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States' Alternative Dispute Resolution Statutes

State of Hawai´i

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States' Alternative Dispute Resolution Statutes

STATE OF HAWAI´I

Index

Uniform Arbitration Act
Division 4, Title 36, Chapter 658A.

Current through the 2008 Second Special Session

§ 658A-1. Definitions

In this chapter:

"Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

"Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

"Court" means any district or circuit court of competent jurisdiction in this State, unless otherwise indicated. In cases involving arbitration subject to chapter 89, chapter 377, or the National Labor Relations Act, "court" means the circuit court of the appropriate judicial circuit.

"Knowledge" means actual knowledge.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 658A-2 Notice

(a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 658A-3. When chapter applies

(a) Except as provided in subsection (c), this chapter governs an agreement to arbitrate made on or after July 1, 2002.

(b) This chapter governs an agreement to arbitrate made before July 1, 2002, if all the parties to the agreement or to the arbitration proceeding so agree in a record. If the parties to the agreement or to the arbitration do not so agree in a record, an agreement to arbitrate that is made before July 1, 2002, shall be governed by the law specified in the agreement to arbitrate or, if none is specified, by the state law in effect on the date when the arbitration began or on June 30, 2002, whichever first occurred.

(c) After June 30, 2004, this chapter governs an agreement to arbitrate whenever made.

§ 658A-4. Effect of agreement to arbitrate; nonwaivable provisions

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

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement shall not:
(1) Waive or agree to vary the effect of the requirements of section 658A-5(a), 658A-6(a), 658A-8, 658A-17(a), 658A-17(b), 658A-26, or 658A-28;
(2) Agree to unreasonably restrict the right under section 658A-9 to notice of the initiation of an arbitration proceeding;
(3) Agree to unreasonably restrict the right under section 658A-12 to disclosure of any facts by a neutral arbitrator; or
(4) Waive the right under section 658A-16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding shall not waive, or the parties shall not vary the effect of, the requirements of this section or section 658A-3(a) or (c), 658A-7, 658A-14, 658A-18, 658A-20(d) or (e), 658A-22, 658A-23, 658A-24, 658A-25(a) or (b), or 658A-29.

§ 658A-5. Application for judicial relief

(a) Except as otherwise provided in section 658A-28, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

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

§ 658A-6. Validity of agreement to arbitrate

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

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

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

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

§ 658A-7. Motion to compel or stay arbitration

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

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

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

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

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is

pending in court, a motion under this section shall be made in that court. Otherwise a motion under this section shall be made in any court as provided in section 658A-27.

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

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

§ 658A-8. Provisional remedies

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

(b) After an arbitrator is appointed and is authorized and able to act:
(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and
(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

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

§ 658A-9. Initiation of arbitration

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

(b) Unless a person objects for lack or insufficiency of notice under section 658A-15(c) before the beginning of the arbitration hearing, by appearing at the hearing the person waives any objection to lack of or insufficiency of notice.

§ 658A-10. Consolidation of separate arbitration proceedings

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

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

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

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ 658A-11. Appointment of arbitrator; service as a neutral arbitrator

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

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

§ 658A-12. Disclosure by arbitrator

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
(1) A financial or personal interest in the outcome of the arbitration proceeding; and
(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

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

(c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 658A-23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under section 658A-23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under section 658A-23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 658A-23(a)(2).

§ 658A-13. Action by majority

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section 658A-15(c).

§ 658A-14. Immunity of arbitrator; competency to testify; attorney's fees and costs

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

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

(c) The failure of an arbitrator to make a disclosure required by section 658A-12 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection does not apply:
(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
(2) To a hearing on a motion to vacate an award under section 658A-23(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

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

§ 658A-15. Arbitration process

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:
(1) If all interested parties agree; or
(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

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

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 658A-11 to continue the proceeding and to resolve the controversy.

§ 658A-16. Representation by lawyer

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

§ 658A-17. Witnesses; subpoenas; depositions; discovery

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

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

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the

circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

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

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

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

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

§ 658A-18. Judicial enforcement of pre-award ruling by arbitrator

If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 658A-19. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 658A-22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 658A-23 or 658A-24.

§ 658A-19. Award

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

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

§ 658A-20. Change of award by arbitrator

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:
(1) Upon a ground stated in section 658A-24(a)(1) or (3);
(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
(3) To clarify the award.

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

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

(d) If a motion to the court is pending under section 658A-22, 658A-23, or 658A-24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
(1) Upon a ground stated in section 658A-24(a)(1) or (3);
(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections 658A-19(a), 658A-22, 658A-23, and 658A-24.

