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States' Alternative Dispute Resolution Statutes

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States' Alternative Dispute Resolution Statutes

STATE OF CALIFORNIA

Index

Judicial Arbitration

Part 3, Title 3, Chapter 2.5.

Current with legislation through the 2008 Regular Session

§ 1141.10. Legislative findings and declarations and intent

(a) The Legislature finds and declares that litigation involving small civil cases can be so costly and complex that efficiently resolving these civil cases is difficult, and that the resulting delays and expenses may deny parties their right to a timely resolution of minor civil disputes. The Legislature further finds and declares that arbitration has proven to be an efficient and equitable method for resolving small civil cases, and that courts should encourage or require the use of arbitration for those actions whenever possible.

(b) It is the intent of the Legislature that:

(1) Arbitration hearings held pursuant to this chapter shall provide parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes.

(2) Arbitration hearings shall be as informal as possible and shall provide the parties themselves maximum opportunity to participate directly in the resolution of their disputes, and shall be held during nonjudicial hours whenever possible.

(3) Members of the State Bar selected to serve as arbitrators should have experience with cases of the type under dispute and are urged to volunteer their services without compensation whenever possible.

§ 1141.11. Nonexempt unlimited civil cases; amount in controversy; submission to arbitration; use of case questionnaires

(a) In each superior court with 18 or more judges, all nonexempt unlimited civil cases shall be submitted to arbitration under this chapter if the amount in controversy, in the opinion of the court, will not exceed fifty thousand dollars ($50,000) for each plaintiff.

(b) In each superior court with fewer than 18 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all nonexempt, unlimited civil cases shall be submitted to arbitration under this chapter if the amount in controversy, in the opinion of the court, will not exceed fifty thousand dollars ($50,000) for each plaintiff.

(c) Each superior court may provide by local rule, when it is determined to be in the best interests of justice, that all nonexempt, limited civil cases shall be submitted to arbitration under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161.

(d)(1) In each court that has adopted judicial arbitration pursuant to subdivision (c), all limited civil cases that involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court.

(2) The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

(3) For the purposes of this subdivision, the term “single defendant” means any of the following:

(A) An individual defendant, whether a person or an entity.

(B) Two or more persons covered by the same insurance policy applicable to the motor vehicle collision.

(C) Two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision.

(4) The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

§ 1141.12. Uniform system of arbitration; stipulation; election by plaintiff to award limit
In all superior courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(a) Any cause, regardless of the amount in controversy, upon stipulation of the parties.

(b) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the amount in controversy as specified in Section 1141.11.

§ 1141.13. Inapplicability of chapter to civil action with prayer for equitable relief; exceptions

This chapter shall not apply to any civil action which includes a prayer for equitable relief, except that if the prayer for equitable relief is frivolous or insubstantial, this chapter shall be applicable.

§ 1141.14. Rules for practice and procedure
Notwithstanding any other provision of law except the provisions of this chapter, the Judicial Council shall provide by rule for practice and procedure for all actions submitted to arbitration under this chapter. The Judicial Council rules shall provide for and conform with the provisions of this chapter.

§ 1141.15. Exceptions for cause to arbitration in § 1141.11; rules
The Judicial Council rules shall provide exceptions for cause to arbitration pursuant to subdivision (a), (b), or (c) of Section 1141.11. In providing for such exceptions, the Judicial Council shall take into consideration whether the civil action might not be amenable to arbitration.

§ 1141.16. Determination of amount in controversy; time to submit to arbitration; discovery order

(a) The determination of the amount in controversy, under subdivision (a) or (b) of Section 1141.11, shall be made by the court and the case referred to arbitration after all named parties have appeared or defaulted. The determination shall be made at a case management conference or based upon review of the written submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified in Section 1141.11.

(b) The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo.

(c) Except as provided in this section, the arbitration hearing may not be held until 210 days after the filing of the complaint, or 240 days after the filing of a complaint if the parties have stipulated to a continuance pursuant to subdivision (d) of Section 68616 of the Government Code. A case shall be submitted to arbitration at an earlier time upon any of the following:

(1) The stipulation of the parties to an earlier arbitration hearing.

(2) The written request of all plaintiffs, subject to a motion by a defendant for good cause shown to delay the arbitration hearing.

(3) An order of the court if the parties have stipulated, or the court has ordered under Section 1141.24, that discovery other than that permitted under Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4 will be permitted after the arbitration award is rendered.

§ 1141.17. Suspension of running of limitations; exception

(a) Submission of an action to arbitration pursuant to this chapter shall not suspend the running of the time periods specified in Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2, except as provided in this section.

(b) If an action is or remains submitted to arbitration pursuant to this chapter more than four years and six months after the plaintiff has filed the action, then the time beginning on the date four years and six months after the plaintiff has filed the action and ending on the date on which a request for a de novo trial is filed under Section 1141.20 shall not be included in computing the five-year period specified in Section 583.310.

§ 1141.18. Arbitrators; qualifications; compensation; selection; disqualification

(a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators. Compensation for arbitrators may not be less than one hundred fifty dollars ($150) per case, or one hundred fifty dollars ($150) per day, whichever is greater. A superior court may set a higher level of compensation for that court. Arbitrators may waive compensation in whole or in part. No compensation shall be paid before the filing of the award by the arbitrator, or before the settlement of the case by the parties.

(c) In cases submitted to arbitration under Section 1141.11 or 1141.12, an arbitrator shall be assigned within 30 days from the time of submission to arbitration.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

§ 1141.19. Arbitrators; powers
Arbitrators approved pursuant to this chapter shall have the powers necessary to perform duties pursuant to this chapter as prescribed by the Judicial Council.

§ 1141.19.5. Arbitration; limitation on production of evidence
In any arbitration proceeding under this chapter, no party may require the production of evidence specified in subdivision (a) of Section 3295 of the Civil Code at the arbitration, unless the court enters an order permitting pretrial discovery of that evidence pursuant to subdivision (c) of Section 3295 of the Civil Code.

§ 1141.20. Finality of award; de novo trial; request; limitation; calendar
(a) An arbitration award shall be final unless a request for a de novo trial is filed within 30 days after the date the arbitrator files the award with the court.

(b) Any party may elect to have a de novo trial, by court or jury, both as to law and facts. Such trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.

§ 1141.21. Judgment on trial de novo equal to or less favorable than arbitration award for party electing; payment of nonrefundable costs and fees

(a)(1) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of these costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(A) To the court, the compensation actually paid to the arbitrator, less any amount paid pursuant to subparagraph (D).

(B) To the other party or parties, all costs specified in Section 1033.5, and the party electing the trial de novo shall not recover his or her costs.

(C) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case.

(D) To the other party or parties, the compensation paid by the other party or parties to the arbitrator, pursuant to subdivision (b) of Section 1141.28.

(2) Those costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under subparagraphs (B) and (C) of paragraph (1) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that

party.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under subparagraph (A) of paragraph (1) of subdivision (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.

§ 1141.22. Grounds for correction, modification or vacation of award
The Judicial Council rules shall specify the grounds upon which the arbitrator or the court, or both, may correct, modify or vacate an award.

§ 1141.23. Award; writing, signature and filing; entry in judgment book; force and effect
The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. If there is no request for a de novo trial and the award is not vacated, the award shall be entered in the judgment book in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided by Section 473, 1286.2, or Judicial Council rule.

§ 1141.24. Post-award discovery restrictions
In cases ordered to arbitration pursuant to Section 1141.11, no discovery other than that permitted by Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4 is permissible after an arbitration award except by stipulation of the parties or by leave of court upon a showing of good cause.

§ 1141.25. Reference to arbitration proceedings or award during trial; grounds for new trial
Any reference to the arbitration proceedings or arbitration award during any subsequent trial shall constitute an irregularity in the proceedings of the trial for the purposes of Section 657.

§ 1141.26. Award in excess of § 1141.11 amount; validity; exemption from § 1141.21
Nothing in this act shall prohibit an arbitration award in excess of the amount in controversy as specified in Section 1141.11. No party electing a trial de novo after such award shall be subject to the provisions of Section 1141.21 if the judgment upon the trial de novo is in excess of the amount in controversy as specified in Section 1141.11.

§ 1141.27. Application of chapter to actions with public agency or entity as party
This chapter shall apply to any civil action otherwise within the scope of this chapter in which a party to the action is a public agency or public entity.

§ 1141.28. Administrative costs; compensation of arbitrators; payment
(a) All administrative costs of arbitration, including compensation of arbitrators, shall be paid for by the court in which the arbitration costs are incurred, except as otherwise provided in subdivision (b) and in Section 1141.21.

(b) The actual costs of compensation of arbitrators in any proceeding which would not otherwise be subject to the provisions of this chapter but in which arbitration is conducted pursuant to this chapter solely because of the stipulation of the parties, shall be paid for in equal shares by the parties. If the imposition of these costs would create such a substantial economic hardship for any party as not to be

in the interest of justice, as determined by the arbitrator, that party's share of costs shall be paid for by the court in which the arbitration costs are incurred. The determination as to substantial economic hardship may be reviewed by the court.

§ 1141.30. Construction of chapter in relation to provisions in title on arbitration
This chapter shall not be construed in derogation of Title 9 (commencing with Section 1280) of Part 3, and, to that extent, this chapter and that title, other than Section 1280.1, are mutually exclusive and independent of each other.

§ 1141.31. Operative date of chapter; date of adoption of arbitration rules
The provisions of this chapter shall become operative July 1, 1979, except that the Judicial Council shall adopt the arbitration rules for practice and procedures on or before March 31, 1979.

Arbitration
Part 3, Title 9.

Current with legislation through the 2008 Regular Session

General Provisions

§ 1280. Definitions

As used in this title:

(a) “Agreement” includes but is not limited to agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

(b) “Award” includes but is not limited to an award made pursuant to an agreement not in writing.

(c) “Controversy” means any question arising between parties to an agreement whether such question is one of law or of fact or both.

(d) “Neutral arbitrator” means an arbitrator who is (1) selected jointly by the parties or by the arbitrators selected by the parties or (2) appointed by the court when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them.

(e) “Party to the arbitration” means a party to the arbitration agreement:

(1) Who seeks to arbitrate a controversy pursuant to the agreement;

(2) Against whom such arbitration is sought pursuant to the agreement; or

(3) Who is made a party to such arbitration by order of the neutral arbitrator upon such party's application, upon the application of any other party to the arbitration or upon the neutral arbitrator's own determination.

(f) "Written agreement" shall be deemed to include a written agreement which has been extended or renewed by an oral or implied agreement.

§ 1280.2. Reference to statutes

Whenever reference is made in this title to any portion of the title or of any other law of this State, the reference applies to all amendments and additions thereto now or hereafter made.

Enforcement of Arbitration Agreements

§ 1281. Validity, enforceability and irrevocability of agreements

A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.

§ 1281.1. Requests to arbitrate

For the purposes of this article, any request to arbitrate made pursuant to subdivision (a) of Section 1299.4 shall be considered as made pursuant to a written agreement to submit a controversy to arbitration.

§ 1281.12. Tolling arbitration time period

If an arbitration agreement requires that arbitration of a controversy be demanded or initiated by a party to the arbitration agreement within a period of time, the commencement of a civil action by that party based upon that controversy, within that period of time, shall toll the applicable time limitations contained in the arbitration agreement with respect to that controversy, from the date the civil action is commenced until 30 days after a final determination by the court that the party is required to arbitrate the controversy, or 30 days after the final termination of the civil action that was commenced and initiated the tolling, whichever date occurs first.

§ 1281.2. Order to arbitrate controversy; petition; determination of court

On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

(a) The right to compel arbitration has been waived by the petitioner; or

(b) Grounds exist for the revocation of the agreement.

(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a

pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

§ 1281.3. Consolidation of separate arbitration proceedings; petition; grounds; procedure

A party to an arbitration agreement may petition the court to consolidate separate arbitration proceedings, and the court may order consolidation of separate arbitration proceedings when:

(1) Separate arbitration agreements or proceedings exist between the same parties; or one party is a party to a separate arbitration agreement or proceeding with a third party; and

(2) The disputes arise from the same transactions or series of related transactions; and

(3) There is common issue or issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

If all of the applicable arbitration agreements name the same arbitrator, arbitration panel, or arbitration tribunal, the court, if it orders consolidation, shall order all matters to be heard before the arbitrator, panel, or tribunal agreed to by the parties. If the applicable arbitration agreements name separate arbitrators, panels, or tribunals, the court, if it orders consolidation, shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator in accord with the procedures set forth in Section 1281.6.

In the event that the arbitration agreements in consolidated proceedings contain inconsistent provisions, the court shall resolve such conflicts and determine the rights and duties of the various parties to achieve substantial justice under all the circumstances.

The court may exercise its discretion under this section to deny consolidation of separate arbitration proceedings or to consolidate separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

This section shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

§ 1281.4. Stay of pending actions or proceedings

If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.

If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order to arbitrate a controversy which is an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.

If the issue which is the controversy subject to arbitration is severable, the stay may be with respect to that issue only.

§ 1281.5. Waiver of right to arbitration; actions to enforce liens on works of improvement; notice of motion and motion to stay actions pending arbitration

(a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, does not thereby waive any right of arbitration the person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant does either of the following:

(1) Includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration, and intends to move the court, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action.

(2) At the same time that the complaint is filed, the claimant files an application that the action be stayed pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien.

(b) Within 30 days after service of the summons and complaint, the claimant shall file and serve a motion and notice of motion pursuant to Section 1281.4 to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien. The failure of a claimant to comply with this subdivision is a waiver of the claimant's right to compel arbitration.

(c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time the defendant answers the complaint filed pursuant to subdivision (a) is a waiver of the defendant's right to compel arbitration.

§ 1281.6. Appointment of arbitrator

If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed. If the arbitration agreement does not provide a method for appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on a method of appointing an arbitrator and that method shall be followed. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his or her successor has not been appointed, the court, on petition of a party to the arbitration agreement, shall appoint the arbitrator.

When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may within five days of receipt of notice of the nominees from the court jointly select the arbitrator whether or not the arbitrator is among the nominees. If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

§ 1281.7. Petition in lieu of answer

A petition pursuant to Section 1281.2 may be filed in lieu of filing an answer to a complaint. The petitioning defendant shall have 15 days after any denial of the petition to plead to the complaint.

§ 1281.8. Provisional remedies; attachment, temporary protective or restraining order, writ of possession, preliminary injunction, or receiver

(a) As used in this section, “provisional remedy” includes the following:

(1) Attachments and temporary protective orders issued pursuant to Title 6.5 (commencing with Section 481.010) of Part 2.

(2) Writs of possession issued pursuant to Article 2 (commencing with Section 512.010) of Chapter 2 of Title 7 of Part 2.

(3) Preliminary injunctions and temporary restraining orders issued pursuant to Section 527.

(4) Receivers appointed pursuant to Section 564.

(b) A party to an arbitration agreement may file in the court in the county in which an arbitration proceeding is pending, or if an arbitration proceeding has not commenced, in any proper court, an application for a provisional remedy in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without

provisional relief. The application shall be accompanied by a complaint or by copies of the demand for arbitration and any response thereto. If accompanied by a complaint, the application shall also be accompanied by a statement stating whether the party is or is not reserving the party's right to arbitration.

(c) A claim by the party opposing issuance of a provisional remedy, that the controversy is not subject to arbitration, shall not be grounds for denial of any provisional remedy.

(d) An application for a provisional remedy under subdivision (b) shall not operate to waive any right of arbitration which the applicant may have pursuant to a written agreement to arbitrate, if, at the same time as the application for a provisional remedy is presented, the applicant also presents to the court an application that all other proceedings in the action be stayed pending the arbitration of any issue, question, or dispute which is claimed to be arbitrable under the agreement and which is relevant to the action pursuant to which the provisional remedy is sought.

§ 1281.85. Ethical standards applicable to neutral arbitrators

(a) Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. The Judicial Council shall adopt ethical standards for all neutral arbitrators effective July 1, 2002. These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter. The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

(b) Subdivision (a) does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

§ 1281.9. Neutral arbitrators; disclosure of information; disqualification; waiver

(a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, "any arbitration" does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

§ 1281.91. Disqualification of neutral arbitrator

(a) A proposed neutral arbitrator shall be disqualified if he or she fails to comply with Section 1281.9 and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with Section 1281.9.

(b)(1) If the proposed neutral arbitrator complies with Section 1281.9, the proposed neutral arbitrator shall be disqualified on the basis of the disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after service of the disclosure statement.

(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any single arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

(c) The right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure. Except as provided in subdivision (d), in no event may a notice of disqualification be given after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter. Nothing in this subdivision shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

(d) If any ground specified in Section 170.1 exists, a neutral arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the arbitration proceeding. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or their respective representatives.

§ 1281.92. Restrictions against private arbitration company from administering consumer arbitration or related services

(a) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if the company has, or within the preceding year has had, a financial interest, as defined in Section 170.5, in any party or attorney for a party.

(b) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

(c) This section shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2003.

(d) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

(e) This section shall become operative on January 1, 2003.

§ 1281.95. Residential construction or improvements; arbitrator disclosures; disqualification

(a) In a binding arbitration of any claim for more than three thousand dollars ($3,000) pursuant to a contract for the construction or improvement of residential property consisting of one to four units, the arbitrator shall, within 10 days following his or her appointment, provide to each party a written declaration under penalty of perjury. This declaration shall disclose (1) whether the arbitrator or his or her employer or arbitration service had or has a personal or professional affiliation with either party, and (2) whether the arbitrator or his or her employer or arbitration service has been selected or designated as an arbitrator by either party in another transaction.

(b) If the arbitrator discloses an affiliation with either party, discloses that the arbitrator has been selected or designated as an arbitrator by either party in another arbitration, or fails to comply with this section, he or she may be disqualified from the arbitration by either party.

(c) A notice of disqualification shall be served within 15 days after the arbitrator makes the required disclosures or fails to comply. The right of a party to disqualify an arbitrator shall be waived if the party fails to serve the notice of disqualification pursuant to this subdivision unless the arbitration makes a material omission or material misrepresentation in his or her disclosure. Nothing in this section shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

§ 1281.96. Private arbitration companies; quarterly or biannual publication of consumer arbitration information; liability

(a) Except as provided in paragraph (2) of subdivision (b), any private arbitration company that administers or is otherwise involved in, a consumer arbitration, shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which shall be accessible at the Internet Web site of the private arbitration company, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars ($100,000), one hundred thousand dollars ($100,000) to two hundred fifty thousand dollars ($250,000), inclusive, and over two hundred fifty thousand dollars ($250,000).

(3) Whether the consumer or nonconsumer party was the prevailing party.

(4) On how many occasions, if any, the nonconsumer party has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b)(1) If the information required by subdivision (a) is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subdivision (a) is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code, and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.

(c) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information required by this section.

Conduct of Arbitration Proceedings

§ 1282. Exercise of powers and duties of neutral arbitrator

Unless the arbitration agreement otherwise provides, or unless the parties to the arbitration otherwise provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all of the parties thereto:

(a) The arbitration shall be by a single neutral arbitrator.

(b) If there is more than one arbitrator, the powers and duties of the arbitrators, other than the powers and duties of a neutral arbitrator, may be exercised by a majority of them if reasonable notice of all proceedings has been given to all arbitrators.

(c) If there is more than one neutral arbitrator:

(1) The powers and duties of a neutral arbitrator may be exercised by a majority of the neutral arbitrators.

(2) By unanimous agreement of the neutral arbitrators, the powers and duties may be delegated to one of their number but the power to make or correct the award may not be so delegated.

(d) If there is no neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the arbitrators.

§ 1282.2. Hearing; time and place; witness lists; adjournment or postponement; conduct; evidence; procedure

Unless the arbitration agreement otherwise provides, or unless the parties to the arbitration otherwise

provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all the parties thereto:

(a)(1) The neutral arbitrator shall appoint a time and place for the hearing and cause notice thereof to be served personally or by registered or certified mail on the parties to the arbitration and on the other arbitrators not less than seven days before the hearing. Appearance at the hearing waives the right to notice.

(2) With the exception of matters arising out of collective-bargaining agreements, those described in Section 1283.05, actions involving personal injury or death, or as provided in the parties' agreement to arbitrate, in the event the aggregate amount in controversy exceeds fifty thousand dollars ($50,000) and the arbitrator is informed thereof by any party in writing by personal service, registered or certified mail, prior to designating a time and place of hearing pursuant to paragraph (1), the neutral arbitrator by the means prescribed in paragraph (1) shall appoint a time and place for hearing not less than 60 days before the hearing, and the following provisions shall apply:

(A) Either party shall within 15 days of receipt of the notice of hearing have the right to demand in writing, served personally or by registered or certified mail, that the other party provide a list of witnesses it intends to call designating which witnesses will be called as expert witnesses and a list of documents it intends to introduce at the hearing provided that the demanding party provides such lists at the time of its demand. A copy of such demand and the demanding party's lists shall be served on the arbitrator.

(B) Such lists shall be served personally or by registered or certified mail on the requesting party 15 days thereafter. Copies thereof shall be served on the arbitrator.

(C) Listed documents shall be made available for inspection and copying at reasonable times prior to the hearing.

(D) Time limits provided herein may be waived by mutual agreement of the parties if approved by the arbitrator.

(E) The failure to list a witness or a document shall not bar the testimony of an unlisted witness or the introduction of an undesignated document at the hearing, provided that good cause for omission from the requirements of subparagraph (A) is shown, as determined by the arbitrator.

(F) The authority of the arbitrator to administer and enforce this paragraph shall be as provided in subdivisions (b) to (e), inclusive, of Section 1283.05.

(b) The neutral arbitrator may adjourn the hearing from time to time as necessary. On request of a party to the arbitration for good cause, or upon his own determination, the neutral arbitrator may postpone the hearing to a time not later than the date fixed by the agreement for making the award, or to a later date if the parties to the arbitration consent thereto.

(c) The neutral arbitrator shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of hearing procedure and shall exercise all powers relating to the conduct of the hearing.

(d) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. On request of any party to the arbitration, the testimony of witnesses shall be given under oath.

(e) If a court has ordered a person to arbitrate a controversy, the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear.

(f) If an arbitrator, who has been duly notified, for any reason fails to participate in the arbitration, the arbitration shall continue but only the remaining neutral arbitrator or neutral arbitrators may make the award.

(g) If a neutral arbitrator intends to base an award upon information not obtained at the hearing, he shall disclose the information to all parties to the arbitration and give the parties an opportunity to meet it.

§ 1282.4. Representation by counsel

(a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes that waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, satisfies all of the following:

(1) He or she timely serves the certificate described in subdivision (c).

(2) The attorney's appearance is approved in writing on that certificate by the arbitrator, the arbitrators, or the arbitral forum.

(3) The certificate bearing approval of the attorney's appearance is filed with the State Bar of California and served on the parties as described in this section.

(c) Within a reasonable period of time after the attorney described in subdivision (b) indicates an intention to appear in the arbitration, the attorney shall serve a certificate in a form prescribed by the State Bar of California on the arbitrator, arbitrators, or arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. The certificate shall state all of the following:

(1) The case name and number, and the name of the arbitrator, arbitrators, or arbitral forum assigned to the proceeding in which the attorney seeks to appear.

(2) The attorney's residence and office address.

(3) The courts before which the attorney has been admitted to practice and the dates of admission.

(4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(5) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(6) That the attorney is not a resident of the State of California.

(7) That the attorney is not regularly employed in the State of California.

(8) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(9) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(10) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application or certificate, and whether or not it was granted. If the attorney has made repeated appearances, the certificate shall reflect the special circumstances that warrant the approval of the attorney's appearance in the arbitration.

(11) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) The arbitrator, arbitrators, or arbitral forum may approve the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed. In the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed.

