records of regularly conducted business activity as contemplated by Rule 803(6) of the Arizona Rules of Evidence; and
(10) a sworn statement of any witness, other than an expert witness, who is listed in the pre-hearing statement, whether or not such witness is available to appear in person.
(f) Assessment of Damages Against Defaulted Parties. In cases involving more than one defendant, where a default has been entered against one or more, but fewer than all, of the defendants prior to the arbitration hearing, the arbitrator shall refer all further proceedings involving the defaulted defendant(s) to the trial court. The arbitrator shall continue to serve and shall proceed with the arbitration for the remaining parties.

(g) Record of Proceedings. The arbitrator shall not be required to make a record of the proceedings. If any party desires the presence of a reporter, such party shall pay for and provide the reporter. The charges of the reporter shall not be considered costs in the case.

(h) Failure to Appear or Participate in Good Faith at Hearing. Failure to appear at a hearing or to participate in good faith at a hearing which has been set in accordance with Rule 74(b) shall constitute a waiver of the right to appeal absent a showing of good cause. If the judge finds that further proceedings before the arbitrator are appropriate, the case shall be remanded to the assigned arbitrator.

Rule 76. Notice of Final Disposition; Failure of Arbitrator to File Award; Judgment; Dismissal; Compensation of Arbitrators

(a) Notice of Decision and Filing of Award or Other Final Disposition. Within ten days after completion of the hearing, the arbitrator shall:
(1) render a decision;
(2) return the original superior court file by messenger or certified mail to the Superior Court Clerk;
(3) notify the parties that their exhibits are available for retrieval;
(4) notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice); and
(5) file the notice of decision with the court.
Within ten days of the notice of decision, either party may submit to the arbitrator a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and a verified statement of costs. Within five days of receipt of the foregoing, the opposing party may file objections. Within ten days of receipt of the objections, the arbitrator shall pass upon the objections and file one signed original award or other final disposition with the Clerk of the Superior Court and on the same day shall mail or deliver copies thereof to all parties or their counsel.

(b) Failure of Arbitrator to File Award. Unless a formal award or stipulation for entry of another form of relief is filed with the court within 50 days from the date of filing the notice of decision, the notice of decision shall constitute the award of the arbitrator.

(c) Judgment. Upon expiration of the time for appeal, if no appeal has been filed, any party may file to have judgment entered on the award.

(d) Dismissal upon Failure to Apply for Entry of Judgment. If no application for entry of judgment has been filed within 120 days from the date of the filing of the notice of decision, and no appeal is

pending, the case shall be dismissed.

(e) Referral of Case to Judge. If the arbitrator does not file an award or other final disposition with the Clerk of the Superior Court within 145 days after the first appointment of an arbitrator, the Superior Court Clerk or the Court Administrator shall refer the case to the judge to whom the case has been assigned for appropriate action.

(f) Amount of Compensation for Arbitrators. An arbitrator assigned to serve in a case subject to the provisions of Rules 72 through 77 of these rules shall receive as compensation for services in each case a fee not to exceed the amount allowed by A.R.S. § 12-133(G) per day for each day, or part thereof, necessarily expended in the hearing of the case. For purposes of this Rule 76(f), 'hearing' ' means any fact-finding proceeding or oral argument that results in the filing of an award or other final disposition, or at which the parties agree to settle and stipulate to dismiss the case. The fee to be paid in each county shall be decided by a majority vote of the judges thereof and the amount that is decided upon shall be incorporated into a superior court order filed with the Clerk of the Supreme Court, and a copy thereof shall be filed with the Clerk of the Superior Court of the applicable county. When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrator is concerned.

(g) Payment of Compensation. The arbitrator shall not be entitled to receive the compensation prescribed in subparagraph (f) of this rule until after an award or other final disposition is filed with the Clerk of the Superior Court, or, if the parties agree to settle and stipulate to dismiss the case at a proceeding before the arbitrator, until after the case has been dismissed.