§ 658A-21. Remedies; fees and expenses of arbitration proceeding

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

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

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 658A-22 or for vacating an award under section 658A-23.

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

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

§ 658A-22. Confirmation of award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 658A-20 or 658A-24 or is vacated pursuant to section 658A-23.

§ 658A-23. Vacating award

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:
(1) The award was procured by corruption, fraud, or other undue means;
(2) There was:
(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;
(B) Corruption by an arbitrator; or
(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 658A-15, so as to prejudice substantially the rights of a party to the arbitration proceeding;
(4) An arbitrator exceeded the arbitrator's powers;
(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 658A-15(c) not later than the beginning of the arbitration hearing; or
(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 658A-9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within ninety days after the movant receives notice of the award pursuant to section 658A-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 658A-20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2), the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in section 658A-19(b) for an award.

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

§ 658A-24. Modification or correction of award

(a) Upon motion made within ninety days after the movant receives notice of the award pursuant to

section 658A-19 or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 658A-20, the court shall modify or correct the award if:
(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

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

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

§ 658A-25. Judgment on award; attorney's fees and litigation expenses

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

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

(c) On application of a prevailing party to a contested judicial proceeding under section 658A-22, 658A-23, or 658A-24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 658A-26. Jurisdiction

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

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

§ 658A-27. Venue

A motion pursuant to section 658A-5 shall be made in the court of the circuit in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the circuit in which it was held. Otherwise, the motion may be made in the court of any circuit in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any circuit in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

§ 658A-28. Appeals

(a) An appeal may be taken from:
(1) An order denying a motion to compel arbitration;
(2) An order granting a motion to stay arbitration;
(3) An order confirming or denying confirmation of an award;
(4) An order modifying or correcting an award;
(5) An order vacating an award without directing a rehearing; or
(6) A final judgment entered pursuant to this chapter.

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

§ 658A-29. Relationship to Electronic Signatures in Global and National Commerce Act

The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.

International Arbitration

Division 4, Title 36, Chapter 658D.

Current through the 2008 Second Special Session

§ 658D-1. Short title

This chapter shall be known and may be cited as the Hawaii International Arbitration, Mediation, and Conciliation Act.

§ 658D-2. Statement of findings and declaration of purposes

The legislature hereby finds and declares that:
(1) The rapid expansion of international business, trade, and commerce among nations in the Pacific region provides important opportunities for the State of Hawaii to participate in such business, trade, and commerce;
(2) There will inevitably arise, from time to time, disagreements and disputes arising from such business, trade, and commercial relations and transactions that are amenable to resolution by means of international arbitration, mediation, conciliation, and other forms of dispute resolution in lieu of international litigation;
(3) It is the policy of this State to encourage the use of arbitration, mediation, and conciliation to reduce disputes arising out of international business, trade, commercial, and other relationships;
(4) It is declared that the objective of encouraging the development of Hawaii as an international center for the resolution of international business, commercial, trade, and other disputes be supported through the establishment of certain legal authorities as set forth in this chapter.

§ 658D-3. Policy

It is the policy of the State of Hawaii to encourage the use of arbitration, mediation, and conciliation to resolve disputes arising out of international relationships and to maximize private autonomy over such proceedings by limiting court involvement therein to:
(1) The enforcement of decisions, awards and settlement; and
(2) Ancillary matters in aid of such proceedings.

§ 658D-4. Scope

(a) This chapter shall apply only to the arbitration, mediation, or conciliation of disputes between:
(1) Two or more persons at least one of whom is a nonresident of the United States; or
(2) Two or more persons all of whom are residents of the United States if the dispute:
(i) Involves property located outside the United States;
(ii) Relates to a contract which envisages enforcement or performance in whole or in part outside the United States; or
(iii) Bears some other relation to one or more foreign countries.

(b) Notwithstanding subsection (a), this chapter shall not apply to the arbitration, mediation, or conciliation of:
(1) Any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this State, unless the parties in writing expressly submit the resolution of that dispute to this chapter; or
(2) Any dispute involving domestic (family) relations.

(c) If in any arbitration within the scope of this chapter reference must, under applicable conflict of laws principles, be made to the arbitration law of this State, such reference shall be to this chapter.