(e) Within a reasonable period of time after the arbitrator, arbitrators, or arbitral forum approves the certificate, the attorney shall file the certificate with the State Bar of California and serve the certificate as described in Section 1013a on all parties and counsel in the arbitration whose address is known to the attorney.

(f) An attorney who fails to file or serve the certificate required by this section or files or serves a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to that certificate or any of his or her acts occurring in the course of the arbitration.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(h) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(i) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(j)(1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (h), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (i), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(k) This section shall be operative until January 1, 2011, and on that date shall be repealed.

§ 1282.6. Issuance of subpoenas

(a) A subpoena requiring the attendance of witnesses, and a subpoena duces tecum for the production of books, records, documents and other evidence, at an arbitration proceeding or a deposition under Section 1283, and if Section 1283.05 is applicable, for the purposes of discovery, shall be issued as provided in this section. In addition, the neutral arbitrator upon his own determination may issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents and other evidence.

(b) Subpoenas shall be issued, as of course, signed but otherwise in blank, to the party requesting them, by a neutral association, organization, governmental agency, or office if the arbitration agreement provides for administration of the arbitration proceedings by, or under the rules of, a neutral association, organization, governmental agency or office or by the neutral arbitrator.

(c) The party serving the subpoena shall fill it in before service. Subpeonas shall be served and enforced in accordance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of this code.

§ 1282.8. Administration of oaths

The neutral arbitrator may administer oaths.

§ 1283. Depositions

On application of a party to the arbitration, the neutral arbitrator may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the state, the party who applied for the taking of the deposition shall obtain a commission, letters rogatory, or a letter of request therefor from the superior court in accordance with Chapter 10 (commencing with Section 2026.010) of Title 4 of Part 4.

§ 1283.05. Manner of taking deposition

To the extent provided in Section 1283.1 depositions may be taken and discovery obtained in arbitration proceedings as follows:

(a) After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to take depositions and to obtain discovery regarding the subject matter of the arbitration, and, to that end, to use and exercise all of the same rights, remedies, and procedures, and be subject to all of the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4, and in Title 4 (commencing with Section 2016.010) of Part 4, as if the subject matter of the arbitration were pending before a superior court of this state in a civil action other than a limited civil case, subject to the limitations as to depositions set forth in subdivision (e) of this section.

(b) The arbitrator or arbitrators themselves shall have power, in addition to the power of determining the merits of the arbitration, to enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as can be or may be imposed in like circumstances in a civil action by a superior court of this state under the provisions of this code, except the power to order the arrest or imprisonment of a person.

(c) The arbitrator or arbitrators may consider, determine, and make such orders imposing such terms, conditions, consequences, liabilities, sanctions, and penalties, whenever necessary or appropriate at any time or stage in the course of the arbitration, and such orders shall be as conclusive, final, and enforceable as an arbitration award on the merits, if the making of any such order that is equivalent to an award or correction of an award is subject to the same conditions, if any, as are applicable to the making of an award or correction of an award.

(d) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of any such duty, such party shall be deemed to include every affiliate of such party as defined in this section. For such purpose:

(1) The personnel of every such affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of such party to the same degree as each of them, respectively, bears such status to such affiliate; and

(2) The files, books, and records of every such affiliate shall be deemed to be in the possession and control of, and capable of production by, such party. As used in this section, “affiliate” of the party to the arbitration means and includes any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee, or managing agent of such party or person.

(e) Depositions for discovery shall not be taken unless leave to do so is first granted by the arbitrator or arbitrators.

§ 1283.1. Incorporation of § 1283.05 in arbitration agreements

(a) All of the provisions of Section 1283.05 shall be conclusively deemed to be incorporated into, made a part of, and shall be applicable to, every agreement to arbitrate any dispute, controversy, or issue arising out of or resulting from any injury to, or death of, a person caused by the wrongful act or neglect of another.

(b) Only if the parties by their agreement so provide, may the provisions of Section 1283.05 be incorporated into, made a part of, or made applicable to, any other arbitration agreement.

§ 1283.2. Witnesses; fees and mileage; payment

Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the superior court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by such party. The fee and mileage of a witness subpoenaed solely upon the determination of the neutral arbitrator shall be paid in the manner provided for the payment of the neutral arbitrator's expenses.

§ 1283.4. Form and contents of award

The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy.

Conduct of Arbitration Proceedings

§ 1283.6. Service of award

The neutral arbitrator shall serve a signed copy of the award on each party to the arbitration personally or by registered or certified mail or as provided in the agreement.

§ 1283.8. Time for making award

The 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 petition of a party to the arbitration. The parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an award was not made within the time required unless he gives the arbitrators written notice of his objection prior to the service of a signed copy of the award on him.

§ 1284. Correction of award; application; objections; action by arbitrators; service of copy of denial or correction

The arbitrators, upon written application of a party to the arbitration, may correct the award upon any of the grounds set forth in subdivisions (a) and (c) of Section 1286.6 not later than 30 days after service of a signed copy of the award on the applicant.

Application for such correction shall be made not later than 10 days after service of a signed copy of the award on the applicant. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the arbitration.

Any party to the arbitration may make written objection to such application. The objection shall be made not later than 10 days after the application is delivered or mailed to the objector. Upon or before making such objection, the objector shall deliver or mail a copy of the objection to the applicant and all the other parties to the arbitration.

The arbitrators shall either deny the application or correct the award. The denial of the application or the correction of the award shall be in writing and signed by the arbitrators concurring therein, and the neutral arbitrator shall serve a signed copy of such denial or correction on each party to the arbitration personally or by registered or certified mail or as provided in the agreement. If no denial of the application or correction of the award is served within the 30-day period provided in this section, the application for correction shall be deemed denied on the last day thereof.

§ 1284.2. Payment of expenses

Unless the arbitration agreement otherwise provides or the parties to the arbitration otherwise agree, each party to the arbitration shall pay his pro rata share of the expenses and fees of the neutral arbitrator, together with other expenses of the arbitration incurred or approved by the neutral arbitrator,

not including counsel fees or witness fees or other expenses incurred by a party for his own benefit.

§ 1284.3. Consumer arbitrations; agreements or rules requiring a nonprevailing consumer party to pay fees and costs incurred by the opposing party; waiver of fees and costs for indigent consumers; application of section

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

(b)(1) All fees and costs charged to or assessed upon a consumer party by a private arbitration company in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer. For the purposes of this section, "indigent consumer" means a person having a gross monthly income that is less than 300 percent of the federal poverty guidelines. Nothing in this section shall affect the ability of a private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to a nonconsumer party.

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

(3) Any consumer requesting a waiver of fees or costs may establish his or her eligibility by making a declaration under oath on a form provided to the consumer by the private arbitration company for signature stating his or her monthly income and the number of persons living in his or her household. No private arbitration company may require a consumer to provide any further statement or evidence of indigence.

(4) Any information obtained by a private arbitration company about a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except a private arbitration company may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(c) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

Enforcement of the Award

Confirmation, Correction or Vacation of the Award

§ 1285. Petition; parties

Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.

§ 1285.2. Response to petition

A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award.

§ 1285.4. Contents of petition

A petition under this chapter shall:

(a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement.

(b) Set forth the names of the arbitrators.

(c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

§ 1285.6. Contents of response to petition

Unless a copy thereof is set forth in or attached to the petition, a response to a petition under this chapter shall:

(a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the respondent denies the existence of such an agreement.

(b) Set forth the names of the arbitrators.

(c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

§ 1285.8. Grounds for relief

A petition to correct or vacate an award, or a response requesting such relief, shall set forth the grounds on which the request for such relief is based.

§ 1286. Powers of court

If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding.

§ 1286.2. Grounds for vacation of award

(a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

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

(2) There was corruption in any of the arbitrators.

(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

§ 1286.4. Conditions to vacation of award

The court may not vacate an award unless:

(a) A petition or response requesting that the award be vacated has been duly served and filed; or

(b) A petition or response requesting that the award be corrected has been duly served and filed and:

(1) All petitioners and respondents are before the court; or

(2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to vacate the award or that the court on its own motion has determined to vacate the award and all petitioners and respondents have been given an opportunity to show why the award should not be vacated.

§ 1286.6. Grounds for correction of award

Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that:

(a) 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;

(b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or

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

§ 1286.8. Conditions to correction of award

The court may not correct an award unless:

(a) A petition or response requesting that the award be corrected has been duly served and filed; or

(b) A petition or response requesting that the award be vacated has been duly served and filed and:

(1) All petitioners and respondents are before the court; or

(2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to correct the award or that the court on its own motion has determined to correct the award and all petitioners and respondents have been given an opportunity to show why the award should not be corrected.

§ 1287. Rehearing

If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators.

If the arbitration agreement requires that the award be made within a specified period of time, the rehearing may nevertheless be held and the award made within an equal period of time beginning with the date of the order for rehearing but only if the court determines that the purpose of the time limit agreed upon by the parties to the arbitration agreement will not be frustrated by the application of this provision.

§ 1287.2. Dismissal of proceeding as to person not bound by award and not party to arbitration

The court shall dismiss the proceeding under this chapter as to any person named as a respondent if the court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

§ 1287.4. Entry of judgment on confirmation of award; force and effect; enforcement

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.

§ 1287.6. Force and effect of unconfirmed or vacated award

An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration.

Limitations of Time

§ 1288. Petition; time for service and filing

A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner. A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner.

§ 1288.2. Response; time for service and filing

A response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 100 days after the date of service of a signed copy of the award upon:

(a) The respondent if he was a party to the arbitration; or

(b) The respondent's representative if the respondent was not a party to the arbitration.

§ 1288.4. Petition; service and filing at least ten days after service of copy of award

No petition may be served and filed under this chapter until at least 10 days after service of the signed copy of the award upon the petitioner.

§ 1288.6. Application for correction of award; service and filing of petition after determination by arbitrators

If an application is made to the arbitrators for correction of the award, a petition may not be served and filed under this chapter until the determination of that application.

§ 1288.8. Application for correction of award; date of service of award

If an application is made to the arbitrators for correction of the award, the date of the service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier:

(a) The date of service upon the petitioner of a signed copy of the correction of the award or of the denial of the application.

(b) The date that such application is deemed to be denied under Section 1284.

General Provisions Relating to Judicial Proceedings

Petitions and Responses

§ 1290. Commencement of proceedings by filing petition; response; allegations

A proceeding under this title in the courts of this State is commenced by filing a petition. Any person named as a respondent in a petition may file a response thereto. The allegations of a petition are deemed to be admitted by a respondent duly served therewith unless a response is duly served and filed. The allegations of a response are deemed controverted or avoided.

§ 1290.2. Summary hearing; notice

A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given.

§ 1290.4. Service of copy of petition and notice of hearing

(a) A copy of the petition and a written notice of the time and place of the hearing thereof and any other papers upon which the petition is based shall be served in the manner provided in the arbitration agreement for the service of such petition and notice.

(b) If the arbitration agreement does not provide the manner in which such service shall be made and the person upon whom service is to be made has not previously appeared in the proceeding and has not previously been served in accordance with this subdivision:

(1) Service within this State shall be made in the manner provided by law for the service of summons in an action.

(2) Service outside this State shall be made by mailing the copy of the petition and notice and other papers by registered or certified mail. Personal service is the equivalent of such service by mail. Proof of service by mail shall be made by affidavit showing such mailing together with the return receipt of the United States Post Office bearing the signature of the person on whom service was made. Notwithstanding any other provision of this title, if service is made in the manner provided in this paragraph, the petition may not be heard until at least 30 days after the date of such service.

(c) If the arbitration agreement does not provide the manner in which such service shall be made and the person on whom service is to be made has previously appeared in the proceeding or has previously been served in accordance with subdivision (b) of this section, service shall be made in the manner provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

§ 1290.6. Time for service and filing of response; extension

A response shall be served and filed within 10 days after service of the petition except that if the petition is served in the manner provided in paragraph (2) of subdivision (b) of Section 1290.4, the response shall be served and filed within 30 days after service of the petition. The time provided in this section for serving and filing a response may be extended by an agreement in writing between the parties to the court proceeding or, for good cause, by order of the court.

§ 1290.8. Manner of serving response

A response shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of

Part 2 of this code.

§ 1291. Statement of decision

A statement of decision shall be made by the court, if requested pursuant to Section 632, whenever an order or judgment, except a special order after final judgment, is made that is appealable under this title.

§ 1291.2. Setting for hearing; hearing; preference

In all proceedings brought under the provisions of this title, all courts wherein such proceedings are pending shall give such proceedings preference over all other civil actions or proceedings, except older matters of the same character and matters to which special precedence may be given by law, in the matter of setting the same for hearing and in hearing the same to the end that all such proceedings shall be quickly heard and determined.

Venue, Jurisdiction and Costs

§ 1292. Petition made prior to commencement of arbitration; place of filing

Except as otherwise provided in this article, any petition made prior to the commencement of arbitration shall be filed in a court having jurisdiction in:

(a) The county where the agreement is to be performed or was made.

(b) If the agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in this state, the county where any party to the court proceeding resides or has a place of business.

(c) In any case not covered by subdivision (a) or (b) of this section, in any county in this state.

§ 1292.2. Petition made after commencement or completion of arbitration; place of filing

Except as otherwise provided in this article, any petition made after the commencement or completion of arbitration shall be filed in a court having jurisdiction in the county where the arbitration is being or has been held, or, if not held exclusively in any one county of this state, or if held outside of this state, then the petition shall be filed as provided in Section 1292.

§ 1292.4. Order to arbitrate; filing in pending action or proceeding

If a controversy referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a superior court, a petition for an order to arbitrate shall be filed in such action or proceeding.

§ 1292.6. Continuing jurisdiction

After a petition has been filed under this title, the court in which such petition was filed retains

jurisdiction to determine any subsequent petition involving the same agreement to arbitrate and the same controversy, and any such subsequent petition shall be filed in the same proceeding.

§ 1292.8. Motion for stay of action

A motion for a stay of an action on the ground that an issue therein is subject to arbitration shall be made in the court where the action is pending.

§ 1293. Making of agreement as consent to jurisdiction of state courts

The making of an agreement in this State providing for arbitration to be had within this State shall be deemed a consent of the parties thereto to the jurisdiction of the courts of this State to enforce such agreement by the making of any orders provided for in this title and by entering of judgment on an award under the agreement.

§ 1293.2. Costs

The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing with Section 1021) of Title 14 of Part 2 of this code.

Appeals

§ 1294. Appealable orders

An aggrieved party may appeal from:

(a) An order dismissing or denying a petition to compel arbitration.

(b) An order dismissing a petition to confirm, correct or vacate an award.

(c) An order vacating an award unless a rehearing in arbitration is ordered.

(d) A judgment entered pursuant to this title.

(e) A special order after final judgment.

§ 1294.2. Manner of taking appeal; scope of review

The appeal shall be taken in the same manner as an appeal from an order or judgment in a civil action. Upon an appeal from any order or judgment under this title, the court may review the decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the order or judgment appealed from, or which substantially affects the rights of a party. The court may also on such appeal review any order on motion for a new trial. The respondent on the appeal, or party in whose favor the judgment or order was given may, without appealing from such judgment, request the court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification

of the judgment or order from which the appeal is taken. The provisions of this section do not authorize the court to review any decision or order from which an appeal might have been taken.

Arbitration and Conciliation of International Commercial Disputes

§ 1297.11. Application of title; subject to certain agreements

This title applies to international commercial arbitration and conciliation, subject to any agreement which is in force between the United States and any other state or states.

§ 1297.12. Application of title; California as place of arbitration or conciliation

This title, except Article 2 (commencing with Section 1297.81) of Chapter 2 and Article 3 (commencing with Section 1297.91) of Chapter 2, applies only if the place of arbitration or conciliation is in the State of California.

§ 1297.13. International status of agreement; requirements

An arbitration or conciliation agreement is international if any of the following applies:

(a) The parties to an arbitration or conciliation agreement have, at the time of the conclusion of that agreement, their places of business in different states.

(b) One of the following places is situated outside the state in which the parties have their places of business:

(i) The place of arbitration or conciliation if determined in, or pursuant to, the arbitration or conciliation agreement.

(ii) Any place where a substantial part of the obligations of the commercial relationship is to be performed.

(iii) The place with which the subject matter of the dispute is most closely connected.

(c) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to commercial interests in more than one state.

(d) The subject matter of the arbitration or conciliation agreement is otherwise related to commercial interests in more than one state.

§ 1297.14. Place of business; habitual residence

For the purposes of Section 1297.13, if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement, and if a party does not have a place of business, reference is to be made to his habitual residence.

§ 1297.15. One state; United States and District of Columbia

For the purposes of Section 1297.13, the states of the United States, including the District of Columbia, shall be considered one state.

§ 1297.16. Commercial agreements; nature of relationships

An arbitration or conciliation agreement is commercial if it arises out of a relationship of a commercial nature including, but not limited to, any of the following:

(a) A transaction for the supply or exchange of goods or services.

(b) A distribution agreement.

(c) A commercial representation or agency.

(d) An exploitation agreement or concession.

(e) A joint venture or other, related form of industrial or business cooperation.

(f) The carriage of goods or passengers by air, sea, rail, or road.

(g) Construction.

(h) Insurance.

(i) Licensing.

(j) Factoring.

(k) Leasing.

(l) Consulting.

(m) Engineering.

(n) Financing.

(o) Banking.

(p) The transfer of data or technology.

(q) Intellectual or industrial property, including trademarks, patents, copyrights and software programs.

(r) Professional services.

§ 1297.17. Effect on other laws; supersession

This title shall not affect any other law in force in California by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this title. Notwithstanding the foregoing, this title supersedes Sections 1280 to 1284.2, inclusive, with respect to international commercial arbitration and conciliation.

Interpretation

§ 1297.21. Definitions

For the purposes of this title:

(a) "Arbitral award" means any decision of the arbitral tribunal on the substance of the dispute submitted to it and includes an interim, interlocutory, or partial arbitral award.

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

(c) "Arbitration" means any arbitration whether or not administered by a permanent arbitral institution.

(d) "Conciliation" means any conciliation whether or not administered by a permanent conciliation institution.

(e) "Chief Justice" means the Chief Justice of California or his or her designee.

(f) "Court" means a body or an organ of the judicial system of a state.

(g) "Party" means a party to an arbitration or conciliation agreement.

(h) "Superior court" means the superior court in the county in this state selected pursuant to Section 1297.61.

(i) "Supreme Court" means the Supreme Court of California.

§ 1297.22. Freedom of parties to determine issue; third party

Where a provision of this title, except Article 1 (commencing with Section 1297.281) of Chapter 6, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

§ 1297.23. Agreement of parties as including arbitration or conciliation rules

Where a provision of this title refers to the fact that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, such agreement shall be deemed to include any arbitration or conciliation rules referred to in that agreement.

§ 1297.24. Claim; counterclaim; defense

Where this title, other than Article 8 (commencing with Section 1297.251) of Chapter 5, Article 5

(commencing with Section 1297.321) of Chapter 6, or subdivision (a) of Section 1297.322, refers to a claim, it also applies to a counterclaim, and where it refers to a defense, it also applies to a defense to that counterclaim.

Receipt of Written Communications

§ 1297.31. Receipt if delivered to addressee personally, at place of business, habitual residence or mailing address on day of delivery

Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence, or mailing address, and the communication is deemed to have been received on the day it is so delivered.

§ 1297.32. Receipt if delivered to last known address if not found after reasonable inquiry

If none of the places referred to in Section 1297.31 can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered mail or by any other means which provides a record of the attempt to deliver it.

§ 1297.33. Court proceedings; inapplicability of this article to written communications

This article does not apply to written communications in respect of court proceedings.

Waiver of Right to Object

§ 1297.41. Failure to state objection without delay; waiver

A party who knows that any provision of this title, or any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his or her objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to object.

§ 1297.42. Any provision of this title, defined

For purposes of Section 1297.41, “any provision of this title” means any provision of this title in respect of which the parties may otherwise agree.

Extent of Judicial Intervention

§ 1297.51. Prohibition against intervention unless provided for in title or federal law
In matters governed by this title, no court shall intervene except where so provided in this title, or applicable federal law.

Functions

§ 1297.61. Superior court; performance of duties

The functions referred to in Sections 1297.114, 1297.115, 1297.116, 1297.134, 1297.135, 1297.136, 1297.165, 1297.166, and 1297.167 shall be performed by the superior court of the county in which the place of arbitration is located. The functions referred to in Section 1297.81 shall be performed by the superior court selected pursuant to Article 2 (commencing with Section 1292) of Chapter 5 of Title 9.

Arbitration Agreements and Judicial Measures in Aid of Arbitration

Definition and Form of Arbitration Agreements

§ 1297.71. Arbitration agreement, defined; form

An "arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

§ 1297.72. Writing; signed document, exchange of communications, statements of claim and defense or reference in contract

An arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunication which provide a record of this agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Stay of Proceedings

§ 1297.81. Commencement of judicial proceedings by one party; right of other party to stay proceedings and compel arbitration

When a party to an international commercial arbitration agreement as defined in this title commences judicial proceedings seeking relief with respect to a matter covered by the agreement to arbitrate, any other party to the agreement may apply to the superior court for an order to stay the proceedings and to compel arbitration.

§ 1297.82. Timely request; grant

A timely request for a stay of judicial proceedings made under Section 1297.81 shall be granted.

Interim Measures

§ 1297.91. Request for interim protection; incompatibility with arbitration agreement

It is not incompatible with an arbitration agreement for a party to request from a superior court, before or during arbitral proceedings, an interim measure of protection, or for the court to grant such a measure.

§ 1297.92. Tribunal's award to take interim measure of protection, request to superior court for enforcement

Any party to an arbitration governed by this title may request from the superior court enforcement of an award of an arbitral tribunal to take any interim measure of protection of an arbitral tribunal pursuant to Article 2 (commencing with Section 1297.171) of Chapter 4. Enforcement shall be granted pursuant to the law applicable to the granting of the type of interim relief requested.

§ 1297.93. Measures which court may grant

Measures which the court may grant in connection with a pending arbitration include, but are not limited to:

(a) An order of attachment issued to assure that the award to which applicant may be entitled is not rendered ineffectual by the dissipation of party assets.

(b) A preliminary injunction granted in order to protect trade secrets or to conserve goods which are the subject matter of the arbitral dispute.

§ 1297.94. Considerations by court on request for interim relief; public policy

In considering a request for interim relief, the court shall give preclusive effect to any and all findings of fact of the arbitral tribunal including the probable validity of the claim which is the subject of the award for interim relief and which the arbitral tribunal has previously granted in the proceeding in question, provided that such interim award is consistent with public policy.

§ 1297.95. Absence of ruling by tribunal to objection to its jurisdiction; independent finding by court; effect

Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction, the application for interim measures of relief shall be denied. Such a ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceeding.

Composition of Arbitral Tribunals

Number of Arbitrators

§ 1297.101. Agreement by parties if more than one arbitrator

The parties may agree on the number of arbitrators. Otherwise, there shall be one arbitrator.

Appointment of Arbitrators

§ 1297.111. Nationality of arbitrator

A person of any nationality may be an arbitrator.

§ 1297.112. Procedure

Subject to Sections 1297.115 and 1297.116, the parties may agree on a procedure for appointing the arbitral tribunal.

§ 1297.113. Appointment of third arbitrator by two party-appointed arbitrators

Failing such agreement referred to in Section 1297.112, in an arbitration with three arbitrators and two parties, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator.

§ 1297.114. Three arbitrator tribunal; failure to appoint arbitrator; appointment by court

If the appointment procedure in Section 1297.113 applies and either a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, or the two appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment, the appointment shall be made, upon request of a party, by the superior court.

§ 1297.115. Sole arbitrator tribunal; failure of agreement; appointment by court

Failing any agreement referred to in Section 1297.112, in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the appointment shall be made, upon request of a party, by the superior court.

§ 1297.116. Measures to be taken by court to secure appointment

The superior court, upon the request of a party, may take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment, where, under an appointment procedure agreed upon by the parties, any of the following occurs:

(a) A party fails to act as required under that procedure.