Rule 77. Right of Appeal

(a) Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal from the award or other final disposition by filing a notice of appeal with the Clerk of the Superior Court within 20 days after the filing of the award or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first. The notice of appeal shall be entitled "Appeal from Arbitration and Motion to Set for Trial" and shall request that the case be set for trial in the Superior Court and state whether a jury trial is requested and the estimated length of trial. The Appeal from Arbitration and Motion to Set for Trial shall serve in place of a Motion to Set and Certificate of Readiness under Rule 38.1(a) of these rules.

(b) Deposit on Appeal. At the time of filing the notice of appeal, and as a condition of filing, the appellant shall deposit with the Clerk of the Superior Court a sum equal to one hearing day's compensation of the arbitrator, but not exceeding ten percent of the amount in controversy. If the court finds that the appellant is unable to make such deposit by reason of lack of funds, the court shall allow the filing of the appeal without deposit.

(c) Appeals De Novo. All appeals shall be de novo on law and facts. Any legal rulings and factual findings made by the arbitrator shall not be binding on the court or the parties, and any discovery had while the case was assigned to arbitration may be used in the superior court proceeding.

(d) Change of Judge. Upon filing a notice of appeal, all rights to change of judge are renewed and no event prior thereto shall constitute a waiver.

(e) Waiver of Right to Appeal. At any time prior to the entry of an award or other final disposition by the arbitrator, the parties may stipulate in writing that the award or other final disposition so entered shall be binding upon the parties. No appeal or collateral attack upon the award or other final disposition may be thereafter taken except as allowed by A.R.S. § 12-1501, et seq.

(f) Costs and Fees on Appeal. The deposit provided for in subparagraph (b) of this rule shall be refunded to the appellant if the judgment on the trial de novo is at least twenty-three percent (23%) more favorable than the monetary relief, or more favorable than the other type of relief, granted by the arbitration award or other final disposition. If the judgment on the trial de novo is not more favorable by at least twenty-three percent (23%) than the monetary relief, or more favorable than the other relief, granted by the arbitration award or other final disposition, the court shall order the deposit to be used to pay, or that the appellant pay if the deposit is insufficient, the following costs and fees unless the court finds on motion that the imposition of the costs and fees would create such a substantial economic hardship as not to be in the interests of justice:
(1) to the county, the compensation actually paid to the arbitrator;
(2) to the appellee, those costs taxable in civil actions together with reasonable attorneys' fees as determined by the trial judge for services necessitated by the appeal; and
(3) reasonable expert witness fees incurred by the appellee in connection with the appeal.
Upon final disposition of the case and lacking an order from the court for the disposition of the deposit provided for in paragraph (b) of this rule, the clerk of court shall refund the deposit to the party making the deposit.

(g) Discovery and Listing of Witnesses and Exhibits. In all cases in which an appeal is taken from the arbitration award, the parties shall proceed as follows:
(1) The appellant shall simultaneously with the filing of the Appeal from Arbitration and Motion to Set for Trial referenced above also file a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these rules. If the appellant fails or elects not to file such a list of witnesses and exhibits together with the Appeal from Arbitration and Motion to Set for Trial, then the witnesses and exhibits intended to be used at trial by appellant shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule 75(c) of these rules.
(2) Within 20 days after service of the Appeal from Arbitration and Motion to Set for Trial, appellee shall serve a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these rules. If the appellee fails or elects not to file such a list of witnesses and exhibits, then the witnesses and exhibits intended to be used at trial by appellee shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule 76(e) of these rules.
(3) The parties shall have 80 days from the filing of the Appeal from Arbitration and Motion to Set for Trial to complete discovery, pursuant to Rules 26 through 37 of these rules.
(4) For good cause shown the court may extend the time for discovery set forth in subsection (3) above and/or allow a supplemental list of witnesses and exhibits to be filed.