(d) This chapter shall apply to any arbitration within the scope of this chapter, without regard to whether the place of arbitration is within or without this State:
(1) If the written undertaking to arbitrate expressly provides that the law of this State shall apply; or
(2) In the absence of a choice of law provision applicable to the written undertaking to arbitrate, if that undertaking forms part of a contract the interpretation of which is to be governed by the laws of this State; or
(3) In any other case, any arbitral tribunal or other panel established pursuant to section 658D-7 below decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the laws of this State.

§ 658D-5. Definitions
As used in this chapter:

"Arbitration" shall also encompass, as appropriate, mediation, conciliation, and other forms of dispute resolution as an alternative to international litigation.

"Center" means any center organized as an independent nonprofit educational corporation duly established under the laws of this State, whose principal purpose is to facilitate the resolution of international business, trade, commercial, and other disputes between persons by means of arbitration, mediation, conciliation, and other means as an alternative to the resort to litigation.

"Nonresident of the United States" means any person not a "resident of the United States".

"Person" means not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally and shall include a government or any agency, instrumentality, or subdivision thereof where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

"Resident of the United States" means:
(1) A natural person who maintains sole residence within a state, possession, commonwealth, or territory of the United States or within the District of Columbia; or
(2) Any other person organized or incorporated under the laws of the United States, any state, possession, commonwealth, or territory thereof, or the District of Columbia.

"Written undertaking to arbitrate" shall mean a writing in which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses. A written undertaking may be part of a contract, may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

§ 658D-6. Consent to jurisdiction

Conducting arbitration in this State, or making a written agreement to arbitrate which provides for arbitration within this State subject to this chapter, shall constitute a consent by the parties to that arbitration or undertaking to the exercise of in personam jurisdiction by the circuit courts of this State but only for the purposes of such arbitration.

§ 658D-7. Certain legal authorities for international commercial disputes resolution

(a) A center shall not be considered a department, agency, or public instrumentality of this State, and shall not be subject to the laws of this State applying to departments, agencies, and public instrumentalities of this State, except that a center shall be subject to all of the laws of this State pertaining to nonprofit corporations.

(b) A center shall permit the participants to an arbitration to select any body of rules and procedures for the conduct, administration, and facilitation of that proceeding, whether such rules and procedures have been prepared by private arbitral organizations, created by the participants themselves, or by the center.

(c) A center shall have the authority pursuant to this chapter to establish from time to time such rules and procedures for the conduct, administration, and facilitation of the resolution, whether by arbitration, mediation, conciliation, or otherwise, of all disputes subject to this chapter.

(d) In furtherance of the foregoing, a center shall have the authority pursuant to this chapter to adopt rules providing, without limitation and by way of illustration only, that any arbitral tribunal or other panel established pursuant to such rules shall:

(1) Determine the relevance and materiality of the evidence without the need to follow formal rules of evidence;
(2) Be able to utilize any lawful methods that it deems appropriate to obtain evidence additional to that produced by the parties;
(3) Issue subpoenas or other demands for the attendance of witnesses or for the production of books, records, documents, and other evidence;
(4) Be empowered to administer oaths, order depositions to be taken or other discovery obtained, without regard to the place where the witness or other evidence is located, and appoint one or more experts to report to it;
(5) Fix such fees for the attendance of witnesses as it deems appropriate;
(6) Make awards of interest, reasonable attorney's fees and costs of the arbitration, mediation, or conciliation as agreed to in writing by the parties, or in the absence of such agreement, as it deems appropriate.

(e) In exercising the powers conferred upon it by this chapter, such arbitral tribunal, or other panel may apply for assistance from any court, tribunal or governmental authority in any jurisdiction. Any application to a court hereunder shall be made and heard in a summary way in the manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

§ 658D-8. Arbitral tribunal or panel; powers

The arbitral tribunal or panel established pursuant to section 658D-7 of this chapter or a majority of them, may summon in writing any person to attend before it or any of them as a witness and in a proper case to bring certain described books, papers, records and documents. The fees for attendance shall be the same as the fees of witnesses before the circuit courts of this State. The summons shall issue in the name of the arbitral tribunal or panel and be signed by a majority of them, shall be directed to such person, and shall be served in the same manner as subpoenas to testify before a court of record. If any person so summoned to testify refuses or neglects to obey the summons, upon petition the circuit court may compel the attendance of such person before the arbitral tribunal or panel, or punish such person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the circuit court.

§ 658D-9. Enforcement

(a) Arbitral or other awards or settlements issued pursuant to this chapter by the center shall be enforced by the circuit courts of this State as permitted by law and consistent with the United States Arbitration Act, 9 U.S.C. § 201, et seq., and the enforcement provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by 9 U.S.C. § 201, et seq., unless subsection (b) below is applicable.