(b) The parties, or two appointed arbitrators, fail to reach an agreement expected of them under that procedure.

(c) A third party, including an institution, fails to perform any function entrusted to it under that procedure.

§ 1297.117. Decision by court; finality; not subject to appeal

A decision on a matter entrusted to the superior court pursuant to Sections 1297.114, 127.115, and 1297.116 is final and is not subject to appeal.

§ 1297.118. Superior court; considerations in appointing arbitrators

The superior court, in appointing an arbitrator, shall have due regard to all of the following:

(a) Any qualifications required of the arbitrator by the agreement of the parties.

(b) Other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(c) In the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

§ 1297.119. Immunity; civil liability

An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity.

Grounds for Challenge

§ 1297.121. Disclosure of information questioning impartiality; circumstances

Except as otherwise provided in this title, all persons whose names have been submitted for consideration for appointment or designation as arbitrators or conciliators, or who have been appointed or designated as such, shall, within 15 days, make a disclosure to the parties of any information which might cause their impartiality to be questioned including, but not limited to, any of the following instances:

(a) The person has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

(b) The person served as a lawyer in the matter in controversy, or the person is or has been associated with another who has participated in the matter during such association, or he or she has been a material witness concerning it.

(c) The person served as an arbitrator or conciliator in another proceeding involving one or more of the parties to the proceeding.

(d) The person, individually or a fiduciary, or such person's spouse or minor child residing in such person's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

(e) The person, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person meets any of the following conditions:

(i) The person is or has been a party to the proceeding, or an officer, director, or trustee of a party.

(ii) The person is acting or has acted as a lawyer in the proceeding.

(iii) The person is known to have an interest that could be substantially affected by the outcome of the proceeding.

(iv) The person is likely to be a material witness in the proceeding.

(f) The person has a close personal or professional relationship with a person who meets any of the following conditions:

(i) The person is or has been a party to the proceeding, or an officer, director, or trustee of a party.

(ii) The person is acting or has acted as a lawyer or representative in the proceeding.

(iii) The person is or expects to be nominated as an arbitrator or conciliator in the proceedings.

(iv) The person is known to have an interest that could be substantially affected by the outcome of the proceeding.

(v) The person is likely to be a material witness in the proceeding.

§ 1297.122. Mandatory obligation to disclose information; waiver

The obligation to disclose information set forth in Section 1297.121 is mandatory and cannot be waived as to the parties with respect to persons serving either as the sole arbitrator or sole conciliator or as the chief or prevailing arbitrator or conciliator. The parties may otherwise agree to waive such disclosure.

§ 1297.123. Disclosure by arbitrator of circumstances not previously disclosed; time

From the time of appointment and throughout the arbitral proceedings, an arbitrator, shall, without delay, disclose to the parties any circumstances referred to in Section 1297.121 which were not previously disclosed.

§ 1297.124. Challenge for doubts as to independence, impartiality or qualifications

Unless otherwise agreed by the parties or the rules governing the arbitration, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or as to his or her possession of the qualifications upon which the parties have agreed.

§ 1297.125. Challenge only for reasons aware of after appointment

A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

Challenge Procedure

§ 1297.131. Agreement on procedure; finality of decision

The parties may agree on a procedure for challenging an arbitrator and the decision reached pursuant to that procedure shall be final.

§ 1297.132. Reasons for challenge; statement to tribunal; time

Failing any agreement referred to in Section 1297.131, a party which intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in Sections 1297.124 and 1297.125, whichever shall be later, send a written statement of the reasons for the challenge to the arbitral tribunal.

§ 1297.133. Decision by tribunal

Unless the arbitrator challenged under Section 1297.132 withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

§ 1297.134. Unsuccessful challenge; superior court; decision on challenge; sustaining challenge

If a challenge following the procedure under Section 1297.133 is not successful, the challenging party may request the superior court, within 30 days after having received notice of the decision rejecting the challenge, to decide on the challenge. If a challenge is based upon the grounds set forth in Section 1297.121, and the superior court determines that the facts support a finding that such ground or grounds fairly exist, then the challenge should be sustained.

§ 1297.135. Finality of superior court decision; no appeal

The decision of the superior court under Section 1297.134 is final and is not subject to appeal.

§ 1297.136. Continuation of arbitral proceedings while court request pending

While a request under Section 1297.134 is pending, the arbitral tribunal, including the challenged arbitrator, may continue with the arbitral proceedings and make an arbitral award.

Failure or Impossibility to Act

§ 1297.141. Termination of arbitrator's mandate; circumstances

The mandate of an arbitrator terminates if he becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, and he withdraws from his or her office or the parties agree to the termination of his or her mandate.

§ 1297.142. Remaining controversy; decision by superior court; request of party

If a controversy remains concerning any of the grounds referred to in Section 1297.141, a party may request the superior court to decide on the termination of the mandate.

§ 1297.143. Decision of superior court not appealable

A decision of the superior court under Section 1297.142 is not subject to appeal.

§ 1297.144. Withdrawal of arbitrator or termination of mandate; effect on validity of grounds for challenge.

If, under this section or Section 1297.132, an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in Section 1297.132.

Termination of Mandate and Substitution of Arbitrators

§ 1297.151. Withdrawal of arbitrator from office or by agreement of parties

In addition to the circumstances referred to under Article 4 (commencing with Section 1297.131) and Article 5 (commencing with Section 1297.141) of this chapter, the mandate of an arbitrator terminates upon his or her withdrawal from office for any reason, or by or pursuant to agreement of the parties.

§ 1297.152. Substitute arbitrator; appointment

Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

§ 1297.153. Repetition of previous hearings; agreement of parties or discretion of tribunal

Unless otherwise agreed by the parties:

(a) Where the sole or presiding arbitrator is replaced, any hearings previously held shall be repeated.

(b) Where an arbitrator other than the sole or presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

§ 1297.154. Order or ruling of tribunal prior to replacement of arbitrator; effect

Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal.

Jurisdiction of Arbitral Tribunals

Competence of an Arbitral Tribunal to Rule on Its Jurisdiction

§ 1297.161. Authority to rule on jurisdiction and arbitration agreement; treatment and effect of arbitration clause

The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract, and a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

§ 1297.162. Plea of lack of jurisdiction; effect if party participated in appointment of arbitrator

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that he or she has appointed, or participated in the appointment of, an arbitrator.

§ 1297.163. Plea of exceeding scope of authority; time

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

§ 1297.164. Admission of later plea if delay justified

The arbitral tribunal may, in either of the cases referred to in Sections 1297.162 and 1297.163, admit a later plea if it considers the delay justified.

Competence of an Arbitral Tribunal to Rule on Its Jurisdiction

§ 1297.165. Ruling on plea as a preliminary question or in award on merits

The arbitral tribunal may rule on a plea referred to in Sections 1297.162 and 1297.163 either as a preliminary question or in an award on the merits.

§ 1297.166. Ruling on plea as a preliminary question; request to superior court; waiver

If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party shall request the superior court, within 30 days after having received notice of that ruling, to decide the matter or shall be deemed to have waived objection to such finding.

§ 1297.167. Continuation of arbitral proceedings while court request pending

While a request under Section 1297.166 is pending, the arbitral tribunal may continue with the arbitral proceedings and make an arbitral award.

Interim Measures Ordered by Arbitral Tribunals

§ 1297.171. Interim measure of protection; order by tribunal

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

§ 1297.172. Requiring party to provide security

The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under Section 1297.171.

Manner and Conduct of Arbitration

Equal Treatment of Parties

§ 1297.181. Equal treatment and opportunity to present case

The parties shall be treated with equality and each party shall be given a full opportunity to present his or her case.

Determination of Rules of Procedure

§ 1297.191. Agreement of parties

Subject to this title, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

§ 1297.192. Conduct of arbitration by tribunal

Failing any agreement referred to in Section 1297.191, the arbitral tribunal may, subject to this title, conduct the arbitration in the manner it considers appropriate.

§ 1297.193. Evidentiary questions; determination by tribunal
The power of the arbitral tribunal under Section 1297.192 includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

Place of Arbitration

§ 1297.201. Agreement of parties

The parties may agree on the place of arbitration.

§ 1297.202. Determination by tribunal upon failure of parties to agree

Failing any agreement referred to in Section 1297.201, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

§ 1297.203. Meetings at place tribunal considers appropriate

Notwithstanding Section 1297.201, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of documents, goods, or other property.

Commencement of Arbitral Proceedings

§ 1297.211. Date on which arbitration referral received by respondent

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Language

§ 1297.221. Agreement by parties

The parties may agree upon the language or languages to be used in the arbitral proceedings.

§ 1297.222. Determination by tribunal

Failing any agreement referred to in Section 1297.221, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

§ 1297.223. Application of agreement of parties or determination by tribunal

The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing, and any arbitral award, decision, or other communication by the arbitral tribunal.

§ 1297.224. Documentary evidence; accompaniment by translation; order by tribunal

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statements of Claim and Defense

Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his or her claim, the points at issue, and the relief or remedy sought, and the respondent shall state his or her defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

§ 1297.232. Submission of documents with statement

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

§ 1297.233. Amendment or supplement to claim or defense; exception

Unless otherwise agreed by the parties, either party may amend or supplement his or her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Hearings and Written Proceedings

§ 1297.241. Oral or written presentation of evidence; agreement or decision

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

§ 1297.242. Oral hearings

Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold oral hearings at an appropriate state of the proceedings, if so requested by a party.

§ 1297.243. Notice of hearings and meetings

The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods, or other property.

§ 1297.244. Statements, documents, etc. by one party to tribunal; communication to other party

All statements, documents, or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

§ 1297.245. Oral hearings and meetings in camera

Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera.

Default of a Party

§ 1297.251. Claimant's failure to communicate statement of claim; termination of proceedings

Unless otherwise agreed by the parties, where, without showing sufficient cause, the claimant fails to communicate his or her statement of claim in accordance with Sections 1297.231 and 1297.232, the arbitral tribunal shall terminate the proceedings.

§ 1297.252. Respondent's failure to communicate statement of defense; continuance of proceedings

Unless otherwise agreed by the parties, where, without showing sufficient cause, the respondent fails to communicate his or her statement of defense in accordance with Sections 1297.231 and 1297.232, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.

§ 1297.253. Failure to appear at hearing or produce evidence

Unless otherwise agreed by the parties, where, without showing sufficient cause, a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue with the proceedings and make the arbitral award on the evidence before it.

Expert Appointed by Arbitral Tribunal

§ 1297.261. Appointment of expert; requirement of party to furnish information, documents, etc.

Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for his or her inspection.

§ 1297.262. Participation of expert in oral hearing

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written or oral report, participate in an oral hearing where the parties have the opportunity to question the expert and to present expert witnesses on the points at issue.

Manner and Conduct of Arbitration

Court Assistance in Taking Evidence and Consolidating Arbitrations

§ 1297.271. Request of superior court for assistance on taking evidence; subpoena, witness compensation

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the superior court assistance in taking evidence and the court may execute the request within its competence and according to its rules on taking evidence. In addition, a subpoena may issue as provided in Section 1282.6, in which case the witness compensation provisions of Section 1283.2 shall apply.

§ 1297.272. Consolidations of arbitrations; actions of superior court

Where the parties to two or more arbitration agreements have agreed, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those arbitration agreements, the superior court may, on application by one party with the consent of all the other parties to those arbitration agreements, do one or more of the following:

(a) Order the arbitrations to be consolidated on terms the court considers just and necessary.

(b) Where all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal in accordance with Section 1297.118.

(c) Where all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

§ 1297.273. Consolidations of arbitrations; agreement of parties

Nothing in this article shall be construed to prevent the parties to two or more arbitrations from agreeing to consolidate those arbitrations and taking any steps that are necessary to effect that consolidation.

Making of Arbitral Award and Termination of Proceedings

Rules Applicable to Substance of Dispute

§ 1297.281. Rules of law designated by parties

The arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

§ 1297.282. Designation by parties of substantive and not conflict of law rules

Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

§ 1297.283. Application of appropriate law by tribunal if parties fail to designate law

Failing any designation of the law under Section 1297.282 by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

§ 1297.284. Decision ex aequo et bono or as amiable compositeur if authorized

The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, if the parties have expressly authorized it to do so.

§ 1297.285. Decision of tribunal in accord with terms of contract and usages of trade

In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Decision Making by Panel of Arbitrators

§ 1297.291. Majority vote in proceedings with more than one arbitrator; decisions on procedural

questions by presiding arbitrator

Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all of its members.

Notwithstanding this section, if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

Settlement

§ 1297.301. Encouragement of settlement; mediation, conciliation, etc.

It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

§ 1297.302. Termination of proceedings; record of award

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

§ 1297.303. Arbitral award on agreed terms; law governing

An arbitral award on agreed terms shall be made in accordance with Article 4 (commencing with Section 1297.311) of this chapter and shall state that it is an arbitral award.

§ 1297.304. Arbitral award on agreed terms; status and effect

An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Form And Content of Arbitral Award

§ 1297.311. Award in writing; signatures

An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

§ 1297.312. Signatures; majority of members; reasons for omitted signatures

For the purposes of Section 1297.311, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

§ 1297.313. Basis for award; statement of reasons; exceptions

The arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no

reasons are to be given, or the award is an arbitral award on agreed terms under Article 3 (commencing with Section 1297.301) of this chapter.

§ 1297.314. Date of award and place of arbitration

The arbitral award shall state its date and the place of arbitration as determined in accordance with Article 3 (commencing with Section 1297.201) of Chapter 5 and the award shall be deemed to have been made at that place.

§ 1297.315. Signed copy; delivery to each party

After the arbitral award is made, a signed copy shall be delivered to each party.

§ 1297.316. Interim award; enforcement

The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award. The interim award may be enforced in the same manner as a final arbitral award.

§ 1297.317. Interest

Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

§ 1297.318. Costs; inclusions

(a) Unless otherwise agreed by the parties, the costs of an arbitration shall be at the discretion of the arbitral tribunal.

(b) In making an order for costs, the arbitral tribunal may include as costs any of the following:

(1) The fees and expenses of the arbitrators and expert witnesses.

(2) Legal fees and expenses.

(3) Any administration fees of the institution supervising the arbitration, if any.

(4) Any other expenses incurred in connection with the arbitral proceedings.

(c) In making an order for costs, the arbitral tribunal may specify any of the following:

(1) The party entitled to costs.

(2) The party who shall pay the costs.

(3) The amount of costs or method of determining that amount.

(4) The manner in which the costs shall be paid.

Termination of Proceedings

§ 1297.321. Means; finality of award

The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under Section 1297.322. The award shall be final upon the expiration of the applicable periods in Article 6 (commencing with Section 1297.331) of this chapter.

§ 1297.322. Order for termination; circumstances

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where any of the following occurs:

(a) The claimant withdraws his or her claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute.

(b) The parties agree on the termination of the proceedings.

(c) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

§ 1297.323. Mandate of tribunal; termination

Subject to Article 6 (commencing with Section 1297.331) of this chapter, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

Correction and Interpretation of Awards and Additional Awards

§ 1297.331. Correction of errors; interpretations; time

Within 30 days after receipt of the arbitral award, unless another period of time has been agreed upon by the parties:

(a) A party may request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors, or any other errors of a similar nature.

(b) A party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

§ 1297.332. Duty of tribunal to correct or interpret award; time

If the arbitral tribunal considers any request made under Section 1297.331 to be justified, it shall make the correction or give the interpretation within 30 days after receipt of the request and the interpretation shall form part of the arbitral award.

§ 1297.333. Correction of errors by tribunal on its own initiative; time

The arbitral tribunal may correct any error of the type referred to in subdivision (a) of Section 1297.331, on its own initiative, within 30 days after the date of the arbitral award.

§ 1297.334. Request for additional award; time

Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to the claims presented in the arbitral proceedings but omitted from the arbitral award.

§ 1297.335. Additional award; time

If the arbitral tribunal considers any request made under Section 1297.334 to be justified, it shall make the additional arbitral award within 60 days after receipt of the request.

§ 1297.336. Extension of time for tribunal action under this article

The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation, or make an additional arbitral award under Section 1297.331 or 1297.334.

Correction and Interpretation of Awards and Additional Awards

§ 1297.337. Construction with other laws

Article 4 (commencing with Section 1297.311) of this chapter applies to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

Conciliation

Appointment of Conciliators

§ 1297.341. State policy; resolution of disputes by conciliation

It is the policy of the State of California to encourage parties to an international commercial agreement or transaction which qualifies for arbitration or conciliation pursuant to Section 1297.13, to resolve disputes arising from such agreements or transactions through conciliation. The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliator or conciliators who shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

§ 1297.342. Principles, rights, obligations, etc. or guides for conciliators

The conciliator or conciliators shall be guided by principles of objectivity, fairness, and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous practices between the parties.

§ 1297.343. Conduct of proceedings; criteria; other codes

The conciliator or conciliators may conduct the conciliation proceedings in such a manner as they consider appropriate, taking into account the circumstances of the case, the wishes of the parties, and the desirability of a speedy settlement of the dispute. Except as otherwise provided in this title, other provisions of this code, the Evidence Code, or the California Rules of Court, shall not apply to conciliation proceedings brought under this title.

Representation and Assistance

§ 1297.351. Choice of parties; qualification

The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be a member of the legal profession or licensed to practice law in California.

Report of Conciliators

§ 1297.361. Draft conciliation settlement; contents; copies

At any time during the proceedings, the conciliator or conciliators may prepare a draft conciliation settlement which may include the assessment and apportionment of costs between the parties, and send copies to the parties, specifying the time within which they must signify their approval.

§ 1297.362. Acceptance of settlement not required
No party may be required to accept any settlement proposed by the conciliator or conciliators.

Confidentiality

§ 1297.371. Admissibility of evidence; nondisclosure; exception

When persons agree to participate in conciliation under this title:

(a) Evidence of anything said or of any admission made in the course of the conciliation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil action in which, pursuant to law, testimony may be compelled to be given. However, this subdivision does not limit the admissibility of evidence if all parties participating in conciliation consent to its disclosure.

(b) In the event that any such evidence is offered in contravention of this section, the arbitration tribunal or the court shall make any order which it considers to be appropriate to deal with the matter, including, without limitation, orders restricting the introduction of evidence, or dismissing the case without prejudice.

(c) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the conciliation, or any copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled, in any arbitration or civil action in which, pursuant to law,

testimony may be compelled to be given.

Stay of Arbitration and Resort to Other Proceedings

§ 1297.381. Agreement to stay judicial or arbitral proceedings; time period

The agreement of the parties to submit a dispute to conciliation shall be deemed an agreement between or among those parties to stay all judicial or arbitral proceedings from the commencement of conciliation until the termination of conciliation proceedings.

§ 1297.382. Limitations; tolling

All applicable limitation periods including periods of prescription shall be tolled or extended upon the commencement of conciliation proceedings to conciliate a dispute under this title and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the conciliation proceedings until the 10th day following the termination of conciliation proceedings. For purposes of this article, conciliation proceedings are deemed to have commenced as soon as (a) a party has requested conciliation of a particular dispute or disputes, and (b) the other party or parties agree to participate in the conciliation proceeding.

Termination

§ 1297.391. Circumstances

The conciliation proceedings may be terminated as to all parties by any of the following:

(a) A written declaration of the conciliator or conciliators, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration.

(b) A written declaration of the parties addressed to the conciliator or conciliators to the effect that the conciliation proceedings are terminated, on the date of the declaration.

(c) The signing of a settlement agreement by all of the parties, on the date of the agreement.

§ 1297.392. Particular parties

The conciliation proceedings may be terminated as to particular parties by either of the following:

(a) A written declaration of a party to the other party and the conciliator or conciliators, if appointed, to the effect that the conciliation proceedings shall be terminated as to that particular party, on the date of the declaration.

(b) The signing of a settlement agreement by some of the parties, on the date of the agreement.

§ 1297.393. Conciliator as arbitrator; ineligibility for appointment; exception

No person who has served as conciliator may be appointed as an arbitrator for, or take part in any

arbitral or judicial proceedings in, the same dispute unless all parties manifest their consent to such participation or the rules adopted for conciliation or arbitration otherwise provide.

§ 1297.394. Nonwaiver of rights or remedies by submission to conciliation

By submitting to conciliation, no party shall be deemed to have waived any rights or remedies which that party would have had if conciliation had not been initiated, other than those set forth in any settlement agreement which results from the conciliation.

Enforceability of Decree

§ 1297.401. Written conciliation agreement as arbitration award; effect

If the conciliation succeeds in settling the dispute, and the result of the conciliation is reduced to writing and signed by the conciliator or conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal duly constituted in and pursuant to the laws of this state, and shall have the same force and effect as a final award in arbitration.

Costs

§ 1297.411. Costs; inclusions

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. As used in this article, "costs" includes only the following:

(a) A reasonable fee to be paid to the conciliator or conciliators.

(b) The travel and other reasonable expenses of the conciliator or conciliators.

(c) The travel and other reasonable expenses of witnesses requested by the conciliator or conciliators with the consent of the parties.

(d) The cost of any expert advice requested by the conciliator or conciliators with the consent of the parties.

(e) The cost of any court.

§ 1297.412. Equality of costs among parties; expenses

These costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Effect on Jurisdiction

§ 1297.421. No consent to court jurisdiction upon failure of conciliation

Neither the request for conciliation, the consent to participate in the conciliation proceedings, the participation in such proceedings, nor the entering into a conciliation agreement or settlement shall be deemed as consent to the jurisdiction of any court in this state in the event conciliation fails.

Immunity of Conciliators and Parties

§ 1297.431. Service of process; immunity of participants in conciliation

Neither the conciliator or conciliators, the parties, nor their representatives shall be subject to service of process on any civil matter while they are present in this state for the purpose of arranging for or participating in conciliation pursuant to this title.

§ 1297.432. Action for damages; nonliability of conciliators

No person who serves as a conciliator shall be held liable in an action for damages resulting from any act or omission in the performance of his or her role as a conciliator in any proceeding subject to this title.

Alternative Dispute Resolution

Title 3, Division 8.

Current with amendments received through August of 2008

General Provisions

Rule 3.800. Definitions

As used in this division:

(1) "Alternative dispute resolution process" or "ADR process" means a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute.

(2) "Mediation" means a process in which a neutral person or persons facilitate communication between disputants to assist them in reaching a mutually acceptable agreement. As used in this division, mediation does not include a settlement conference under rule 3.1380.

Judicial Arbitration

Rule 3.810. Application

The rules in this chapter (commencing with this rule) apply if Code of Civil Procedure, part 3, title 3, chapter 2.5 (commencing with section 1141.10) is in effect.

Rule 3.811. Cases subject to and exempt from arbitration

(a) Cases subject to arbitration

Except as provided in (b), the following cases must be arbitrated:
(1) In each superior court with 18 or more authorized judges, all unlimited civil cases where the amount in controversy does not exceed $50,000 as to any plaintiff;
(2) In each superior court with fewer than 18 authorized judges that so provides by local rule, all unlimited civil cases where the amount in controversy does not exceed $50,000 as to any plaintiff;
(3) All limited civil cases in courts that so provide by local rule;
(4) Upon stipulation, any limited or unlimited civil case in any court, regardless of the amount in controversy; and
(5) Upon filing of an election by all plaintiffs, any limited or unlimited civil case in any court in which each plaintiff agrees that the arbitration award will not exceed $50,000 as to that plaintiff.

(b) Cases exempt from arbitration

The following cases are exempt from arbitration:
(1) Cases that include a prayer for equitable relief that is not frivolous or insubstantial;
(2) Class actions;
(3) Small claims cases or trials de novo on appeal from the small claims court;
(4) Unlawful detainer proceedings;
(5) Family Law Act proceedings except as provided in Family Code section 2554;
(6) Any case otherwise subject to arbitration that is found by the court not to be amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation;
(7) Any category of cases otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that, under the circumstances relating to the particular court, arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation; and
(8) Cases involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $50,000.

Rule 3.812. Assignment to arbitration

(a) Stipulations to arbitration

When the parties stipulate to arbitration, the case must be set for arbitration forthwith. The stipulation must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(b) Plaintiff election for arbitration

Upon written election of all plaintiffs to submit a case to arbitration, the case must be set for arbitration forthwith, subject to a motion by defendant for good cause to delay the arbitration hearing. The election must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(c) Cross-actions

A case involving a cross-complaint where all plaintiffs have elected to arbitrate must be removed from the list of cases assigned to arbitration if, upon motion of the cross-complainant made within 15 days after notice of the election to arbitrate, the court determines that the amount in controversy relating to the cross-complaint exceeds $50,000.

(d) Case management conference

Absent a stipulation or an election by all plaintiffs to submit to arbitration, cases must be set for arbitration when the court determines that the amount in controversy does not exceed $50,000. The amount in controversy must be determined at the first case management conference or review under the rules on case management in division 7 of this title that takes place after all named parties have appeared or defaulted.

Rule 3.813. Arbitration program administration
(a) Arbitration administrator

The presiding judge must designate the ADR administrator selected under rule 10.783 to serve as arbitration administrator. The arbitration administrator must supervise the selection of arbitrators for the cases on the arbitration hearing list, generally supervise the operation of the arbitration program, and perform any additional duties delegated by the presiding judge.

(b) Responsibilities of ADR committee

The ADR committee established under rule 10.783 is responsible for:
(1) Appointing the panels of arbitrators provided for in rule 3.814;
(2) Removing a person from a panel of arbitrators;
(3) Establishing procedures for selecting an arbitrator not inconsistent with these rules or local court rules; and
(4) Reviewing the administration and operation of the arbitration program periodically and making recommendations to the Judicial Council as the committee deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

Rule 3.814. Panels of arbitrators
(a) Creation of panels

Every court must have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(b) Composition of panels

The panels of arbitrators must be composed of active or inactive members of the State Bar, retired court commissioners who were licensed to practice law before their appointment as commissioners, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless he or she is an active or inactive member of the State Bar.

(c) Responsibilities of ADR committee

The ADR committee is responsible for determining the size and composition of each panel of arbitrators. The personal injury panel, to the extent feasible, must contain an equal number of those who usually represent plaintiffs and those who usually represent defendants.

(d) Service on panel

Each person appointed serves as a member of a panel of arbitrators at the pleasure of the ADR committee. A person may be on arbitration panels in more than one county. An appointment to a panel is effective when the person appointed:
(1) Agrees to serve;
(2) Certifies that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules; and
(3) Files an oath or affirmation to justly try all matters submitted to him or her.
(e) Panel lists

Lists showing the names of panel arbitrators available to hear cases must be available for public inspection in the ADR administrator's office.

Rule 3.815. Selection of the arbitrator

(a) Selection by stipulation

By stipulation, the parties may select any person to serve as arbitrator. If the parties select a person who is not on the court's arbitration panel to serve as the arbitrator, the stipulation will be effective only if:
(1) The selected person completes a written consent to serve and the oath required of panel arbitrators under these rules; and
(2) Both the consent and the oath are attached to the stipulation.
A stipulation may specify the maximum amount of the arbitrator's award. The stipulation to an arbitrator must be served and filed no later than 10 days after the case has been set for arbitration under rule 3.812.

(b) Selection absent stipulation or local procedures

If the arbitrator has not been selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:
(1) Within 15 days after a case is set for arbitration under rule 3.812, the administrator must determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the number or identity of sides must be decided by the presiding judge in the same manner as disputes in determining sides entitled to peremptory challenges of jurors.
(2) The administrator must select at random a number of names equal to the number of sides, plus one, and mail the list of randomly selected names to counsel for the parties.
(3) Each side has 10 days from the date of mailing to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4) Promptly on the expiration of the 10-day period, the administrator must appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.
(5) The administrator must assign the case to the arbitrator appointed and must give notice of the appointment to the arbitrator and to all parties.

(c) Local selection procedures

Instead of the procedure in (b), a court that has an arbitration program may, by local rule or by procedures adopted by its ADR committee, establish any fair method of selecting an arbitrator that:
(1) Affords each side an opportunity to challenge at least one listed arbitrator peremptorily; and
(2) Ensures that an arbitrator is appointed within 30 days from the submission of a case to arbitration.
The local rule or procedure may require that all steps leading to the selection of the arbitrator take place during or immediately following the case management conference or review under the rules on case management in division 7 of this title at which the court determines the amount in controversy and the suitability of the case for arbitration.

(d) Procedure if first arbitrator declines to serve

If the first arbitrator selected declines to serve, the administrator must vacate the appointment of the arbitrator and may either:
(1) Return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator; or
(2) Certify the case to the court.

(e) Procedure if second arbitrator declines to serve or hearing is not timely held

If the second arbitrator selected declines to serve or if the arbitrator does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 3.818, the administrator must certify the case to the court.

(f) Cases certified to court

If a case is certified to the court under either (d) or (e), the court must hold a case management conference. If the inability to hold an arbitration hearing is due to the neglect or lack of cooperation of a party who elected or stipulated to arbitration, the court may set the case for trial and may make any other appropriate orders. In all other circumstances, the court may reassign the case to arbitration or make any other appropriate orders to expedite disposition of the case.

Rule 3.816. Disqualification for conflict of interest

(a) Arbitrator's duty to disqualify himself or herself

The arbitrator must determine whether any cause exists for disqualification upon any of the grounds set forth in Code of Civil Procedure section 170.1 governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision (a)(2) of section 170.1, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator must promptly notify the administrator

of any known ground for disqualification and another arbitrator must be selected as provided in rule 3.815.

(b) Disclosures by arbitrator

In addition to any other disclosure required by law, no later than five days before the deadline for parties to file a motion for disqualification of the arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, an arbitrator must disclose to the parties:
(1) Any matter subject to disclosure under subdivisions (D)(5)(a) and (D)(5)(b) of canon 6 of the Code of Judicial Ethics; and
(2) Any significant personal or professional relationship the arbitrator has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the arbitrator has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

(c) Request for disqualification

A copy of any request by a party for the disqualification of an arbitrator under Code of Civil Procedure section 170.1 or 170.6 must be sent to the ADR administrator.

(d) Arbitrator's failure to disqualify himself or herself

On motion of any party, made as promptly as possible under Code of Civil Procedure sections 170.1 and 1141.18(d) and before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case must be vacated if the court finds that:
(1) The party has demanded that the arbitrator disqualify himself or herself;
(2) The arbitrator has failed to do so; and
(3) Any of the grounds specified in section 170.1 exists.
The ADR administrator must return the case to the top of the arbitration hearing list and appoint a new arbitrator. The disqualified arbitrator's name must be returned to the list of those available for selection to hear cases, unless the court orders that the circumstances of the disqualification be reviewed by the ADR administrator, the ADR committee, or the presiding judge for appropriate action.

Rule 3.817. Arbitration hearings; notice; when and where held

(a) Setting hearing; notice

Within 15 days after the appointment of the arbitrator, the arbitrator must set the time, date, and place of the arbitration hearing and notify each party and the administrator in writing of the time, date, and place set.

(b) Date of hearing; limitations

Except upon the agreement of all parties and the arbitrator, the arbitration hearing date must not be set:

(1) Earlier than 30 days after the date the arbitrator sends the notice of the hearing under (a); or
(2) On Saturdays, Sundays, or legal holidays.

(c) Hearing completion deadline

The hearing must be scheduled so as to be completed no later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule 3.818.

(d) Hearing location

The hearing must take place in appropriate facilities provided by the court or selected by the arbitrator.

Rule 3.818. Continuances

(a) Stipulation to continuance; consent of arbitrator

Except as provided in (c), the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator must consent to a request for a continuance if it appears that good cause exists. Notice of the continuance must be sent to the ADR administrator.

(b) Court grant of continuance

If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance must notify the arbitrator and the arbitrator must reschedule the hearing, giving notice to all parties to the arbitration proceeding.

(c) Limitation on length of continuance

An arbitration hearing must not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule, except by order of the court upon the motion of a party as provided in (b).

Rule 3.819. Arbitrator's fees

(a) Filing of award or notice of settlement required

The arbitrator's award must be timely filed with the clerk of the court under rule 3.825(b) or a notice of settlement must have been filed before a fee may be paid to the arbitrator.

(b) Exceptions for good cause

On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee:
(1) If the arbitrator devoted a substantial amount of time to a case that was settled without a hearing; or
(2) If the award was not timely filed.

(c) Arbitrator's fee statement

The arbitrator's fee statement must be submitted to the administrator promptly upon the completion of the arbitrator's duties and must set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

Rule 3.820. Communication with the arbitrator

(a) Disclosure of settlement offers prohibited

No disclosure of any offers of settlement made by any party may be made to the arbitrator prior to the filing of the award.

(b) Ex parte communication prohibited

An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending arbitration, except as follows:
(1) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.
(2) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

Rule 3.821. Representation by counsel; proceedings when party absent

(a) Representation by counsel

A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(b) Proceedings when party absent

The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award must not be based solely on the absence of a party. In the event of a default by defendant, the arbitrator must require the plaintiff to submit such evidence as may be appropriate for the making of an award.

Rule 3.822. Discovery

(a) Right to discovery

The parties to the arbitration have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and are subject to all of the same duties, liabilities, and obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure, except as provided in (b).

(b) Completion of discovery

All discovery must be completed not later than 15 days before the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

Rule 3.823. Rules of evidence at arbitration hearing

(a) Presence of arbitrator and parties

All evidence must be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) Application of civil rules of evidence

The rules of evidence governing civil cases apply to the conduct of the arbitration hearing, except:
(1) Written reports and other documents
Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident that gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business.
(A) The arbitrator must receive them in evidence if copies have been delivered to all opposing parties at least 20 days before the hearing.
(B) Any other party may subpoena the author or custodian of the document as a witness and examine the witness as if under cross-examination.
(C) Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, must be accompanied by:
(i) A statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part; and
(ii) A copy of the receipted bill showing the items of repair made and the amount paid.
(D) The arbitrator must not consider any opinion as to ultimate fault expressed in a police report.
(2) Witness statements
The written statements of any other witness may be offered and must be received in evidence if:
(A) They are made by declaration under penalty of perjury;
(B) Copies have been delivered to all opposing parties at least 20 days before the hearing; and
(C) No opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator must disregard any portion of a statement received under this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.
(3) Depositions

(A) The deposition of any witness may be offered by any party and must be received in evidence, subject to objections available under Code of Civil Procedure section 2025.410, notwithstanding that the deponent is not "unavailable as a witness" within the meaning of Evidence Code section 240 and no exceptional circumstances exist, if:
(i) The deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and
(ii) Not less than 20 days before the hearing the proponent of the deposition delivered to all opposing parties notice of intention to offer the deposition in evidence.
(B) The opposing party, upon receiving the notice, may subpoena the deponent and, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the subpoenaing party. These limitations are not applicable to a deposition admissible under the terms of Code of Civil Procedure section 2025.620.

(c) Subpoenas

(1) Compelling witnesses to appear
The attendance of witnesses at arbitration hearings may be compelled through the issuance of subpoenas as provided in the Code of Civil Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It is the duty of the party requesting the subpoena to modify the form of subpoena so as to show that the appearance is before an arbitrator and to give the time and place set for the arbitration hearing.
(2) Adjournment or continuances
At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing.
(3) Contempt
If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the superior court as provided in Code of Civil Procedure section 1991 for other instances of refusal to appear and answer before an officer or commissioner out of court.

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by mail, the times prescribed in this rule for delivery of documents, notices, and demands are increased by five days.

Rule 3.824. Conduct of the hearing

(a) Arbitrator's powers

The arbitrator has the following powers; all other questions arising out of the case are reserved to the court:
(1) To administer oaths or affirmations to witnesses;
(2) To take adjournments upon the request of a party or upon his or her own initiative when deemed necessary;
(3) To permit testimony to be offered by deposition;

(4) To permit evidence to be offered and introduced as provided in these rules;
(5) To rule upon the admissibility and relevancy of evidence offered;
(6) To invite the parties, on reasonable notice, to submit arbitration briefs;
(7) To decide the law and facts of the case and make an award accordingly;
(8) To award costs, not to exceed the statutory costs of the suit; and
(9) To examine any site or object relevant to the case.

(b) Record of proceedings

(1) Arbitrator's record
The arbitrator may, but is not required to, make a record of the proceedings.
(2) Record not subject to discovery
Any records of the proceedings made by or at the direction of the arbitrator are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.
(3) No other record
No other record may be made, and the arbitrator must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by (1).

Rule 3.825. The award

(a) Form and content of the award

(1) Award in writing
The award must be in writing and signed by the arbitrator. It must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.
(2) No findings or conclusions required
The arbitrator is not required to make findings of fact or conclusions of law.

(b) Filing the award or amended award

(1) Time for filing the award
Within 10 days after the conclusion of the arbitration hearing, the arbitrator must file the award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award.
(2) Amended award
Within the time for filing the award, the arbitrator may file and serve an amended award.

Rule 3.826. Trial after arbitration

(a) Request for trial; deadline

Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the

award by the arbitrator, but before the award has been filed with the clerk, is valid and timely filed. The 30-day period within which to request trial may not be extended.

(b) Prosecution of the case

If a party makes a timely request for a trial, the case must proceed as provided under an applicable case management order. If no pending order provides for the prosecution of the case after a request for a trial after arbitration, the court must promptly schedule a case management conference.

(c) References to arbitration during trial prohibited

The case must be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) Costs after trial

In assessing costs after the trial, the court must apply the standards specified in Code of Civil Procedure section 1141.21.

Rule 3.827. Entry of award as judgment

(a) Entry of award as judgment by clerk

The clerk must enter the award as a judgment immediately upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules.

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must mail notice of entry of judgment to all parties who have appeared in the case and must execute a certificate of mailing and place it in the court's file in the case.

(c) Effect of judgment

The judgment so entered has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in rule 3.828. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

Rule 3.828. Vacating judgment on award

(a) Motion to vacate

A party against whom a judgment is entered under an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in Code of Civil Procedure sections 473 or 1286.2(a)(1), (2), and (3), and on no other grounds.

(b) Notice and grounds for granting motion

The motion must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

Rule 3.829. Settlement of case

If a case is settled, each plaintiff or other party seeking affirmative relief must notify the arbitrator and the court as required in rule 3.1385.

Rule 3.830. Arbitration not pursuant to rules

These rules do not prohibit the parties to any civil case or proceeding from entering into arbitration agreements under part 3, title 9 of the Code of Civil Procedure. Neither the ADR committee nor the ADR administrator may take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

General Rules Relating to Mediation of Civil Cases

Rule 3.850. Purpose and function

(a) Standards of conduct

The rules in this article establish the minimum standards of conduct for mediators in court-connected mediation programs for general civil cases. These rules are intended to guide the conduct of mediators in these programs, to inform and protect participants in these mediation programs, and to promote public confidence in the mediation process and the courts. For mediation to be effective, there must be broad public confidence in the integrity and fairness of the process. Mediators in court-connected programs are responsible to the parties, the public, and the courts for conducting themselves in a manner that merits that confidence.

(b) Scope and limitations

These rules are not intended to:
(1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;
(2) Create a basis for challenging a settlement agreement reached in connection with mediation; or
(3) Create a basis for a civil cause of action against a mediator.

Rule 3.851. Application

(a) Circumstances applicable

The rules in this article apply to mediations in which a mediator:
(1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program; and
(2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program.
(b) Application to listed firms

If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this article when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.

(c) Time of applicability

Except as otherwise provided in these rules, the rules in this article apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.

(d) Inapplicability to judges

The rules in this article do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.

(e) Inapplicability to settlement conferences

The rules in this article do not apply to settlement conferences conducted under rule 3.1380.

Rule 3.852. Definitions

As used in this article, unless the context or subject matter requires otherwise:
(1) “Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
(2) “Mediator” means a neutral person who conducts a mediation.
(3) “Participant” means any individual, entity, or group, other than the mediator taking part in a mediation, including but not limited to attorneys for the parties.
(4) “Party” means any individual, entity, or group taking part in a mediation that is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a petitioner, a respondent, or an intervenor in the case.

Rule 3.853. Voluntary participation and self-determination

A mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. For this purpose a mediator must:
(1) Inform the parties, at or before the outset of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement of the parties;
(2) Respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and
(3) Refrain from coercing any party to make a decision or to continue to participate in the mediation.

Rule 3.854. Confidentiality

(a) Compliance with confidentiality law

A mediator must, at all times, comply with the applicable law concerning confidentiality.

(b) Informing participants of confidentiality

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.

(c) Confidentiality of separate communications; caucuses

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.

(d) Use of confidential information

A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

Rule 3.855. Impartiality, conflicts of interest, disclosure, and withdrawal

(a) Impartiality

A mediator must maintain impartiality toward all participants in the mediation process at all times.

(b) Disclosure of matters potentially affecting impartiality

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include:
(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.
(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

(c) Proceeding if there are no objections or questions concerning impartiality

Except as provided in (f), if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

(d) Responding to questions or concerns concerning impartiality

If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in (f), if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

(e) Withdrawal or continuation upon party objection concerning impartiality

In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw. In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

(f) Circumstances requiring mediator recusal despite party consent

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:
(1) The mediator cannot maintain impartiality toward all participants in the mediation process; or
(2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

Rule 3.856. Competence

(a) Compliance with court qualifications

A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.

(b) Truthful representation of background

A mediator has a continuing obligation to truthfully represent his or her background to the court and

participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.

(c) Informing court of public discipline and other matters

A mediator must also inform the court if:
(1) Public discipline has been imposed on the mediator by any public disciplinary or professional licensing agency;
(2) The mediator has resigned his or her membership in the State Bar or another professional licensing agency while disciplinary or criminal charges were pending;
(3) A felony charge is pending against the mediator;
(4) The mediator has been convicted of a felony or of a misdemeanor involving moral turpitude; or
(5) There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

(d) Assessment of skills; withdrawal

A mediator has a continuing obligation to assess whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively. A mediator must decline to serve or withdraw from the mediation if the mediator determines that he or she does not have the level of skill, knowledge, or ability necessary to conduct the mediation effectively.

Rule 3.857. Quality of mediation process

(a) Diligence

A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

(b) Procedural fairness

A mediator must conduct the mediation proceedings in a procedurally fair manner. “Procedural fairness” means a balanced process in which each party is given an opportunity to participate and make uncoerced decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

(c) Explanation of process

In addition to the requirements of rule 3.853 (voluntary participation and self-determination), rule 3.854(a) (confidentiality), and (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:
(1) The nature of the mediation process;
(2) The procedures to be used; and
(3) The roles of the mediator, the parties, and the other participants.

(d) Representation and other professional services

A mediator must inform all participants, at or before the outset of the first mediation session, that during the mediation he or she will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.

(e) Recommending other services

A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

(f) Nonparticipants' interests

A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

(g) Combining mediation with other ADR processes

A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

(h) Settlement agreements

Consistent with (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.

(i) Discretionary termination and withdrawal

A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that:
(1) The mediation is being used to further illegal conduct;
(2) A participant is unable to participate meaningfully in negotiations; or
(3) Continuation of the process would cause significant harm to any participant or a third party.

(j) Manner of withdrawal

When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw,

the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

Rule 3.858. Marketing

(a) Truthfulness

A mediator must be truthful and accurate in marketing his or her mediation services. A mediator is responsible for ensuring that both his or her own marketing activities and any marketing activities carried out on his or her behalf by others comply with this rule.

(b) Representations concerning court approval

A mediator may indicate in his or her marketing materials that he or she is a member of a particular court's panel or list but, unless specifically permitted by the court, must not indicate that he or she is approved, endorsed, certified, or licensed by the court.

(c) Promises, guarantees, and implications of favoritism

In marketing his or her mediation services, a mediator must not:
(1) Promise or guarantee results; or
(2) Make any statement that directly or indirectly implies bias in favor of one party or participant over another.

(d) Solicitation of business

A mediator must not solicit business from a participant in a mediation proceeding while that mediation is pending.

Rule 3.859. Compensation and gifts

(a) Compliance with law

A mediator must comply with any applicable requirements concerning compensation established by statute or the court.

(b) Disclosure of and compliance with compensation terms

Before commencing the mediation, the mediator must disclose to the parties in writing any fees, costs, or charges to be paid to the mediator by the parties. A mediator must abide by any agreement that is reached concerning compensation.

(c) Contingent fees

The amount or nature of a mediator's fee must not be made contingent on the outcome of the mediation.

(d) Gifts and favors

A mediator must not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, bequest, or favor that might reasonably raise a question concerning the mediator's impartiality.

Rule 3.860. Attendance sheet and agreement to disclosure

(a) Attendance sheet

In each mediation to which these rules apply under rule 3.851(a), the mediator must request that all participants in the mediation complete an attendance sheet stating their names, mailing addresses, and telephone numbers; retain the attendance sheet for at least two years; and submit it to the court on request.

(b) Agreement to disclosure

The mediator must agree, in each mediation to which these rules apply under rule 3.851(a), that if an inquiry or a compliant is made about the conduct of the mediator, mediation communications may be disclosed solely for purposes of a complaint procedure conducted pursuant to rule 3.865 to address that complaint or inquiry.

Rule 3.865. Complaint procedure required

(a) Court procedures required

Each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in the court must establish procedures for receiving, investigating, and resolving complaints that mediators who are on the court's list or who are recommended, selected, appointed, or compensated by the court failed to comply with the rules for conduct of mediators set forth in this article, when applicable.

(b) Actions court may take

The court may impose additional mediation training requirements on a mediator, reprimand a mediator, remove a mediator from the court's panel or list, or otherwise prohibit a mediator from receiving future mediation referrals from the court if the mediator fails to comply with the rules of conduct for mediators in this article, when applicable.

Rule 3.866. Designation of person to receive inquiries and complaints

In each superior court that is required to establish a complaint procedure under rule 3.865, the presiding judge must designate a person who is knowledgeable about mediation to receive and coordinate the investigation of any inquiries or complaints about the conduct of mediators who are subject to rule 3.865.

Rule 3.867. Confidentiality of complaint procedures, information, and records

(a) This rule's requirement that rule 3.865 complaint procedures be confidential is intended to:

(1) Preserve the confidentiality of mediation communications as required by Evidence Code sections 1115-1128;
(2) Promote cooperation in the reporting, investigation, and resolution of complaints about mediators on court panels; and
(3) Protect mediators against damage to their reputations that might result from unfounded complaints against them.

(b) All procedures for receiving, investigating, and resolving inquiries or complaints about the conduct of mediators must be designed to preserve the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

(c) All communications, inquiries, complaints, investigations, procedures, deliberations, and decisions about the conduct of a mediator under rule 3.865 must occur in private and must be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint under rule 3.865 may be open to the public or disclosed outside the course of the rule 3.865 complaint procedure except as provided in (d) or as otherwise required by law.

(d) The presiding judge or a person designated by the presiding judge for this purpose may, in his or her discretion, authorize the disclosure of information or records concerning rule 3.865 complaint procedures that do not reveal any mediation communications, including the name of a mediator against whom action has been taken under rule 3.865, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should consider the purposes of the confidentiality of rule 3.865 complaint procedures stated in (a)(2) and (a)(3).

(e) In determining whether the disclosure of information or records concerning rule 3.865 complaint procedures is required by law, courts should consider the purposes of the confidentiality of rule 3.865 complaint procedures stated in (a). Before the disclosure of records concerning procedures under rule 3.865 is ordered, notice should be given to any person whose mediation communications may be revealed.

Rule 3.868. Disqualification from subsequently serving as an adjudicator

A person who has participated in or received information about the receipt, investigation or resolution of an inquiry or a complaint under rule 3.865 must not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation, as a judge, an arbitrator, a referee, or a juror, or in any other adjudicative capacity, in any court action or proceeding.