(b) Where the parties specifically submit to jurisdiction of this chapter pursuant to section 658D-6, the center may require those parties residing in countries not signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by 9 U.S.C. § 201, et seq., and not having sufficient assets otherwise within the jurisdiction of the circuit courts of this State, to post such bonds or other security as the center shall deem appropriate to assure reasonable likelihood of enforcement of any award or other relief ultimately ordered by the center in the proceeding.

Hawai'i Arbitration Rules

Current with amendments received through July 2008

RULE 1. THE COURT ANNEXED ARBITRATION PROGRAM

The Court Annexed Arbitration Program (the Program) is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases in the State of Hawai'i.

RULE 2. INTENT OF PROGRAM AND APPLICATION OF RULES

(A) The purpose of the Program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters to be designated by the Judicial Arbitration Commission.
(B) These rules shall not be applicable to arbitration by private agreement or to other forms of arbitration under existing statutes, policies and procedures.
(C) These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the Arbitration Administrator, the Arbitration Judge, and the Judicial Arbitration Commission. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

RULE 3. THE ARBITRATION JUDGE

(A) The Arbitration Judge for the Program in each judicial circuit shall be a Circuit Court Judge who shall be appointed by the Chief Justice. The Arbitration Judge may delegate his or her powers and duties under these rules to another Circuit Court Judge as may be needed for the efficient operation of the Program.
(B) The Arbitration Judge shall determine all disputed issues under these rules as hereinafter set forth, including, but not limited to, all disputed issues concerning the arbitrability of cases and the qualifications and acts of arbitrators.

RULE 4. THE JUDICIAL ARBITRATION COMMISSION

(A) The Chief Justice shall establish a Judicial Arbitration Commission which will have the responsibility to develop, monitor, maintain, supervise and evaluate the Program for the State of Hawai'i.
(B) The Judicial Arbitration Commission shall include the Arbitration Judges of each judicial circuit and a representative to be designated by the President of the Hawai'i State Bar Association. The chairperson shall be designated by the Chief Justice. Additional members shall be appointed at the discretion of the Chief Justice. The Chief Justice may also appoint advisors to the Judicial Arbitration Commission, who shall not have the right to vote.
(C) The Judicial Arbitration Commission shall be responsible for the selection and training of arbitrators.
(D) The Judicial Arbitration Commission shall be responsible for the supervision and evaluation of the Arbitration Administrator in each judicial circuit.
(E) The Judicial Arbitration Commission shall interpret these rules prior to the appointment of an arbitrator in any case under the Program.
(F) The Judicial Arbitration Commission may recommend the adoption or amendment of rules and regulations to the Supreme Court for the implementation and administration of the Program.

RULE 5. THE ARBITRATION ADMINISTRATOR

The Arbitration Administrator for the Program in each judicial circuit shall be appointed by the Chief Justice and shall be responsible for the operation and management of the Program, as hereinafter set forth.

RULE 6. MATTERS SUBJECT TO ARBITRATION

(A) All tort cases having a probable jury award value, not reduced by the issue of liability and not in excess of One Hundred Fifty Thousand Dollars ($150,000.00), exclusive of interest and costs, may be accepted into the Program at the discretion of the Judicial Arbitration Commission.
(B) Any other civil case, regardless of the monetary value or the amount in controversy, may be submitted to the Program upon the agreement of all parties and the approval of the Arbitration Judge.
(C) Parties to cases submitted or ordered to the Program may agree at any time to be bound by any arbitration ruling or award.
(D) The Arbitration Judge may accept into, or remove from, the Program any action where good cause for acceptance or removal is found. The Court's decision in this regard is non-reviewable.