Civil Action Mediation Program Rules

Rule 3.870. Application

The rules in this chapter implement the Civil Action Mediation Act, Code of Civil Procedure section 1775 et seq. Under section 1775.2, they apply in the Superior Court of California, County of Los Angeles and in other courts that elect to apply the act.

Rule 3.871. Actions subject to mediation

(a) Actions that may be submitted to mediation

The following actions may be submitted to mediation under these provisions:

(1) By court order

Any action in which the amount in controversy, independent of the merits of liability, defenses, or comparative negligence, does not exceed $50,000 for each plaintiff. The court must determine the amount in controversy under Code of Civil Procedure section 1775.5. Determinations to send a case to mediation must be made by the court after consideration of the expressed views of the parties on the amenability of the case to mediation. The court must not require the parties or their counsel to personally appear in court for a conference held solely to determine whether to send their case to mediation.

(2) By stipulation

Any other action, regardless of the amount of controversy, in which all parties stipulate to such mediation. The stipulation must be filed not later than 90 days before trial unless the court permits a later time.

(b) Case-by-case determination

Amenability of a particular action for mediation must be determined on a case-by-case basis, rather than categorically.

Rule 3.872. Panels of mediators

Each court, in consultation with local bar associations, ADR providers, and associations of providers, must identify persons who may be appointed as mediators. The court must consider the criteria in standard 10.72 of the Standards of Judicial Administration and California Code of Regulations, title 16, section 3622, relating to the Dispute Resolution Program Act.

Rule 3.873. Selection of mediators

The parties may stipulate to any mediator, whether or not the person selected is among those identified under rule 3.872, within 15 days of the date an action is submitted to mediation. If the parties do not stipulate to a mediator, the court must promptly assign a mediator to the action from those identified under rule 3.872.

Rule 3.874. Attendance, participant lists, and mediation statements

(a) Attendance

(1) All parties and attorneys of record must attend all mediation sessions in person unless excused or permitted to attend by telephone as provided in (3). If a party is not a natural person, a representative of that party with authority to resolve the dispute or, in the case of a governmental entity that requires an agreement to be approved by an elected official or a legislative body, a representative with authority

to recommend such agreement, must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).
(2) If any party is insured under a policy of insurance that provides or may provide coverage for a claim that is a subject of the action, a representative of the insurer with authority to settle or recommend settlement of the claim must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).
(3) The mediator may excuse a party, attorney, or representative from the requirement to attend a mediation session under (1) or (2) or permit attendance by telephone. The party, attorney, or representative who is excused or permitted to attend by telephone must promptly send a letter or an electronic communication to the mediator and to all parties confirming the excuse or permission.
(4) Each party may have counsel present at all mediation sessions that concern the party.

(b) Participant lists and mediation statements

(1) At least five court days before the first mediation session, each party must serve a list of its mediation participants on the mediator and all other parties. The list must include the names of all parties, attorneys, representatives of a party that is not a natural person, insurance representatives, and other persons who will attend the mediation with or on behalf of that party. A party must promptly serve a supplemental list if the party subsequently determines that other persons will attend the mediation with or on behalf of the party.
(2) The mediator may request that each party submit a short mediation statement providing information about the issues in dispute and possible resolutions of those issues and other information or documents that may appear helpful to resolve the dispute.

Rule 3.875. Filing of statement by mediator
Within 10 days after conclusion of the mediation, the mediator must file a statement on Statement of Agreement or Nonagreement (form ADR-100), advising the court whether the mediation ended in full agreement or nonagreement as to the entire case or as to particular parties in the case.

Rule 3.876. Coordination with Trial Court Delay Reduction Act
(a) Effect of mediation on time standards

Submission of an action to mediation under the rules in this chapter does not affect time periods specified in the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.), except as provided in this rule.

(b) Exception to delay reduction time standards

On written stipulation of the parties filed with the court, the court may order an exception of up to 90 days to the delay reduction time standards to permit mediation of an action. The court must coordinate the timing of the exception period with its delay reduction calendar.

(c) Time for completion of mediation

Mediation must be completed within 60 days of a reference to a mediator, but that period may be extended by the court for up to 30 days on a showing of good cause.

(d) Restraint in discovery

The parties should exercise restraint in discovery while a case is in mediation. In appropriate cases to accommodate that objective, the court may issue a protective order under Code of Civil Procedure section 2017(c) and related provisions.

Rule 3.877. Statistical information
(a) Quarterly information reports

Each court must submit quarterly to the Judicial Council pertinent information on:
(1) The cost and time savings afforded by mediation;
(2) The effectiveness of mediation in resolving disputes;
(3) The number of cases referred to mediation;
(4) The time cases were in mediation; and
(5) Whether mediation ended in full agreement or nonagreement as to the entire case or as to particular parties in the case.

(b) Submission of reports to the Judicial Council

The information required by this rule must be submitted to the Judicial Council either on the Statement of Agreement or Nonagreement (form ADR-100) and ADR Information Form (form ADR-101) or as an electronic database that includes, at a minimum, all of the information required on these forms. The format of any electronic database used to submit this information must be approved by the Administrative Office of the Courts.

(c) Parties and mediators to supply information

Each court must require parties and mediators, as appropriate, to supply pertinent information for the reports required under this rule.

(d) Alternative reporting method

On request, a court may report cases in mediation under the rules in this chapter under the appropriate reporting methods for cases stayed for contractual arbitration.

Rule 3.878. Educational material
Each court must make available educational material, adopted by the Judicial Council, or from other sources, describing available ADR processes in the community.

Mediation
Part 3, Title 11.6.

Current with legislation through the 2008 Regular Session

§ 1775. Findings and declarations

The Legislature finds and declares that:

(a) The peaceful resolution of disputes in a fair, timely, appropriate, and cost-effective manner is an essential function of the judicial branch of state government under Article VI of the California Constitution.

(b) In the case of many disputes, litigation culminating in a trial is costly, time consuming, and stressful for the parties involved. Many disputes can be resolved in a fair and equitable manner through less formal processes.

(c) Alternative processes for reducing the cost, time, and stress of dispute resolution, such as mediation, have been effectively used in California and elsewhere. In appropriate cases mediation provides parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving these disputes. Mediation may also assist to reduce the backlog of cases burdening the judicial system. It is in the public interest for mediation to be encouraged and used where appropriate by the courts.

(d) Mediation and similar alternative processes can have the greatest benefit for the parties in a civil action when used early, before substantial discovery and other litigation costs have been incurred. Where appropriate, participants in disputes should be encouraged to utilize mediation and other alternatives to trial for resolving their differences in the early stages of a civil action.

(e) As a pilot project in Los Angeles County and in other counties which elect to apply this title, courts should be able to refer cases to appropriate dispute resolution processes such as judicial arbitration and mediation as an alternative to trial, consistent with the parties' right to obtain a trial if a dispute is not resolved through an alternative process.

(f) The purpose of this title is to encourage the use of court-annexed alternative dispute resolution methods in general, and mediation in particular. It is estimated that the average cost to the court for processing a civil case of the kind described in Section 1775.3 through judgment is three thousand nine hundred forty-three dollars ($3,943) for each judge day, and that a substantial portion of this cost can be saved if these cases are resolved before trial.

The Judicial Council, through the Administrative Office of the Courts, shall conduct a survey to determine the number of cases resolved by alternative dispute resolution authorized by this title, and shall estimate the resulting savings realized by the courts and the parties. The results of the survey shall be included in the report submitted pursuant to Section 1775.14. The programs authorized by this title shall be deemed successful if they result in estimated savings of at least two hundred fifty thousand dollars ($250,000) to the courts and corresponding savings to the parties.

§ 1775.1. Definitions

(a) As used in this title, “mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) Unless otherwise specified in this title or ordered by the court, any act to be performed by a party may also be performed by his or her counsel of record.

§ 1775.2. Application of title
(a) This title shall apply to the courts of the County of Los Angeles.

(b) A court of any county, at the option of the presiding judge, may elect whether or not to apply this title to eligible actions filed in that court, and this title shall not apply in any court which has not so elected. An election under this subdivision may be revoked by the court at any time.

(c) Courts are authorized to apply this title to all civil actions pending or commenced on or after January 1, 1994.

§ 1775.3. At-issue civil actions; actions with public agency or public entity as party
(a) In the courts of the County of Los Angeles and in other courts that elect to apply this title, all at-issue civil actions in which arbitration is otherwise required pursuant to Section 1141.11, whether or not the action includes a prayer for equitable relief, may be submitted to mediation by the presiding judge or the judge designated under this title as an alternative to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3.

(b) Any civil action otherwise within the scope of this title in which a party to the action is a public agency or public entity may be submitted to mediation pursuant to subdivision (a).

§ 1775.4. Actions ordered into arbitration; actions ordered into mediation
An action that has been ordered into arbitration pursuant to Section 1141.11 or 1141.12 may not be ordered into mediation under this title, and an action that has been ordered into mediation pursuant to Section 1775.3 may not be ordered into arbitration pursuant to Section 1141.11.

§ 1775.5. Cases ordered into mediation; limitation on amount in controversy
The court shall not order a case into mediation where the amount in controversy exceeds fifty thousand dollars ($50,000). The determination of the amount in controversy shall be made in the same manner as provided in Section 1141.16 and, in making this determination, the court shall not consider the merits of questions of liability, defenses, or comparative negligence.

§ 1775.6. Selection of mediator; time limitations
In actions submitted to mediation pursuant to Section 1775.3, a mediator shall be selected for the action within 30 days of its submission to mediation. The method of selection and qualification of the mediator shall be as the parties determine. If the parties are unable to agree on a mediator within 15 days of the date of submission of the action to mediation, the court may select a mediator pursuant to standards adopted by the Judicial Council.

§ 1775.7. Running of time limitations
(a) Submission of an action to mediation pursuant to this title shall not suspend the running of the time periods specified in Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2, except as provided in this section.

(b) If an action is or remains submitted to mediation pursuant to this title more than four years and six months after the plaintiff has filed the action, then the time beginning on the date four years and six months after the plaintiff has filed the action and ending on the date on which a statement of

nonagreement is filed pursuant to Section 1775.9 shall not be included in computing the five-year period specified in Section 583.310.

§ 1775.8. Compensation of court-appointed mediators; administrative costs

(a) The compensation of court-appointed mediators shall be the same as the compensation of arbitrators pursuant to Section 1141.18, except that no compensation shall be paid prior to the filing of a statement of nonagreement by the mediator pursuant to Section 1775.9 or prior to settlement of the action by the parties.

(b) All administrative costs of mediation, including compensation of mediators, shall be paid in the same manner as for arbitration pursuant to Section 1141.28. Funds allocated for the payment of arbitrators under the judicial arbitration program shall be equally available for the payment of mediators under this title.

§ 1775.9. Termination of mediation; statement of nonagreement

(a) In the event that the parties to mediation are unable to reach a mutually acceptable agreement and any party to the mediation wishes to terminate the mediation, then the mediator shall file a statement of nonagreement. This statement shall be in a form to be developed by the Judicial Council.

(b) Upon the filing of a statement of nonagreement, the matter shall be calendared for trial, by court or jury, both as to law and fact, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to mediation, or shall receive civil priority on the next setting calendar.

§ 1775.10. Statements made during mediation; evidence

All statements made by the parties during the mediation shall be subject to Sections 703.5 and 1152, and Chapter 2 (commencing with Section 1115) of Division 9, of the Evidence Code.

§ 1775.11. Discovery

Any party who participates in mediation pursuant to Section 1775.3 shall retain the right to obtain discovery to the extent available under the Civil Discovery Act, Title 4 (commencing with Section 2016.010) of Part 4.

§ 1775.12. Reference to mediation or statement of nonagreement at subsequent trial

Any reference to the mediation or the statement of nonagreement filed pursuant to Section 1775.9 during any subsequent trial shall constitute an irregularity in the proceedings of the trial for the purposes of Section 657.

§ 1775.13. Legislative intent

It is the intent of the Legislature that nothing in this title be construed to preempt other current or future alternative dispute resolution programs operating in the trial courts.

§ 1775.14. Report to legislature

(a) On or before January 1, 1998, the Judicial Council shall submit a report to the Legislature concerning court alternative dispute resolution programs. This report shall include, but not be limited to, a review of programs operated in Los Angeles County and other courts that have elected to apply this title, and shall examine, among other things, the effect of this title on the judicial arbitration

programs of courts that have participated in that program.

(b) The Judicial Council shall, by rule, require that each court applying this title file with the Judicial Council data that will enable the Judicial Council to submit the report required by subdivision (a).

§ 1775.15. Rules provided by Judicial Council
Notwithstanding any other provision of law except the provisions of this title, the Judicial Council shall provide by rule for all of the following:

(a) The procedures to be followed in submitting actions to mediation under this act.

(b) Coordination of the procedures and processes under this act with those under the trial Court Delay Reduction Act, Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code.

(c) Exceptions for cause from provisions of this title. In providing for exceptions, the Judicial Council shall take into consideration whether the civil action might not be amenable to mediation.

Evidence Affected or Excluded by Extrinsic Policies – Mediation
Division 9, Chapter 2.

Current with legislation through the 2008 Regular Session

§ 1115. Definitions
For purposes of this chapter:

(a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

§ 1116. Effect of chapter
(a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.

(b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

§ 1117. Application of chapter

(a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.

(b) This chapter does not apply to either of the following:

(1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

(2) A settlement conference pursuant to Rule 3.1380 of the California Rules of Court.

§ 1118. Oral agreements

An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

(a) The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording.

(b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.

(c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.

(d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

§ 1119. Written or oral communications during mediation process; admissibility

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

§ 1120. Evidence otherwise admissible

(a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation

consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

(1) The admissibility of an agreement to mediate a dispute.

(2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

§ 1121. Mediator's reports and findings

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

§ 1122. Communications or writings; conditions to admissibility

(a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

§ 1123. Written settlement agreements; conditions to admissibility

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

§ 1124. Oral agreements; conditions to admissibility
An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

(a) The agreement is in accordance with Section 1118.

(b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.

(c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

§ 1125. End of mediation; satisfaction of conditions
(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that fully resolves the dispute.

(2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.

(3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.

(4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.

(5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that partially resolves the dispute.

(2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

§ 1126. Protections before and after mediation ends

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

§ 1127. Attorney's fees and costs

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

§ 1128. Subsequent trials; references to mediation

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

Mediation and Resolution of Land Use Disputes

Title 7, Division 1, Chapter 9.3.

Current with legislation through the 2008 Regular Session

§ 66030. Legislative findings and intent

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

§ 66031. Actions subject to mediation proceeding; selecting a mediator; considerations; failure to select a mediator

(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency that can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

§ 66032. Tolling of time limitations; consideration of mediation as meeting of legislative or state body; reactivation of action; findings of mediator; applicability of Evidence Code sections

(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

§ 66033. Completion of mediation; report to office of permit assistance

(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

§ 66034. Failure of mediation to resolve action; settlement conferences
If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

§ 66035. Adoption of rules, forms, and standards
The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

Agricultural Labor Relations – Contract Dispute Resolution

Division 2, Part 3.5, Chapter 6.5.

Current with legislation through the 2008 Regular Session

§ 1164. Declaration of failure to reach collective bargaining agreement; order for mandatory mediation and conciliation; selection of mediator; meetings; report; factors considered
(a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11 or (2) 180 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. “Agricultural employer,” for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and

conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

(e) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.

(3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.

(5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed.

§ 1164.3. Review of report; procedure

(a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order

the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall, within 21 days, issue an order requiring the mediator to modify the terms of the collective bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a second report resolving any outstanding issues. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

§ 1164.5. Judicial review; petition; scope

(a) Within 30 days after the order of the board takes effect, a party may petition for a writ of review in the court of appeal or the California Supreme Court. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the board to certify its record in the case to the court within the time specified. The petition for review shall be served personally upon the executive director of the board and the nonappealing party personally or by service.

(b) The review by the court shall not extend further than to determine, on the basis of the entire record, whether any of the following occurred:

(1) The board acted without, or in excess of, its powers or jurisdiction.

(2) The board has not proceeded in the manner required by law.

(3) The order or decision of the board was procured by fraud or was an abuse of discretion.

(4) The order or decision of the board violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(c) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

§ 1164.7. Judicial review; procedure

(a) The board and each party to the action or proceeding before the mediator may appear in the review proceeding. Upon the hearing, the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings instituted under this chapter.

§ 1164.9. Judicial review; jurisdiction

No court of this state, except the court of appeal or the Supreme Court, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the board to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the board in the performance of its official duties, as provided by law and the rules of court.

§ 1164.11. Criteria required prior to filing demand

A demand made pursuant to paragraph (1) of subdivision (a) of Section 1164 may be made only in cases which meet all of the following criteria: (a) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them.

§ 1164.12. Limitation upon number of declarations allowed

To ensure an orderly implementation of the mediation process ordered by this chapter, a party may not file a total of more than 75 declarations with the board prior to January 1, 2008. In calculating the number of declarations so filed, the identity of the other party with respect to whom the declaration is filed, shall be irrelevant.

§ 1164.13. Severability

The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Agricultural Labor Relations Board - Mandatory Mediation and Conciliation
Cal. Admin. Code Title 8, Division 2, Chapter 4.

Current through December of 2008

§ 20400. Filing of Declaration Requesting Mandatory Mediation and Conciliation.

(a) Where the certification issued prior to January 1, 2003:
A declaration pursuant to Labor Code section 1164, subdivision (a)(1) may be filed with the Board by either the agricultural employer or the certified labor organization at any time at least 90 days after a renewed demand to bargain, as defined in subdivision (2) below. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The declaration shall be signed under penalty of perjury by an authorized representative of the filing party, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, and shall state that (A) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (B) the employer has committed an unfair labor practice, describing the nature of the violation, and providing the corresponding Board decision number or case number, (C) the parties have not previously had a binding contract between them, and (D) the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements and establishes the date of the renewed demand to bargain.

(1) The unfair labor practice referred to above is one where a final Board decision has issued or where there is a settlement agreement that includes an admission of liability.

(2) The renewed demand to bargain referred to above is one that occurred on or after January 1, 2003.

(b) Where the certification issued after January 1, 2003:
A declaration pursuant to Labor Code section 1164, subdivision (a)(2) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 180 days after the initial request to bargain by either party following the certification. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, shall provide the date of the initial request to bargain, and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(c) For the purpose of determining the number of declarations permitted to be filed by a labor organization, the term "party" as used in Labor Code section 1164.12 shall refer to the labor organization named in the Board's certifications.

§ 20401. Answer to Declaration.

(a) Within three (3) days of service of a declaration, the other party to the collective bargaining relationship (or alleged bargaining relationship) may file an answer to the declaration. The answer

shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The answer shall be signed under penalty of perjury by an authorized representative of the filing party, and shall identify any statements in the declaration that are disputed. In addition, the answer shall be accompanied by any documentary or other supporting evidence. If it is claimed that the employer has not engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of the declaration seeking referral to mandatory mediation, payroll records sufficient to support the claim shall be submitted with the answer. Payroll records shall be submitted in electronic form if kept in that form in the normal course of business.

(b) All statements in a declaration that are not expressly denied in the answer shall be deemed admitted.

§ 20402. Evaluation of the Declaration and Answer.

(a) The Board shall dismiss any declaration that fails to include all of the requirements of section 20400, subdivision (a) or (b), as applicable. A declaration dismissed under this regulation shall not be included in the total of seventy-five (75) declarations permitted under Labor Code section 1164.12

(b) If no answer to the declaration is timely filed, or if the answer admits the truth of all factual prerequisites to the validity of the declaration, the Board shall immediately issue an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

(c) Where a timely filed answer disputes the existence of any of the prerequisites for referral to mediation, the Board shall attempt to resolve the dispute on the basis of the parties' filing and/or upon investigation. The Board shall issue a decision within 5 days of receipt of the answer either (1) dismissing the petition, or (2) referring the matter to mediation, or (3) scheduling an expedited evidentiary hearing to resolve any factual issues material to the question of the existence of any of the prerequisites.

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:
(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of

mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

§ 20403. Selection of Mediator.

Within seven (7) days of the receipt of the list of nine mediators, the parties shall either select a mediator from the list in accordance with Labor Code section 1164, subdivision (b), or mutually designate a mediator from a list of all qualified mediators maintained by the State Mediation and Conciliation Service.

§ 20404. Disqualification of Mediator.

(a) Any mediator selected pursuant to Labor Code section 1164, subdivision (b), shall be subject to disqualification for bias, prejudice, or interest in the outcome of the proceeding.

(b) Whenever a mediator shall have knowledge of any fact, which by reason of bias or prejudice makes it appear probable that a fair and impartial mediation, within the meaning of Labor Code section 1164, et seq., cannot be held before him or her, it shall be his or her duty to immediately notify the Executive Secretary, setting forth all reasons for his or her belief.

(c) Prior to the first mediation session, any party may request the mediator disqualify himself or herself whenever it appears probable that a fair and impartial mediation cannot be held by the selected

mediator. The request shall be under oath and shall specifically set forth all facts constituting the grounds for the disqualification of the mediator.
(1) If the mediator admits his or her disqualification, such admission shall be immediately communicated to the Executive Secretary, who shall refer the matter to the State Mediation and Conciliation Service for selection of another mediator in accordance with section 20403.

(2) If the mediator does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule in writing or on the record, state the grounds for the ruling, and proceed with the mediation. The party requesting the disqualification may, upon issuance of the mediator's report, file for review of the mediator's report on the grounds set forth in Labor Code section 1164.3, subdivision (e), and in accordance with section 20408 of these regulations.

§ 20405. Notice of Mediation.

The mediator shall appoint a time and place for the mediation and cause notice thereof to be served personally or by registered or certified mail on the parties to the mediation not less than fifteen (15) days before the mediation. The mediation shall commence within thirty (30) days of the selection of the mediator, or as soon as practical. Appearance at the mediation shall waive the right to notice.

§ 20406. Discovery.

(a) Witness and Document Lists. Either party shall within fifteen (15) days of receipt of a Board order directing the parties to mandatory mediation and conciliation have the right to demand in writing, served personally or by registered or certified mail, that the other party provide a list of witnesses it intends to call designating which witnesses will be called as expert witnesses and a list of documents it intends to introduce on the record at the mediation. A copy of the demand shall be served on the mediator.
(1) Witness and document lists shall be served personally or by registered or certified mail on the requesting party within ten (10) days of service of the request. Copies of the lists shall be served on the mediator.

(2) Listed documents shall be made available for inspection and copying at reasonable times prior to the hearing.

(3) Time limits provided herein may be waived by mutual agreement of the parties if approved by the mediator.

(4) The failure to list a witness or a document shall not bar the testimony of an unlisted witness or the introduction of an undesignated document at the mediation, provided that good cause is shown, as determined by the mediator. The introduction of bona fide rebuttal evidence shall constitute good cause.

(b) Subpoenas. After the appointment of a mediator, and prior to the commencement of mediation, any member of the Board, or the Executive Secretary, or any person authorized by the Board, shall upon the ex parte request of a party to a mediation, issue subpoenas requiring the attendance and testimony of witnesses and or the production of any materials, including, but not limited to, books, records,

correspondence or documents in their possession or under their control. Requests for subpoenas at or after the first mediation session shall be made to the mediator.
(1) The subpoena shall show on its face the name, address, and telephone number of the party at whose request the subpoena was issued. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum showing good cause for the production of the matters or things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues tendered by the party and stating that the party or witness has the desired matters or materials in his or her possession or under his or her control. Information concerning the financial condition of the employer and its ability to meet the costs of the contract shall not be discoverable except where the employer makes a plea of inability to meet the union's wage and benefit demands; however, other financial information may be discoverable if necessary to verify or evaluate a party's claims or proposals.

(2) Service of subpoenas shall be made personally or by registered or certified mail. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(3) Any person on whom a subpoena is served who does not intend to comply shall, within 5 days, after the date of service, petition the mediator in writing to revoke the subpoena. The petition shall be sent to the mediator by registered or certified mail and served by the same means upon the party requesting the subpoena. The petition to revoke shall explain with particularity the grounds for objecting to each item covered by the petition, which shall include a copy of the subpoena. The mediator shall have the discretion, where good cause is shown, to modify the time requirements regarding subpoenas and subpoena compliance.

(4) The mediator shall revoke the subpoena in whole or in part if the evidence required to be produced does not relate to any matter in question or does not describe with sufficient particularity the evidence required to be produced or the testimony or records sought are privileged or otherwise protected or if the subpoena is otherwise invalid.

(5) The mediator shall rule on all petitions to revoke. Upon the failure of any person to comply with a ruling by the mediator enforcing a subpoena, the mediator may request the Board apply for a court order enforcing the subpoena.

(c) In addition to the limitations set forth above, discovery requests shall be considered untimely if submitted prior to the identification of issues required by section 20407, subdivision (a)(1).

(d) Enforcement of Discovery. For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify, the mediator may draw adverse inferences or impose terms, conditions, or sanctions upon a party. For the purposes of this section, "party" shall be deemed to include the officers, directors, agents, and employees of such party. The files, books, and records of each officer, director, agent, or employee shall be deemed to be in the possession and control of, and capable of production by, such party.

§ 20407. The Mediation and Conciliation Process.

(a) Mediation shall proceed in accordance with Labor Code section 1164, subdivisions (b), (c), and (d).

The 30-day periods referred to in Labor Code section 1164, subdivision (c) shall commence on the date of the first scheduled mediation session, shall proceed for consecutive calendar days, and shall not include any pre-mediation conference. The 30-day timelines may be waived by mutual agreement of the parties and with the approval of the mediator. Premediation conferences may be scheduled at the discretion of the mediator.
(1) No later than seven (7) days after receipt of a Board order directing the parties to mandatory mediation and conciliation, and prior to their first discovery requests pursuant to section 20406 above, each party shall identify for the mediator those issues that are in dispute and those that are not in dispute, identify the standards which they propose to resolve the disputed issues, and provide agreed upon contract language for those issues not in dispute. This information shall be served on the other party immediately and on the mediator upon his or her selection. During the mediation, the parties shall provide the mediator with a detailed rationale for each of its contract proposals on issues that are in dispute, and shall provide on the record supporting evidence to justify those proposals. The failure of any party to participate or cooperate in the mediation and conciliation process shall not prevent the mediator from filing a report with the Board that resolves all issues and establishes the final terms of a collective bargaining agreement, based on the presentation of the other party.

(2) The mediator shall preside at the mediation, shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the mediation. All evidence upon which the mediator relies in writing the report required by section 1164, subdivision (d) shall be preserved in an official record through the use of a court reporting service or, with the consent of both parties and the approval of the mediator, by a stipulated record. The mediator shall cite evidence in the record that supports his or her findings and conclusions. The mediator shall retain the discretion to go off the record at any time to clarify or resolve issues informally. All communications taking place off the record shall be subject to the limitations on admissibility and disclosure provided by Evidence Code section 1119, subdivisions (a) and (c), and shall not be the basis for any findings and conclusions in the mediator's report.

(3) The parties shall have the right to be represented by counsel or other representative.

(4) The parties to the mediation are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. The testimony of witnesses shall be given under oath.

(b) In determining the issues in dispute, the mediator may consider those factors commonly applied in similar proceedings, such as, but not limited to:
(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer makes a plea of inability to meet the union's wage and benefit demands.

(3) Comparison of corresponding wages, benefits, and terms and conditions of employment in collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) Comparison of corresponding wages, benefits, and terms and conditions of employment in comparable firms or industries in geographical areas with similar economic conditions, considering the

size of the employer, the skills, experience, and training required of the employees, as well as the difficulty and nature of the work.

(5) The average consumer prices for goods and services, commonly known as the Consumer Price Index, and the overall cost of living in the area where the work is performed.

(c) The mediator shall issue his or her report within twenty-one (21) days of the last mediation session. Upon completion of the mediator's report, the report shall be served on the parties and filed with the Board in accordance with sections 20164 and 20168. Upon the filing of the report, the mediator also shall transfer the official record of the proceeding to the Board.

(d) The issuance of any document signed by the mediator which reflects the determination of the issues in dispute and fixes the terms of a collective bargaining agreement shall be deemed a "report" pursuant to Labor Code sections 1164 through 1164.13, and these regulations.

(e) Where the parties agree to a collective bargaining agreement without the issuance of a mediator's report, as defined in subdivision (d), the parties shall notify the Board and submit a copy of the signed agreement pursuant to Regulation 20450.

§ 20408. Board Review of the Mediator's Report.

(a) Within seven (7) days of the filing of first or second report by the mediator, either party may file a petition for review of the report. The petition shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The petition shall be based on any one or more of the grounds set forth in Labor Code section 1164.3, subdivision (a) or subdivision (e). The petitioning party shall specify the particular provisions of the mediator's report for which it is seeking review, shall specify the specific grounds authorizing review, and shall cite the portions of the record that support the petition. In the event the petition is based on the grounds set forth in Labor Code section 1164.3, subdivision (e), the petitioning party may attach declarations that describe pertinent events that took place off the record, if necessary to establish the grounds for review stated in the petition.

(b) The Board shall issue a decision on the petition in accordance with Labor Code section 1164.3. Where the petition is based on the grounds specified in Labor Code section 1164.3, subdivision (e), and the Board determines that there are material facts in dispute that are outside the official record of the mediation, the Board may order an expedited evidentiary hearing to resolve the dispute, to be conducted in accordance with the procedures set forth in section 20402 of these regulations.

(c) Where the Board orders additional mediation pursuant to Labor Code section 1164.3, subdivision (c), the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical.

§ 20450. Submission of Copies of Collective Bargaining Agreements to the Board.

In order to facilitate the calculation of bargaining makewhole awards pursuant to Labor Code section 1160.3 and the administration of the Mandatory Mediation and Conciliation process provided in Labor Code sections 1164 through 1164.14, certified labor organizations and agricultural employers shall submit to the Board a copy of the full text of any collective bargaining agreements to which they have

agreed, where the effective date of the agreement is on or after the effective date of this regulation.

Agency Alternatives to Formal Hearings – Alternative Dispute Resolution
Cal. Admin. Code Title 1, Division 2, Chapter 3.

Current through December of 2008

§ 1200. Scope.

(a) This chapter applies to disputes which are the subject of adjudicative proceedings.

(b) These regulations shall be effective July 1, 1997, and shall be construed to encourage the fair and expeditious resolution of disputes.

(c) If an agency by regulation provides inconsistent rules or provides that these regulations are not applicable to that agency's proceedings, these regulations will not govern.

§ 1202. Purpose.

The purpose of Alternative Dispute (ADR) is to provide a less expensive and more satisfying alternative to administrative adjudication without diminishing the quality of justice or the parties' right to a hearing.

§ 1204. Definitions.

(a) "Agency or Agencies" refers to any agency subject to s 11410.20 of the Government Code.

(b) "Alternative dispute resolution" or "ADR" is a method, procedure, or technique used in lieu of traditional or formal adjudication to voluntarily resolve a dispute. As used in this chapter, ADR refers to mediation, non-binding arbitration, and binding arbitration.

(c) "Neutral" refers to an impartial third party who functions as a mediator or an arbitrator.

(d) "OAH" refers to the Office of Administrative Hearings in Sacramento which is the organization responsible for the administration of ADR under these regulations.

(e) Unless otherwise specified, all section references are to this chapter, Title 1, California Code of Regulations, Sections 1200 et seq.

§ 1206. Referral to ADR.

(a) Request by Party Other Than Agency. Any party, other than the Agency, interested in resolving a dispute may request ADR by applying to an Agency's Executive Officer, Director, or Agency designee. The application shall contain:
(1) an election to mediate, to arbitrate, or to use either or both procedures; and

(2) the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all parties to the dispute and those who represent them, if known.

Filing an application constitutes consent to Agency referral of the dispute to ADR. Filing an application shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, except as provided below.

(b) Request by Agency. Any Agency may refer a matter to ADR with the written consent of each party to the dispute.

(c) Agency Review of Application. Within ten working days of the receipt of an application from a party requesting ADR, the Executive Officer, Director, or designee of the Agency shall review the application to determine if the dispute is suitable for ADR. If it is determined that the dispute is suitable for ADR, the Agency shall notify each party and shall file a request for ADR with the OAH. If the Agency determines that the dispute is not suitable for ADR, the Agency shall notify each party.

(d) Lack of Consent Not Reported. A lack of consent by any party or party's representative to one or more ADR processes shall not be reported to any judge, hearing officer or presiding officer to whom the matter is assigned.

(e) Filing with the OAH. The OAH may establish filing fees or other necessary fees to cover administrative costs. The filing of a request for ADR with the OAH shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to a dispute unless each party agrees otherwise in writing.

§ 1208. Standards of Conduct for Neutrals.

Any Neutral participating in mediation or arbitration pursuant to these regulations shall comply in good faith with these standards. A Neutral shall indicate compliance on the Neutral's resume by appending the Neutral's signature on the sentence "I agree to comply with the California statutes and regulations governing ADR, including Government Code Sections 11420.10 through 11420.30 and regulations 1 CCR 1200 et seq. (Title 1, Division 2, Chapter 3)."

(a) Qualifications of a Neutral. Neutrals shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service.
(1) Impartiality & Full Disclosure. A Neutral shall maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve equally the interests of all participants. No person shall serve as a Neutral in any dispute in which that person, that person's spouse, or immediate family has any financial or personal interest in the result of the mediation or arbitration, except by written consent of all parties. Upon accepting an appointment, the prospective Neutral shall disclose in writing any circumstance likely to create an appearance or presumption of bias or prevent a prompt meeting with the parties.

(2) Competence. A Neutral shall decline appointment, withdraw, or request technical assistance when the Neutral decides that a case is beyond the Neutral's competence. A Neutral shall maintain professional competence in mediation and/or arbitration skills including at a minimum:

(A) staying informed of and abiding by laws and regulations relevant to the practice of mediation and/or arbitration;

(B) regularly engaging in educational activities promoting professional growth.

Nothing in this section shall replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any Neutral by virtue of the Neutral's professional license or association.

(b) Responsibilities of a Neutral. A Neutral shall be truthful in advertising and soliciting ADR services. A Neutral shall make only accurate statements about the mediation and/or arbitration process, its costs and benefits, and the Neutral's qualifications. A Neutral shall be candid, accurate, and fully responsive concerning the Neutral's qualifications, availability, and all other pertinent matters. Upon request, a Neutral shall disclose the extent and nature of the Neutral's training and experience.

(c) Fees. A written agreement regarding payment of mediation or arbitration fees and related costs shall be entered into by the mediator and the parties before commencement of the mediation or arbitration. Parties shall share fees and costs equally unless they agree otherwise. When setting fees, the Neutral shall ensure that they are explicit, fair, and commensurate with the service to be performed. The Neutral shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties upon request. A Neutral shall not charge contingent fees or base fees upon the outcome of the mediation or arbitration.

§ 1210. Resumes of Neutrals.

(a) Content of File. The OAH shall maintain a file containing the names and resumes of mediators and arbitrators. Information about Neutrals shall be kept on file for a minimum of one year unless the Neutral requests in writing to be removed. Neutrals may update their resumes not more than twice in a 12-month period but must update them annually to remain on file. The file shall contain a disclaimer stating "Inclusion of a resume in this file does not constitute an endorsement of a Neutral, nor should negative implications be drawn from the fact that a Neutral is not included in this file. Parties are not obligated to choose a Neutral from this file."

(b) Content of Resumes. Resumes shall be submitted on a ADR-Resume2, revision date 8/97, available from the OAH and from the OAH Web Page (http:// www.dgs.ca.gov/oah). Resumes shall include, as a minimum, qualifications, degrees, experience, areas of specialty, and fees charged. Each resume shall also contain a signed and dated statement of compliance with these regulations as specified in Section 1208. Resumes shall not be advertisements but factual information pages The fee schedule specified in the resume shall be the fees charged for the duration of any mediation or arbitration agreed to while the resume is on file.

(c) Removal of Resumes for Cause. If a neutral does not comply with Regulation 1208, the OAH ADR administrator may remove the neutral's resume from the file, provided that the administrator gives the neutral written notice of the intended action and affords the neutral a 10-day opportunity to respond in writing.

(d) Fees. The OAH may establish filing fees or other necessary fees to cover administrative costs of

maintaining the file. The amount of such fee, if any, will be available from the OAH with the resume forms.

§ 1212. Mediation; Definition.

Mediation refers to a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

§ 1214. Initiation of Mediation.

Any party to a dispute may initiate mediation by filing a request for mediation as specified in Section 1206.

§ 1216. Appointment of Mediator.

The parties may agree on a mediator to assist them in the resolution of their dispute.
On occasion, parties may not be able to agree on a mediator. In such a situation, each party may select 5 names either from the resumes on file with the OAH or from another source. If a mediator is chosen from another source, the party selecting that mediator shall provide OAH with a resume of that mediator. Of the names submitted to the OAH by the parties, a complete list shall be complied and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as is practicable, the OAH will choose a mediator at random from the remaining list of names. The OAH will then notify the chosen mediator and the parties of the mediator's selection. The chosen mediator shall be sent an acceptance form to sign and return, in which the mediator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also state that the mediator foresees no difficulty in completing the mediation according to the schedule set out in these regulations.
If, at any time before the end of the 10-day period, the parties agree on a mediator and notify the OAH in writing, that agreed-upon mediator shall be appointed.

§ 1218. Cost of Mediation.

Compensation of the mediator and any other associated costs shall be the responsibility of the parties to the mediation. An agreement regarding compensation and costs shall be reached between the mediator and the parties before the mediation is commenced and shall be memorialized in writing.

§ 1220. Date, Time and Place of Mediation.

In consultation with the parties, the mediator shall fix the date, time and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Mediation shall be completed within 60 days of the appointment of the mediator. Statutory,

regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties.

§ 1222. Attendance at Mediation.

All involved parties shall attend the mediation session(s). A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement by sending a representative familiar with the facts of the case, and that person shall have the authority to negotiate and to effectively recommend settlement to the governmental or corporate entity involved. Any party to the mediation may have the assistance of an attorney or other representative. Other persons may attend only with the permission of all parties and with the consent of the mediator.

§ 1224. Statements Before Mediation.

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The parties should expect that the mediator will request a premediation statement outlining facts, issues, and perspectives in advance of the mediation session. At the discretion of the mediator, such statements or other information may be mutually exchanged by the parties.

§ 1226. Confidentiality.

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5, 1152.5, and 1152.6.

§ 1228. Agreements.

Agreements resolving the mediated dispute shall be written, signed, and dated by the parties or an authorized representative of the party or parties.

§ 1230. Termination of Mediation.

Any party or the Neutral may terminate the mediation at any time by written notice to the mediator and other parties. If any party or the Neutral terminates the mediation, or if mediation does not result in resolution, the parties shall resume the same status as before mediation and shall proceed as if mediation had not taken place.

§ 1232. Arbitration; Definition; General Rules.

(a) Arbitration under these regulations is an adjudicative process in which an arbitrator or panel of arbitrators issues a decision on the merits after a hearing. Except as set forth herein, arbitrations are governed by the Administrative Procedure Act (commencing with Government Code Section 11370), Part I, Division 3, Title 2 of the Government Code.

(b) Before the arbitration the parties shall agree that the decision by the arbitrator(s) is binding or non-binding upon the parties. If the parties select non-binding arbitration, any party may reject the non-binding decision. If a party rejects the non-binding decision, the parties shall resume the same status as before arbitration and shall proceed as if arbitration had not taken place.

(c) All determinations of time under these regulations are governed by the provisions of Code of Civil Procedures ss 12a, 12b, 13, 13a, 13b, 1013, 1013a.

(d) The arbitrator shall not engage in private communication with any party upon the merits or substance of the dispute at any time prior to the issuance of the decision.

§ 1234. Agreement to Arbitrate.

At any time prior to a formal administrative hearing, a matter may be referred to arbitration by request, as specified in 1206. The written consent shall indicate whether the arbitration is binding or non-binding. Unless all parties agree to binding arbitration, the arbitration shall be non-binding. The parties may, at any time, by written agreement signed by all parties or their legal representatives, consent to make the arbitration binding.

§ 1236. Selection of Arbitrator.

(a) Selection of Arbitrator by Mutual Agreement
(1) Once the parties agree to arbitration they shall then confer to select a single arbitrator or, if the parties so agree, a panel of three arbitrators. Unless the parties agree otherwise, selection of the arbitrator(s) shall take place within 21 days of the agreement to arbitrate.

(2) If the parties are unable to agree to a single arbitrator, then each party may agree to select one arbitrator and the selected arbitrators shall then select a third arbitrator who shall act as chair to the arbitration panel.

(b) Selection of Arbitrator with the Assistance of the OAH
(1) On occasion, parties may not be able to agree on a single arbitrator but may not wish a panel. In such a situation, each party may select 5 names either from the resumes on file with the OAH or from another source. If an arbitrator is chosen from another source, the party selecting that arbitrator shall provide OAH with a resume of that arbitrator. Of the names submitted to the OAH by the parties, a complete list shall be compiled and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as practicable, the OAH will choose an arbitrator at random from the remaining list of names. The OAH will then notify the chosen arbitrator and the parties of the arbitrator's selection. The chosen arbitrator will be sent an acceptance form to sign and return, in which the arbitrator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also require disclosure of any potential conflicts of interest and any circumstances likely to prevent a prompt hearing.

(2) If, at any time before the end of the 10-day period, the parties agree to an arbitrator and notify the OAH in writing, that agreed-upon arbitrator shall be appointed.

§ 1238. Costs.

Responsibility for the payment of arbitrator(s) fees and all other costs of the arbitration shall be

established by written agreement among the parties and the arbitrator(s), executed not less than ten calendar days before the first scheduled hearing date. If there are rental fees or other costs involved with the hearing, those costs are to be paid by the parties in equal shares, unless the parties agree otherwise. The total estimated fees and costs of the arbitration shall be paid in advance to the arbitrator or placed into an escrow, pursuant to the terms of the written agreement.

§ 1240. Timing and Scheduling the Hearing.

(a) Date and Time. The parties and the arbitrator(s) shall confer and mutually agree on the date(s) and time(s) for hearing. The date of hearing shall be scheduled to commence not more than 120 days after selection of the arbitrator(s). If the case is resolved before the hearing date or if, due to an emergency, a participant cannot attend the arbitration, the parties shall notify the arbitrator(s) immediately upon learning of such settlement or emergency.

(b) The hearing may be held at any location within California selected by the arbitrator(s). In selecting a location, the arbitrator(s) shall consider the convenience of the parties and witnesses.

§ 1242. Discovery.

Discovery pursuant to California Government Code Section 11507.6 shall be commenced in arbitration cases by service of requests for discovery. Parties may serve requests for discovery by regular mail or personal discovery, with proof of service, to the last known address of the party served. All discovery shall be concluded no less than 20 calendar days before the arbitration hearing and may not be reopened after commencement of the arbitration hearing except on order of the arbitrator(s) for good cause shown.

§ 1244. Conference Before Arbitration.

The arbitrator(s) shall schedule a brief joint conference with counsel for the parties or with the parties themselves, if they are not represented, at least 15 days before the arbitration hearing to discuss matters such as whether the arbitration will be binding or non-binding, allocation of costs and expenses, the procedures to be followed, whether supplemental written material should be submitted, which witnesses will attend, how testimony will be presented (including expert testimony), and whether and how the arbitration will be recorded. This conference may be by telephone or any other real-time or simultaneous electronic means. The arbitrator's costs associated with conducting the conference shall be allocated among the parties, as determined by the arbitrator.

§ 1246. Statements Before Arbitration.

(a) Time for Submission. No later than 10 calendar days before the arbitration hearing, each party shall submit directly to the arbitrator(s), and shall serve on all other parties a written arbitration statement by regular mail, facsimile, or other acceptable electronic means, accompanied by a proof of service.

(b) Content of Statements. The statements shall be concise and shall:
(1) Summarize the facts, claims, and defenses;

(2) Identify the significant contested factual and legal issues, citing authority on the questions of law;

(3) Identify proposed witnesses; and,

(4) Identify, by name and title or status, the person(s) who, in addition to counsel, will attend the arbitration as representative(s) of the party.

(c) Modification of Requirement by Arbitrator(s). After jointly consulting counsel for all parties, or the parties themselves if they are not represented, the arbitrator(s) may modify or dispense with the requirement of written arbitration statements.

§ 1248. Attendance at Arbitration.

Each party and/or the party's counsel shall attend the arbitration hearing. A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement if represented by a designated legal representative who has immediate access to a representative of the entity. The representative of the entity shall be familiar with the dispute and shall have the power and authority to enter into stipulations and binding agreements on behalf of the entity.

§ 1250. Authority or Arbitrators.

(a) Arbitrators shall be authorized to:
(1) Administer oaths and affirmations;

(2) Make reasonable rulings as are necessary for the fair, impartial, and efficient conduct of the hearing including, but not limited to, granting continuances for good cause shown; and,

(3) Make Statements of Factual and Legal Basis, Orders, and/or Awards, as appropriate.

(b) Failure or refusal of a party to comply with any lawful and duly noticed order of the arbitrator given prior to or at the hearing, including those orders related to fees and costs, shall be cause for holding such party in default. If a party is held in default, the arbitrator shall conduct the hearing according to Regulation 1254.

§ 1252. Procedures at Arbitration.

(a) Presumption Against Bifurcation. Except in extraordinary circumstances, the arbitrator(s) shall not bifurcate the arbitration.

(b) Quorum. Where a panel of three arbitrators has been selected, any two members of a panel shall constitute a quorum, but the concurrence of a majority of the entire panel shall be required for any action or decision by the panel, unless the parties stipulate otherwise.

(c) Subpoenas. Attendance of witnesses and production of documents may be compelled in accordance with California Government Code Sections 11450.05 through 11450.50. Service of subpoenas may be accomplished by personal delivery with proof of service or service by certified mail, return receipt requested, postage prepaid, to the last known address of the subpoenaed party.

(d) Oath and Cross-Examination. All testimony shall be taken under oath or affirmation and shall be subject to reasonable cross-examination. Affidavits submitted must comply with California Government Code Section 11514.

(e) Evidence. In receiving evidence, the arbitrator(s) shall be guided by California Government Code Section 11513, but shall not thereby be precluded from receiving evidence which the arbitrator(s) consider(s) relevant and trustworthy and which is not privileged.

(f) Transcript or Recording.
(1) In non-binding arbitration, the proceedings shall not be recorded or reported unless otherwise agreed by all parties.

(2) In binding arbitration, a party may cause a transcript or recording of the proceedings to be made and shall provide a copy to any other party who requests it and who agrees to pay the reasonable costs of having a copy made.

§ 1254. Defaults.

(a) The absence of a party shall not be grounds for continuance. If a party is not present and that party's absence is not excused, the hearing may proceed and a default entered against the absent party. Statements of Factual and Legal Basis, Orders and/or Awards against a defaulting party may be taken only upon presentation of proof, satisfactory to the arbitrator(s), that reasonably supports such action.

(b) When the matter is heard on a default basis, the party not in default has the burden of proof of affirmative allegations, and affirmative findings shall be based only on the express admissions of the defaulted party, judicially noticeable facts, or on evidence which would support findings of fact in an uncontested civil trial, or any combination thereof.

(c) Default constitutes a waiver of the defaulting party's rights to cross-examine witnesses, or present evidence to controvert the allegations of the complaint or the answer, or otherwise present any evidence.

§ 1256. Decision.

(a) Form. The arbitrator(s) shall issue a decision after a completed arbitration hearing under this regulation. The decision shall be issued within 30 days after the matter is submitted and shall contain Statements of Factual and Legal Basis, Orders, and/or Awards, as appropriate. The decision shall be signed by the arbitrator or by at least two members of a panel.

(b) Costs. An arbitrator may not assess the costs of items previously agreed to in the agreement to arbitrate between the parties. Costs not agreed to by contract of the parties may be awarded in the arbitrator's discretion.

(c) Filing the Decision. The arbitrator(s) shall file the decision with the OAH, and serve the decision on all parties, including the Agency head, by regular mail, or personal delivery, with proof of service, within 30 days after the matter is submitted.

(d) Effective Date of the Decision. The arbitrator(s) decision shall become effective 30 days after service of the decision upon the parties.

(e) Non-binding Arbitration Decisions. If no party has filed a demand for proceeding de novo pursuant to California Government Code Section 11420.10, subdivision (a)(3), the arbitrator's decision is final.

(f) Binding Arbitration Decisions. In binding arbitrations, the Statements of Factual and Legal Basis, Orders and Awards of the arbitrator(s) shall be final and no proceedings de novo are available. Chapter 4 (commencing with Section 1285) of Title 9, Part 3, of the California Code of Civil Procedure shall control the procedures for review of a decision after binding arbitration.

§ 1258. Proceeding De Novo.

(a) Demand. Any party to a non-binding arbitration may reject the decision and request a proceeding de novo by filing with the OAH and serving on all parties by regular mail, or personal delivery, with proof of service, a demand for proceeding de novo within 30 calendar days after service of the decision.

(b) Time for Demand. If any party files with the OAH and serves the other party/parties a demand for proceeding de novo within 30 days after service of the arbitrator(s) decision, the action will proceed in the normal course of the administrative proceedings before the respective board/Agency. Failure to file and serve a demand for proceeding de novo within this 30 day period waives the right to proceeding de novo.

(c) Disclosure. The contents of a decision issued after non-binding arbitration shall not be disclosed to any judge who might be assigned the case until the action is final or has otherwise been terminated.

(d) Evidence. At the administrative hearing's proceeding de novo, no evidence shall be admitted concerning the conduct of the arbitration proceeding, including, but not limited to, the nature of or rulings upon any motions brought during the arbitration process, or the arbitration decision itself, unless:
(1) The evidence would otherwise be admissible in the hearing under the California Evidence Code; or,

(2) The parties stipulate otherwise.

§ 1260. Definitions.

(a) Agency. An "Agency" is any board, bureau, commission, department, division, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly acting on behalf of or under the authority of the agency head.

(b) Applicant. An "Applicant" is any Person who files with an Agency an application for a Declaratory Decision.

(c) Declaratory Decision. A "Declaratory Decision" is a written opinion containing a statement of undisputed or assumed facts and a determination of issues relating to the application of a state agency

rule, regulation, order, statute, or administrative decision as it applies to a Situation in which the Agency has primary jurisdiction.

(d) Declaratory Decision Proceeding. A "Declaratory Decision Proceeding" is a quasi-adjudicative proceeding to provide an inexpensive and expeditious means for Persons to obtain information as to applicability of Agency administered law to the persons particular circumstances.

(e) Person. "Person" includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character having an interest in the application of a rule, order, statute, or administrative decision in a particular Situation. "Person" includes the Applicant, and any intervenors or parties determined in Regulation 1282.

(f) Situation. A "Situation" is any undisputed set of facts, actual or hypothetical, to which a rule, order, statute, or administrative decision might apply.

§ 1262. Scope of Declaratory Decisions.

(a) Appropriate Subjects for Declaratory Decisions. An application for a Declaratory Decision may be filed to determine the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction.

(b) Other Remedies Do Not Preclude Declaratory Decisions. The existence of another adequate remedy at law does not preclude an Agency from granting an application for a Declaratory Decision when the Agency determines issuing a Declaratory Decision is appropriate.

§ 1264. Application for a Declaratory Decision.

(a) Any Person may file a written application with an Agency requesting the issuance of a Declaratory Decision. An application for a Declaratory Decision shall be directed to the Agency head and shall be delivered personally or by certified mail. An application for a Declaratory Decision shall be signed by the Applicant or by the Applicant's attorney or representative, if any, and shall identify:
(1) the address and telephone number of the Applicant and the address and telephone number of the Applicant's attorney or representative, if any;

(2) a clear and precise statement of the Situation;

(3) the Applicant's standing to raise the issue or interest in the determination of the issue;

(4) the relevant rules, orders, statutes, or final administrative decisions of the Agency and their potential applicability to the Situation described in the application;

(5) the question or questions for which a Declaratory Decision is sought;

(6) whether a hearing is requested; and

(7) a good faith list of all interested Persons by relevant description or by the names, addresses, and phone numbers of such Persons, if available.

(b) Model Application for a Declaratory Decision

<table>
<tr><td>1. Applicant's Name:
Applicant's Address:

Applicant's Phone Number:</td><td>2. Attorney or Representative for Applicant (name, address, phone number):</td></tr>
<tr><td>3. A Clear and Precise Statement of the Situation:</td><td>4. Applicant's Standing to raise the Issue (interest in the determination):</td></tr>
<tr><td><What is going on></td><td><Why I should be able to ask for a Declaratory Decision></td></tr>
<tr><td>5. Relevant rules, orders, statutes, regulations, or final administrative decisions of the Agency and their potential applicability to the Situation described above:</td><td>6. Question or Questions for which a Declaratory Decision is sought:</td></tr>
<tr><td><What law or policy might apply></td><td><Exactly what is my question></td></tr>
<tr><td colspan="2">7. A good faith list of all Interested Persons (titles, names, contact information):</td></tr>
<tr><td colspan="2"><Who would want to know about this></td></tr>
</table>

§ 1266. Initial Agency Review of Application.

(a) Return for Insufficient Application. The Agency may return an application to an Applicant for failure to meet the criteria in Regulation 1264. A return of an application is not a denial. Interested parties need not be notified when an application is returned on this basis.

(b) Request for Additional Information. The Agency may request the Applicant to submit additional facts, make a more precise statement of particular facts, or narrow the request for applicability of the law to a Situation.

(c) Selection or Elimination of Issues. The Agency, in its discretion, may choose to select or eliminate certain issues presented in the Application for Declaratory Decision.

§ 1270. Agency Notice of Application for Declaratory Decision.

Within 30 days of a receipt of an application for Declaratory Decision, if the application is not returned

pursuant to Regulation 1266(a), an Agency must give notice of application receipt to all Persons to whom notice is required by law. This requirement may be satisfied by completing the notice requirements in Regulation 1276 within 30 days of receipt of an application and at least 45 days before issuing a Declaratory Decision.

§ 1272. Initial Decision to Consider Application.

If the Agency determines an application for a Declaratory Decision should be considered, the Agency shall grant the application and shall commence a Declaratory Decision Proceeding by giving notice as specified in Regulation 1276.

§ 1274. Denial of Application; Application Denied After Commencement of Declaratory Decision Proceeding.

(a) A decision not to issue a Declaratory Decision is within the discretion of the Agency. An Agency's failure to take action within 60 days of receipt of an application constitutes non-acceptance of the application.

(b) If the Agency determines a Declaratory Decision should not be issued because the application does not involve the validity of any Agency regulation or the application of rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction, the Agency shall, within 60 days of receipt of the application, deny the application.

(c) The Agency shall deny the application if, after commencement of a Declaratory Decision Proceeding, the Agency determines that:
(1) undisputed facts sufficient to support a meaningful Declaratory Decision do not exist;

(2) the subject matter of the application is also the subject of pending administrative or judicial proceedings;

(3) no question or issue could arise concerning the application of rules, regulations, orders, statutes, or final administrative decisions on a matters within the primary jurisdiction of the Agency; or

(4) any of the factors in Government Code section 11465.20(b) apply.

(d) The Agency's denial of an application for a Declaratory Decision shall be in writing and shall state the reasons for denying the application for a Declaratory Decision. Notice of the denial shall be served upon the Applicant and every party and sent to each Person who was given notice of the application under Regulation 1270 or who requested such notice under Regulation 1278.

§ 1276. Agency Notice of Declaratory Decision Proceeding.

(a) 45 Day Notice Required Before Issuing a Declaratory Decision. Within 60 days of receipt of an application and at least 45 days before a hearing is held in a Declaratory Decision Proceeding or, when no hearing is held, at least 45 days before issuing a Declaratory Decision, the Agency shall serve on the Applicant and any other party and shall mail notice of the Declaratory Decision Proceeding to the following:

(1) every Person who has requested notice under Regulation 1278 of this Article or who has a known interest in the subject matter of the Declaratory Decision Proceeding;

(2) every Person who the Agency believes may be entitled to party status or intervenor status;

(3) every Person who is identified by the Applicant as an interested party under Regulation 1264 herein;

(4) every Person to whom notice is required by any provision of law; and

(5) any other Person within the Agency's discretion. In making a decision to notify other Persons concerning its intent to issue a Declaratory Decision, the Agency may consider such factors as:

(A) whether additional public participation would aid in reaching a decision;

(B) whether the property or personal rights of such other Persons might be directly affected by the requested ruling; and

(C) whether the proposed Declaratory Decision would affect the application or interpretation of other rules, orders, statutes, or final administrative decisions on matters within the primary jurisdiction of the Agency in which other Persons would be interested.

(b) Method of the Required Notice. This notice shall be by any method reasonably calculated to give notice to interested persons of such matters, and may include Agency newsletters to specific classes of licensees, the California Regulatory Notice Register, or first class mail.

(c) Contents of the Required Notice. The Agency's notice of its intent to hold a hearing or issue a Declaratory Decision, whether mailed or published, shall state:
(1) whether the Agency intends to make the decision a Precedential Decision, pursuant to Government Code section 11425.60;

(2) the subject matter of the application, including any pertinent facts;

(3) the Agency contact person and the time period for accepting comments, protest or requests for full party status;

(4) the opportunity to file comments concerning the subject matter of the application, pursuant to Regulation 1280;

(5) the right to protest the issuance of a Declaratory Decision, pursuant to Regulation 1280; and,

(6) the opportunity of a Person directly affected by the outcome of the Declaratory Decision to request the Agency accord such Person the status of a party or an intervenor in the Declaratory Decision Proceeding, pursuant to Regulation 1282.

(d) Model Agency Notice of Intent to Issue Declaratory Decision.

NOTICE OF DECLARATORY DECISION PROCEEDING Agency Name/Address/Phone

An application for a Declaratory Decision has been received by this Agency, and an initial determination to proceed has been made. This application is, in essence, a request for a clarification of laws, rules, or regulations to a particular given fact situation.

This Agency has decided that this Declaratory Decision will/will not be a Precedential Decision and will have binding effect on....

You are receiving this notice because it has been determined that you may have an interest in the application of law to the particular situation set out in the application.

The subject matter of this application concerns....

The Agency may deny the application without reaching a decision. Reasons for denying or proceeding with the application may be found in 1 California Code of Regulations 1260 et. seq. You may request a copy of these regulations from the Agency. The Agency contact person for this matter is: _____

You have the right to file comments in accordance with those regulations, to express your opinion to the Agency before a final determination has been made. You may also view the application and any other comments received by this Agency under the Public Records Act.

You have the right to protest such proceedings in order to exercise different procedural rights in another type of adjudicatory proceeding to which you may be entitled.

You have the right to request full party status if you feel that the decision should be binding as to your rights as well as the Applicant's.

Your comments, protest, or requests for full party status must be received by the Agency contact person by or will be considered waived.

It is this Agency's option whether to hold a hearing or to issue a Decision without a hearing.
A hearing has been scheduled on _____ to be held at _____ . If the Agency grants you party status, you may make an oral presentation at the hearing of no more than _____ minutes, pursuant to Regulation 1 CCR 1284(b). A written summary of your oral presentation must be submitted at the hearing.

The Agency has decided, in its decision, not to hold a hearing.

A Decision will be issued on _____ .

If you have further questions or wish to review other comments received, please contact the Agency contact person.

§ 1278. Requests for Notice of Declaratory Decision Proceedings.

Any Person may request an Agency to provide notice of commencement of, or other action concerning, a Declaratory Decision Proceeding. Any request for such notice shall be in writing and

shall be directed to the Agency head. Requests shall be renewed annually.

§ 1280. Right to Dissent or Submit Written Comments to the Agency; Availability of Comments.

(a) A Person who does not consent to a Declaratory Decision Proceeding shall submit a protest or dissent in writing within 25 days of the date of the notice specified in Regulations 1270 or 1276. Failure to dissent within this time period shall be deemed a waiver.

(b) All Persons receiving notice of the Declaratory Decision Proceeding, including all members of the public responding to a published notice of the Declaratory Decision Proceeding, may submit written comments to the Agency concerning the Declaratory Decision Proceeding within 25 days of the notice in Regulations 1270 or 1276 or a specified by the Agency.

(c) Written comments shall be directed to the Agency head or Agency contact person, shall be signed by the Person filing the comment or by his attorney or other representative, if any, and shall contain the name and telephone number of the Person filing the comment or his attorney or other representative. Written comments shall be delivered personally or by mail.

(d) The Agency shall provide copies of all written comments to the Applicant and to other parties to the proceeding. Other interested persons requesting copies of the comments may be charged reasonable duplication fees by the Agency.

§ 1282. Request to Become a Party or an Intervenor.

Within 25 days of notice of an application for Declaratory Decision or the Agency's commencement of a Declaratory Decision Proceeding, any Person may file a request with the Agency head or Agency contact person to become a party or intervenor in the Declaratory Decision Proceeding. The Agency head may, within his or her discretion, grant party status to any Person similarly situated to the Applicant and shall grant intervenor status to any Person who will likely be directly affected by the Declaratory Decision.

§ 1284. Hearings.

(a) Hearings. The Agency may direct a hearing to be held in a Declaratory Decision Proceeding whenever the Agency determines such a hearing would be helpful in issuing a Declaratory Decision or to determine if the Person filing the application, the parties, the intervenors, and other Persons directly affected by the Declaratory Decision agree on a set of undisputed facts sufficient to support a meaningful Declaratory Decision; to confirm the matter is not the subject of a pending adjudication; or to verify a genuine controversy exists.

(b) Hearing Procedure. When the Agency determines to hold a hearing, unless an Applicant, party, or intervenor waives the opportunity to be heard, the Agency, the Applicant, the parties, the intervenors and, at the Agency's discretion, any other interested Person, may each be permitted equal time in the discretion of the Agency to make oral presentations. No cross-examination will be permitted. Parties may stipulate to additional facts or information to assist the Agency's understanding of the Situation. The hearing need not be reported by a stenographic reporter, but in that instance a written summary of each oral presentation must be submitted at the hearing.

§ 1286. Declaratory Decision Proceeding Record.

(a) The Agency shall keep, in accordance with the State Records Management Act (Government Code, Title 2, Division 3, Part 5.5, Chapter 5 (Commencing with Section 14740), a record of each Declaratory Decision Proceeding, which shall include, but not be limited to:
(1) the application for a Declaratory Decision;

(2) all written comments filed with the Agency;

(3) any further stipulations of undisputed facts;

(4) if a hearing is held, a transcript of the hearing or, in the absence of a transcript, the summaries of the oral presentations submitted by each presenter;

(5) any other records, as defined in Government Code Section 14741, considered by the Agency in issuing the Declaratory Decision; and,

(6) the written Declaratory Decision, which shall contain a statement of undisputed facts and a determination of the issues, and the Agency's reason(s) for reaching the determination.

(b) This Declaratory Decision Proceeding record is a public record and shall be available to the public as provided by law. Nothing under this Article requires an Agency to disclose information which would otherwise be considered exempt from public disclosure.

§ 1288. Issuance and Service of a Declaratory Decision.

(a) The Declaratory Decision shall be based on the statement of undisputed facts submitted by the parties, written comments, oral presentations, and any other matters deemed appropriate by the Agency.

(b) A copy of the Agency's written Declaratory Decision shall be served upon the Applicant and upon every party. Service of a Declaratory Decision may be by personal delivery or mail or other means to the last known address of a Person.

(c) The Agency shall make the Declaratory Decision available, and send either the decision itself or notice of how to receive the decision to every intervenor or Person who filed comments, to any party given notice of the Application under Regulation 1270, and to any to party requesting notice under Regulation 1278 of this Article.

§ 1290. The Effect of a Declaratory Decision.

A Declaratory Decision binds the Agency, the Applicant, and any other parties to the Proceeding to the determination of issues reached in the Declaratory Decision. Pursuant to Government Code section 11425.60, a Declaratory Decision may be given precedential effect, if the agency so designates. Nothing shall prevent the Agency from prospectively changing a Declaratory Decision by regulation or by subsequent Declaratory Decision.

§ 1292. Judicial Review of a Declaratory Decision.

(a) An Agency's refusal or failure to issue a Declaratory Decision is not subject to judicial review.

(b) A Declaratory Decision is subject to judicial review in the same manner as the Agency's final decision or order in a contested adjudicative proceeding.

(c) Nothing in this regulation authorizes judicial review without exhaustion of other applicable administrative remedies, if any.

Hazardous Substance Cleanup Arbitration Panel Hearing Regulations

Cal. Admin. Code Title 27, Division 4, Chapter 2.

Current through December of 2008

§ 28007. Exercise of Administrative Authority.

(a) The Director shall provide administrative services for arbitrations under these regulations. The costs for these services will be based on a reasonable percentage of the total costs of an arbitration. The Director shall determine the percentage rate based upon, but not limited to, the following considerations: The complexity of the arbitration, the estimated length of the arbitration, projected expenses to be incurred during the course of the arbitration process, and current agency administrative overhead costs. Administrative services shall not include the services of reporters or transcribers.

(b) The Director shall be the repository of official records of any proceeding under these regulations until expiration of the appeal period, and may thereafter dispose of any such record after reasonable notice to the parties and subject to Government Code section 14755.

§ 28008. Payment of Arbitration Costs.

(a) The Director may order the potentially responsible parties, at any time, to make deposits necessary to assure payment of the costs of arbitrations. The Director may order the arbitration panel to withhold the draft or final arbitration decision or find parties in default to assure payment of arbitration costs. Even if the Director has not issued such an order, the arbitration panel shall not issue their draft or final decision until it has requested and received certification from the Director that all payments due from the potentially responsible parties have been made, or otherwise has obtained the consent of the Director irrespective of parties being in default of payment. The arbitration panel shall not waive any requirement that participating potentially responsible parties pay the costs of arbitration. However, one or more potentially responsible parties may pay the costs assigned to another responsible party.

(b) For arbitration panels convened pursuant to Health and Safety Code section 25398.10, response costs, which include the cost of arbitration, shall be apportioned among all responsible persons notified of the arbitration proceedings, regardless of whether those persons appear before the arbitration panel.

§ 28009. Docketing.

Upon a determination to convene the panel pursuant to section 28037, the Director shall docket the arbitration and notify all parties, including potentially responsible parties identified in the petition, of the docketing, convening of an arbitration panel and provide a list of potential arbitrators and a list of the names and addresses of all potentially responsible parties identified in the petition.

§ 28010. Setting and Notice of Hearings.

The arbitration panels shall set the date and time for all hearings conducted under these regulations and shall require service of written notice thereof on all parties no later than thirty (30) days prior to the date of the hearing.

§ 28011. Absence of an Appointed Arbitrator.

Prior to selection of the arbitrators or in the absence of the appointed arbitrators, with consent of all of the parties, the Director may decide necessary procedural and discovery questions.

§ 28012. Appointment of Arbitrators.

Any arbitrator appointed pursuant to section 28013 must have applied and been approved by the Office of Environmental Health Hazard Assessment based upon the criteria in Health and Safety Code sections 25356.2 or 25398.10, as applicable. Any arbitrator appointed shall be neutral, shall decide impartially and shall be subject to removal or disqualification for the reasons specified in section 28015.

§ 28013. Selection of Arbitrators.

(a) The Department or Water Board, whichever is the lead agency for the site, shall select one (1) arbitrator within fifteen (15) days after notice has been sent pursuant to section 28009.

(b) The participating potentially responsible party or a majority of the participating potentially responsible parties who have submitted to arbitration by the panel shall select one (1) arbitrator within fifteen (15) days after notice has been sent pursuant to section 28009.

(c) If the parties do not comply with (a) or (b) above, the Director will select the necessary arbitrator or arbitrators at random from those who have indicated a willingness to serve in the location of the hearing.

(d) If the two (2) arbitrators selected pursuant to (a), (b) or (c) above do not agree upon a third arbitrator within fifteen (15) days after their own selection, the third arbitrator shall be selected according to the following procedure:
(1) The Director shall prepare a list of five (5) potential arbitrators selected at random from those who have indicated a willingness to serve as an arbitrator in the hearing location.

(2) Within ten (10) days from the mailing of the list, the two (2) arbitrators may each:

A. Object to not more than two (2) names by crossing such names off the list;

B. Number the remaining names in the order of preference; and,

C. Return the list to the Director with a copy to the other arbitrator.

(3) All persons named on such list shall be deemed equally acceptable if either of the two (2) arbitrators fail to:

A. Return the list within the specified time; or

B. Indicate an order of preference.

(4) The Director shall appoint the third arbitrator from the persons whose names remain on the list in accordance with the designated order of preference, if possible.

(e) The selection of arbitrators shall be based upon the statutory criteria pursuant to Health and Safety Code sections 25356.2 or 25398.10, as applicable.
(1) For arbitrators selected pursuant Health and Safety Code section 25356.2, this criteria includes, but is not limited to, that arbitrators shall have relevant arbitration experience, and arbitrators shall have expertise in engineering, expertise in the physical, biological, or health sciences, or other relevant experience and qualifications.

(2) For arbitrators selected pursuant to Health and Safety Code section 25398.10, selection criteria includes, but is not limited to, the criteria specified in section 25356.2. In addition, the arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

§ 28014. Notice to Arbitrators of Appointment.

The Director shall mail a notice of appointment, with a copy of these regulations and an oath of office, to the arbitrators.

§ 28015. Disclosure and Challenge Procedure.

(a) On notice of selection, the appointed arbitrators shall disclose to the Director and the parties any circumstances known to him or her which are likely to prevent a prompt hearing and decision, or to create a bias or conflict of interest, or to prevent him or her from providing adequate performance. Upon receipt of such information from an appointed arbitrator or other source, the Director shall, within two (2) days of receipt, communicate such information to the parties. Such communication may be made orally or in writing, but if made orally, shall be confirmed in writing.

(b) If any party wishes to request disqualification of an arbitrator, such party shall notify the Director and the other parties of such request and the basis therefor within ten (10) days of receipt of the information on which such request is based. However, any challenge filed pursuant to Health and Safety Code section 25398.12 must be filed within ten (10) days of the provision of public notice of the arbitration hearing pursuant to paragraph (1) of subdivision (b) of section 25398.11 of the Health and Safety Code.

(c) The Director shall make a determination on any request for disqualification of an arbitrator within twenty (20) days after the Director receives any such request, and shall notify the parties in writing of such determination. This determination shall be within the sole discretion of the Director, and the decision shall be final.

(d) Once accepted, arbitrators have a continuing duty to disclose to the Director and the parties the development of any circumstances listed in (a) above, and every such disclosure shall be dealt with as in (a).

(e) If the Director determines that an arbitrator has failed to comply with subsections (a) or (d) above, the arbitrator may be removed from the panel by section 28016.

(f) Any person may challenge the selection of any arbitrator on ground of conflict of interest or lack of one or more of the qualifications required by Health and Safety Code sections 25356.2 or 25398.10, where applicable.

§ 28016. Vacancy.

(a) If any arbitrator selected by a party dies, refuses, or is unable to perform his or her duties adequately or is disqualified or removed during the course of a proceeding, the party who selected him or her shall choose a replacement within fifteen (15) days. If a replacement has not bee chosen within the specified time, the Director will select a replacement at random from the arbitrators who have indicated a willingness to serve in the location of the hearing.

(b) If any third arbitrator dies, refuses, or is unable to perform his or her duties adequately or is disqualified or removed during the course of a proceeding, the remaining arbitrators shall select a replacement arbitrator within fifteen (15) days. If a replacement arbitrator has not been selected within the specified time, the Director will select a replacement at random from the arbitrators who have indicated a willingness to serve in the hearing location.

(c) If a vacancy as described in (a) or (b) above occurs, the merits of the matter shall be reheard unless otherwise agreed to by the parties. The time periods specified herein shall commence to run on the day the arbitrator dies, refuses, or becomes unable to perform the duties of arbitrator adequately or is disqualified or removed during the course of the proceeding.

§ 28017. Arbitrators to Preside.

The three (3) arbitrators on each selected panel shall, by majority vote, elect one of its members to preside at the hearing.

§ 28018. Jurisdiction.

The arbitrators shall have the powers and authority conferred by Health and Safety Code sections 25356.2 through 25356.10, and 25398.10 through 25398.13, where applicable. The arbitrators shall rule on the admission and exclusion of evidence, on questions of hearing procedures, and on all other motions and shall exercise all powers relating to the conduct of the hearing. The arbitrators may make

orders necessary to promote the prompt and orderly conduct of the hearing, including any orders necessary for in camera consideration of evidence for reasons of business confidentiality as defined and as consistent with Health and Safety Code section 25358.2.

§ 28019. Arguments, Briefs and Proposed Findings.

(a) The arbitrators may require the parties before, during or following a hearing to submit arguments or briefs, in addition to any opening and closing briefs, on some or all of the issues in dispute.

(b) As a part of or in lieu of argument or briefs, the arbitrators, prior to taking the issues under submission for decision, may require the parties to submit proposed findings of fact and conclusions of law on some or all of the issues. When a proposed finding of fact is thus required to be submitted on an issue, the failure of a party to propose such finding may be treated by an arbitrator as a waiver of that party's contentions with respect thereto.

§ 28020. Discovery.

(a) Within thirty (30) days after the prehearing conference, the parties shall:
(1) Disclose the names and addresses of witnesses;

(2) Afford an opportunity to the other parties to inspect and copy any relevant documents or exhibits in the possession, custody, or control of the party; and,

(3) Exchange legible copies of all documents or exhibits to be offered in evidence.

(b) Not less than ten (10) days prior to the arbitration hearing, the parties shall provide any additional discovery that may be required as a result of the initial discovery.

(c) Except upon a showing of good cause, a party shall not be permitted to call a witness or introduce a document or exhibit that has not been disclosed, exchanged or made available pursuant to this section.

(d) Three (3) copies of all exhibits to be offered in evidence shall be provided by the parties, one for each arbitrator. The presiding arbitrator shall keep the copies of the exhibits which shall be designated as the exhibits for the official record.

(e) The arbitrators shall have the authority to decide necessary procedural and discovery questions, including defining or limiting the scope of discovery.

§ 28021. Subpoenas.

(a) The Director or an arbitrator may issue a subpoena or a subpoena duces tecum, signed and sealed but otherwise blank, to a party requesting it, who shall complete it before service.

(b) If the panel determines that a person is refusing to respond to a subpoena or subpoena duces tecum, or is guilty of misconduct, the arbitration panel may certify the facts to the superior court as provided in Health and Safety Code section 25356.3, subdivision (d).

(c) After receipt of documents pursuant to a subpoena duces tecum, any party may request the panel for a continuance upon showing good cause.

§ 28022. Prehearing Conference: Setting Hearing Date.

(a) Within thirty (30) days after the selection of the third arbitrator, the arbitrators shall hold a prehearing conference. The arbitrators shall mail to each party notice of the prehearing conference no later than twenty (20) days in advance of such conference, unless the parties by mutual agreement waive such notice. The prehearing conference may proceed in the absence of any party who, after due notice, fails to appear.

(b) At the prehearing conference the arbitration panel shall consider:
(1) The possibility of agreement disposing of all or any of the issues in dispute;

(2) The simplification or clarification of the issues;

(3) The possibility of obtaining stipulations, admissions, agreements on documents, understanding of matters already on record, use of affidavits and means of avoiding unnecessary proof;

(4) The identity and limitation of the number of witnesses, including expert witnesses, and avoidance of cumulative evidence;

(5) A timetable for completion of discovery, if any, and schedules for submission of written briefs;

(6) A date for commencement of the arbitration hearing and an estimate of time for the hearing;

(7) Such other matters that may aid in the disposition of the arbitration.

(c) The parties shall file and serve prehearing statements addressing the matters delineated in (b) at least five (5) days before the prehearing conference.

(d) The arbitration hearing shall commence within ninety (90) days after the prehearing conference on a date chosen at that conference.

(e) The arbitrators shall issue a prehearing conference order stating, but not limited to, the location and the date for the commencement of the arbitration hearing.

§ 28023. Continuances; Adjournment; Dismissal.

(a) Continuances may be permitted in the following circumstances: (1) once a petition for arbitration has been filed with the Director and a determination has been made that arbitration panel will be convened, but prior to a panel being convened, each party may request a maximum of two (2) continuances upon a showing of good cause; and, (2) once the panel has been convened, any party may request a continuance to the arbitration panel upon a showing of good cause. Before granting a continuance for good cause, the Director or the arbitration panel shall consider fairness to all parties. In either circumstance, a continuance of more than sixty (60) days shall not be approved. The basis for any continuance shall be set forth in the record.

(b) The arbitrators may take adjournments on the request of a party or on their own initiative provided that, to the fullest extent practicable, the arbitration hearing shall not be adjourned prior to the conclusion of the evidentiary hearing on the merits.

(c) An arbitration hearing shall be dismissed by the Director on its own motion or on motion of a party, after notice to the parties, if a final arbitration decision is not issued within two (2) years after notice is mailed pursuant to section 28009.

§ 28024. Motions.

All motions by the parties shall be in writing, unless made on the record during a hearing, and shall clearly state the action requested and the grounds relied upon. The original written motion, together with evidence of service on all other parties and the arbitrators, shall be filed with the Director at least thirty (30) days before the time appointed for the hearing on the motion. The arbitrators shall conduct such proceedings and make such orders deemed necessary to dispose of the issues raised by the motion.

§ 28025. Evidence.

(a) Oral evidence shall be taken only on oath or affirmation administered by one of the arbitrators.

(b) Each party has the right to: (1) present evidence relevant to the issues including, but not limited to, evidence by way of declaration under oath or affidavit; (2) cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; (3) impeach any witness regardless of which party first called the witness to testify; and, (4) rebut evidence. Any party of record, or person identified with such party may be called and examined as if under cross-examination by any adverse party as provided in Evidence Code section 776.

(c) The hearing need not be conducted according to technical rules relating to evidence and procedure although it may be by stipulation. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. However, such evidence shall be subject to the exclusions of Evidence Code sections 1151, 1152, and 1154. The rules of privilege shall be effective to the same extent as in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(d) Notwithstanding the best evidence rule (Evidence Code section 1500), copies of any document are admissible unless a genuine question is raised as to authenticity.

(e) Failure to furnish sufficient legible copies of exhibits may be grounds for exclusion of the exhibits.

(f) Arbitrators may request briefs on any issue related to the admission or exclusion of evidence.

§ 28026. Notice of Officially Noticeable Facts.

The arbitrators may take notice of, and find as true without proof, any matter which may be officially noticed pursuant to Government Code section 11515. Any officially noticed matter must be set forth in the record.

§ 28027. Submission on Agreed Facts.

The parties may submit any matter or issue pending before the arbitrators on an agreed statement of facts with such written or oral arguments as the arbitrators may permit.

§ 28028. Technical Support Services.

The Secretary shall ensure that all arbitration panels convened pursuant to section 25398.10 of the Health and Safety Code are provided necessary technical support by a team of state employees with experience and expertise appropriate to the issue or issues in dispute, as provided in section 25398.11 of the Health and Safety Code. The team of state employees shall provide a written report setting forth recommendations on all technical issues before the panel.

§ 28029. Place of Hearings.

The arbitrators may, for the convenience of all parties, order any hearing at any location.

§ 28030. Commencement of Hearings.

(a) The hearing shall commence within ninety (90) days after the pre-hearing conference. The arbitration panel may, upon a showing by the parties that settlement is likely, extend the date for the hearing for up to thirty (30) additional days, if further settlement discussions are necessary.

(b) The arbitration panel shall mail to each party notice of the hearing no later than thirty (30) days in advance of the hearing, unless the parties by mutual agreement waive such notice. The arbitrator need not mail a second notice to the parties if the date for the hearing is extended.

§ 28031. Attendance at Hearings.

(a) The arbitration hearings may be open to the public unless, on the motion of a party, the arbitrators determine that doing so would interfere with the orderly conduct or timely completion of the proceedings. However, all arbitration hearings held pursuant to section 25398.10 of the Health and Safety Code, shall be open to the public.

(b) At the request of any party, the arbitrators may exclude any witness not under examination. A party to the arbitration cannot be excluded under this section.

(c) If a person other than a natural person is a party to the arbitration, an officer or employee designated by its attorney or representative is entitled to be present to assist in the presentation of that party's case. However, that attorney or representative cannot be a witness who is excluded under subsection (b).

(d) The hearing may proceed in the absence of any person who, after due notice, fails to appear or fails to obtain an adjournment. If a party, after due notice, fails to appear or fails to obtain an adjournment, such party will be deemed to have waived the right to be present at the hearing.

(e) After all disputed issues have been heard by the arbitration panel, the arbitration panel may permit the parties to make closing statements, after which the arbitration panel shall declare the hearing closed.

(f) The hearing shall be completed within thirty (30) days, unless the arbitration panel extends the hearing for good cause.

(g) The parties may provide, by written agreement, for the waiver of the hearing.

§ 28032. Transcripts.

Each hearing shall be recorded, including all testimony and evidence presented, by any means that is agreeable to all parties. If the parties cannot agree, the hearing may be reported by a certified stenographic reporter or other method selected by the presiding arbitrator. The costs shall be borne by the potentially responsible parties.

§ 28033. Record of Proceedings.

(a) Upon request by a party, the Director shall have the complete record of the proceedings, or such parts thereof as are designated, prepared and delivered to such party. The cost of preparing a copy of the transcript, the complete record, or designated parts of either, shall be paid in advance by the requesting party.

(b) The complete record includes the pleadings, all notices and orders issued in the case, all decisions, a transcript or recording of all proceedings, the exhibits admitted, exhibits offered and excluded, the written evidence and other documents in the case.

§ 28034. Petition to Convene the Arbitration Panel.

(a) The arbitration panel may be convened by filing with the Director a written petition of any potentially responsible party or parties with liability or aggregate liability as provided in section 25356.3 or by any responsible person, the affected community or the public pursuant to section 25398.10 of the Health and Safety Code.
(1) The petition or petitions to convene the panel shall be filed within fifteen (15) days after the issuance of a final remedial action plan pursuant to section 25356.3 or as provided in section 25398.10, subdivision (b)(1) or prior to the time that the action in dispute becomes final pursuant to section 25398.10(b)(2).

(2) The petition shall be served upon all parties and upon the Director.

(3) If one or more petitions for arbitration have been filed for a single site, the arbitration panel shall consolidate all hearings where reasonably possible.

§ 28035. Petition to Convene the Panel; Contents.

A petition to convene the panel must contain the following:

(a) A petition to convene the panel;

(b) An explanation of the reasons for convening the panel;

(c) Identification of the party or parties petitioning arbitration, their names and addresses for the purposes of service and a recitation of their aggregate liability, if appropriate;

(d) The name and address of any other known potentially responsible party;

(e) An agreement not to contest the fact of liability in the arbitration, if filed pursuant to Health and Safety Code section 25356.3, subdivision (a);

(f) The date of the issuance of the final remedial action plan, if appropriate;

(g) An estimate of the length of time required to present the petitioning party's or parties' case or cases.

(h) An affidavit by the petitioner attesting to how each and every statutory requirement for filing the petition pursuant to Health and Safety Code sections 25356.3 or 25398.10, as applicable, has been met.

§ 28036. Objections to the Petition to Convene the Panel; Contents; When Time Estimates of All Parties Are Due.

(a) Within fifteen (15) days after the notice of convening a panel is mailed pursuant to section 28009, parties must:
(1) File any objections to the notice to convene the panel by giving notice to the Director and to all other parties;

(2) Give notice to the Director and to all other parties indicating whether the party intends to submit to arbitration;

(3) Give notice to the Director and to all other parties of the length of time they estimate will be required to present their cases.

(b) The basis for objections include, but are not limited to, the fact that the statutory prerequisites for convening an arbitration are not satisfied.

§ 28037. Decision to Convene the Panel.

(a) The Director shall determine whether to convene the panel and shall notify all parties, including parties identified in the petition pursuant to section 28035(c), of any such decision in accordance with section 28009.

(b) In addition, for a petition filed pursuant to Health and Safety Code section 25398.10, the Director shall notify all responsible persons who have been identified and located, the affected community, the team of state employees referenced in Health and Safety Code section 25398.11, and the public, of the arbitration hearing request and the location and scheduling of the arbitration hearing, in writing, by appropriate means, as soon as reasonably practicable.

§ 28038. Intervention and Withdrawal.

(a) No later than thirty (30) days prior to the prehearing conference, any potentially responsible party associated with the site which is subject to arbitration, may petition to intervene in the arbitration proceeding. Any intervening party shall agree not to contest the fact of liability in the arbitration if the petition is filed pursuant to Health and Safety Code section 25356.3, subdivision (a).

(b) If an arbitration panel has been appointed, a petition to intervene shall be filed with the arbitration panel and a copy shall be served upon all parties. If the arbitration panel has not yet been appointed, a petition to intervene shall be submitted to the Director and a copy shall be served upon all parties.

(c) Any such petition to intervene may be granted only upon the written approval of the arbitration panel or the Director if an arbitration panel has not been appointed. By seeking to intervene, the intervening party consents to be bound by the time limits for the filing of pleadings as the arbitration panel may make to prevent delaying the pre-hearing conference.

(d) Any party may petition to withdraw from the arbitration proceeding within thirty (30) days after receipt of the notice of appointment of the arbitrators. The arbitration panel shall approve such withdrawal, without prejudice to the moving party, and shall assess such administrative fees and expenses against the withdrawing party as the arbitration panel deems appropriate.

(e) For arbitration panels convened pursuant to Health and Safety Code section 25356.3, subdivision (a), the Director shall continue to convene the arbitration panel only if the remaining parties have an aggregate alleged liability in excess of 50 percent of the costs of removal and remedial action.

§ 28039. Arbitration Decisions.

(a) For arbitration decisions rendered pursuant to Health and Safety Code section 25356.3, the arbitration panel shall prepare a draft arbitration decision which contains a statement of reasons supporting the apportionment of liability and it shall circulate the decision for at least thirty (30) days for public comment. After review and consideration of any public comment, the arbitration panel shall issue the final arbitration decision as provided in Health and Safety Code section 25356.4(a) and pursuant to the conditions set forth in section 15008.

(b) For arbitration decisions rendered pursuant to Health and Safety Code section 25398.10, the arbitration panel shall provide notice of the arbitration decision in writing, by appropriate means, within five (5) days from the date that the arbitration panel has reached a decision, to the responsible parties, the affected community, the public and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(c) The arbitration panel shall render its decision within a reasonable period of time, but in no event

later than two (2) years after notice is mailed pursuant to Section 15009.

§ 28040. Apportionment of Response Costs.

(a) For arbitration decisions rendered pursuant to Health and Safety Code section 25356.3, the arbitration panel shall apportion liability for the costs of removal and remedial actions among all identifiable potentially responsible parties, regardless of whether those parties are before the panel or have otherwise been released, or are immune from liability.

(b) For arbitration decisions rendered pursuant to Health and Safety Code section 25398.10, the arbitration panel shall apportion all response costs, including costs incurred by the state in connection with any arbitration conducted, among all responsible parties notified of the arbitration proceedings, regardless of whether those persons appear before the arbitration panel.

(c) The costs of conducting the arbitration shall be borne by the potentially responsible parties submitting to the arbitration, except that any filing fees, witness fees, costs of discovery, or any other costs necessarily incurred by one party shall not be shared by any other party.

Seed Complaint Mediation

Cal. Admin. Code Title 3, Division 4, Chapter 5, Subchapter 3, Article 10

Current through December of 2008

§ 3915. Mediation of Complaints Required.

Use and completion of the complaint meditation procedures set forth in this article is a prerequisite to pursuing other dispute resolution mechanisms against a seed labeler when seed planted in California fails to conform to the label statements required by Sections 52452 and 52453 of the Food and Agricultural Code. Only those completing the complaint process are eligible to pursue other dispute resolution mechanisms except as otherwise provided.

(a) The complaint process requires the filing of a complaint followed by an investigation by the Secretary. At the conclusion of the investigation, mediation may be requested.

(b) Mediation as used in this article shall mean an alternative dispute resolution process which utilizes a neutral third party who facilitates the resolution of a dispute between parties. The mediator does not make a decision or an award. Resolution of a dispute that is mediated occurs when an agreement is reached between the complainant and the respondent.

(c) The Secretary may terminate the complaint mediation procedure and issue an Order of the Secretary stating that the requirement of Section 52332(f) of the Food and Agricultural Code has not been met if the person alleging damage to a crop (designated herein as complainant):
(1) fails to maintain the crop until notification of release;

(2) withdraws the complaint at any time;

(3) refuses to cooperate in the investigation;

(4) fails to request mediation after receipt of the report of investigation; or

(5) fails to appear at the mediation hearing without reasonable cause.

(d) The Secretary may release the complainant to pursue other dispute resolution mechanisms by issuing an Order of the Secretary stating that the requirement of Section 52332(f) has been met if the seller or labeler of the seed (designated herein as respondent):
(1) fails to file an answer;

(2) refuses to cooperate in the investigation procedure;

(3) fails to agree to mediation; or

(4) fails to appear at the mediation hearing without reasonable cause.

§ 3915.1. Mediation Notice.

The following notice shall appear upon every label of agricultural or vegetable seed except as provided in Section 3867:
Notice arbitration/conciliation/mediation required by several states

Under the seed laws of several states, arbitration, mediation or conciliation is required as a prerequisite to maintaining a legal action based upon the failure of seed to which this notice is attached to produce as represented. The consumer shall file a complaint (sworn for AR, FL, IN, MS, SC, TX, WA; signed only CA, ID, ND, SD) along with the required filing fee (where applicable) with the Commissioner/Director/Secretary of Agriculture, Seed Commissioner, or Chief Agricultural Officer within such time as to permit inspection of the crops, plants or trees by the designated agency and the seedman from whom the seed was purchased. A copy of the complaint shall be sent to the seller by certified or registered mail or as otherwise provided by state statute.

§ 3916. Complaint Procedures.

In order to make a formal complaint and seek mediation of a dispute as required by Section 3915, the complainant shall file a complaint within such time as to permit inspection of the crop by the Secretary and the respondent.

(a) To file a complaint, the complainant shall:
(1) File a written complaint with the Secretary giving the following information:

(A) the complainant's name, address and telephone number;

(B) the nature of the complaint and the alleged causes thereof;

(C) evidence of purchase and the label of the seed used to plant the affected crop (copies are acceptable, but originals must be presented upon demand by the Secretary during the investigation or mediation); and

(D) accurate and complete directions to locate the affected crop;

(2) forward a copy of the written complaint to the respondent by certified or registered mail, at the time of filing;

(3) pay to the Department of Food and Agriculture a nonrefundable filing fee of two hundred and fifty dollars ($250), at the time of filing in accordance with Section 52321 of the Food and Agricultural Code; and

(4) maintain the crop alleged to be damaged in the field until notified of release by the Secretary. The Secretary may require the complainant to maintain a representative portion of the crop. Designation of a representative portion by the Secretary shall be made within seven (7) days after receipt of the complaint.

(b) Within seven (7) calendar days after receipt of the copy of the written, filed complaint, the respondent shall file with the Secretary a written answer to the complaint and send a copy of the answer to the complainant by certified mail.

(c) The Secretary shall review the complaint to determine if the complaint is within the scope of Section 52332(f) of the Food and Agricultural Code and has been filed in accordance with this section. Within ten (10) calendar days of receipt of the respondent's written answer, the Secretary shall notify both parties in writing of the acceptance or the reason for rejection of the complaint.

§ 3917. Investigation Procedures.

Upon review and acceptance of a complaint, the Secretary shall initiate an investigation of the complaint.

(a) Within seven (7) calendar days, the Secretary shall appoint an investigational committee whose purpose is to assist the Secretary in conducting the investigation, make recommendations, offer opinions, and file an investigational report with the Secretary. Each investigational committee shall be composed of four disinterested members as follows: one member shall be the Secretary's designee, who shall serve as chairperson of all investigational committees and who shall make and maintain the file of each committee's investigations and opinions; one member, plus an alternate, shall be a County Agricultural Commissioner in whose county there is production of the kind of crop under consideration; one member, plus an alternate, shall be engaged primarily in the production and/or sale of the kind of seed cited in the complaint; and one member, plus an alternate, shall be a user of such seed.
(1) Members of each investigational committee shall serve until dismissed by the Secretary or until the report of investigation is filed with the Secretary, whichever occurs first. Alternates shall serve only in the absence of their respective members.

(2) Committee members shall receive no compensation for the performance of their duties but may receive per diem and mileage as authorized by law.

(3) Each committee may be called into session by the chairperson to consider matters referred to it. The chairperson shall conduct all meetings and deliberations held by the committee.

(b) The Secretary shall make a full and complete investigation of the matters complained of, including, but not limited to, an inspection of the crop in the field. The investigation shall be completed within sixty (60) days of the receipt of the complaint unless the investigation requires a growout or other procedure which cannot be completed within that time; in such case, the Secretary shall notify the complainant and respondent in writing stating the reasons for the extension.

(c) In conducting the investigation, the Secretary may:
(1) require the parties to provide pertinent records;

(2) require testimony under oath or statements under penalty of perjury;

(3) cause to be tested or grown to production a representative sample of seed under the supervision of the Secretary;

(4) obtain assistance from qualified experts; and

(5) investigate any other matters relative to the complaint.

(d) The chairperson shall file with the Secretary the committee's written report of investigation along with the investigation file within thirty (30) days after the conclusion of the investigation of the complaint. The Secretary shall transmit the report by certified mail to the complainant and to the respondent. The file, including the report of investigation, shall be maintained by the Secretary for a period of five (5) years.

§ 3918. Mediation Procedures.

If, during the course of the investigation, the complainant and respondent have not resolved the disputed complaint, the complainant may request mediation.

(a) To request mediation of the disputed complaint the complainant shall:
(1) file a written request for mediation with the Secretary within ten (10) days after the receipt of the investigation report; and

(2) forward a copy of the request for mediation to the respondent by certified mail.

(b) Within seven (7) days after receipt of the request for mediation, the Secretary shall:
(1) appoint a mediator from within the Department or by contract with outside mediation services; and

(2) set a time and place for the mediation hearing. The mediation hearing shall begin within thirty (30) days after the request for mediation and shall take place in the county in which the crop alleged to be damaged was grown unless other arrangements are agreed to by the complainant and the respondent.

(c) The Secretary may declare an impasse if the mediator determines that either party fails to be responsive to the mediation process during the mediation hearing.

(d) The mediator shall file a report with the Secretary within seven (7) days after completion of the mediation hearing and transmit same by certified mail to the complainant and respondent.

(e) Within seven (7) days after receipt of the mediator's report, the complainant and respondent shall file with the Secretary written notice of acceptance or rejection of the mediation. Upon completion of mediation or declared impasse, the prerequisite requirement as specified in Section 52332(f) of the Food and Agricultural Code shall be satisfied.