RULE 7. RELATIONSHIP TO CIRCUIT COURT JURISDICTION AND RULES; FORM OF DOCUMENTS

(A) Cases filed in, or removed to, the Circuit Court shall remain under the jurisdiction of that court for all phases of the proceedings, including arbitration.
(B) Except for the authority to act or interpret these rules expressly given to the arbitrator, the Arbitration Administrator, the Judicial Arbitration Commission, or the Arbitration Judge, all issues shall be determined by the Circuit Court with jurisdiction.
(C) Before a case is submitted or ordered to the Program, and after a Notice of Appeal and Request for Trial De Novo is filed, all applicable rules of the Circuit Court and of civil procedure apply. After a case is submitted or ordered to the Program, and before a Notice of Appeal and Request for Trial De Novo is filed, or until the case is removed from the Program, these rules apply.
(D) The calculation of time and the requirements of service of pleadings and documents under these rules shall be the same as under the Hawai'i Rules of Civil Procedure, except that service under these rules by the Arbitration Administrator may be made by facsimile transmission.
(E) Circuit Court Rule 12(q), and all rules of court or of civil procedure requiring the filing of pleadings, remain in effect notwithstanding the fact that a case is under the Program.
(F) All dispositive motions shall be made to the Circuit Court as required by law or rule notwithstanding the fact that a case is under the Program.
(G) All documents required to be utilized or filed under these rules shall be in a form designated by the Arbitration Judge.
(H) Once a case is submitted or ordered to the Program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the Arbitration Judge.

RULE 8. DETERMINATION OF ARBITRABILITY

(A) The court shall view all tort cases as arbitration eligible and automatically "in" the Program unless plaintiff certifies that his or her case has a value in excess of the $150,000 jurisdictional amount of the Program. Plaintiff shall file a request for exemption at the time the complaint is filed and such a request shall include a summary of facts that support plaintiff's contentions.

(B) Where exemptions from arbitration have been requested, the Arbitration Administrator shall review the contentions and evidence available and determine eligibility. The Arbitration Administrator may require a party to submit additional evidence to support the party's contentions. The Arbitration Administrator shall render a decision on the request for exemption, which may be appealed to the Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal that was not presented to the Arbitration Administrator, will not be considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge's decision on appeal is non-reviewable.
(C) Subsequent to the filing of the complaint, any party who believes a case should be removed from, admitted or readmitted to the Program, shall file a request to remove, admit or readmit, with the Arbitration Judge. The request shall include a summary of the facts that support the party's contentions, and shall be served on all parties. The Arbitration Judge's decision on the request is non-reviewable.
(D) The Arbitration Judge shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a conference on the issue of arbitrability at the judge's discretion.
(E) The Arbitration Judge may, at the judge's discretion, impose sanctions of reasonable costs and attorney's fees against any party who without good cause or justification attempts to remove a case from the Program.

RULE 9. ASSIGNMENT TO ARBITRATOR

(A) Parties may select and stipulate to a private arbitrator(s), who is an arbitrator not on the panel of the Program, or one who is on the panel but who has agreed to serve on a private basis. Such stipulation must be made within twenty (20) days after the appearance of defense counsel and must include a statement signed by the arbitrator(s) expressing his or her express willingness to arbitrate under the rules and procedures of the Court Annexed Arbitration Program and a duly signed arbitrator's oath.
(B) Any and all fees or expenses related to the use of a private arbitrator(s) shall be borne by the parties.
(C) Unless the Arbitration Administrator is notified of a stipulation for a private arbitrator(s) within the above twenty (20) day period, one (1) arbitrator will be assigned. If the assigned arbitrator is disqualified, another arbitrator shall be assigned.
(D) Any party may object, for good cause, to the assigned arbitrator. The objection, which shall be made in writing and state the specific grounds for the objection, shall be filed with the Arbitration Administrator and served on all parties within ten (10) days from the date of the assignment of the arbitrator. Any response to the objection shall be filed with the Arbitration Administrator and served on all parties within three (3) days after service of the objection. The Arbitration Administrator shall render a decision on the objection, which may be appealed to the Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal that was not presented to the Arbitration Administrator, will not be considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge's decision on the appeal is non-reviewable.
(E) Where an Arbitrator is assigned to a case and subsequent thereto, an additional party is added, the

party may object, for good cause, to the assigned arbitrator within ten (10) days from the appearance of the party in the case. Except as otherwise provided herein, the provisions of section (D) of this rule shall govern any objection, response, and appeal filed under this section (E).
(F) The above described method of selection of an arbitrator shall be followed in all the Judicial Circuits.

RULE 10. QUALIFICATIONS OF ARBITRATORS

(A) The Judicial Arbitration Commission shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice in the State of Hawai'i and, in its discretion, qualified non-attorneys.
(B) Attorneys serving as arbitrators shall have substantial experience in civil litigation, and shall have been licensed to practice law in the State of Hawai'i for a period of five (5) years, or can provide the Judicial Arbitration Commission with proof of equivalent qualifying experience.
(C) Arbitrators shall be required to complete an orientation and training program following their selection to the panel and other additional training sessions or classes scheduled by the Judicial Arbitration Commission or Arbitration Administrator.
(D) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, the laws of the State of Hawai'i, and the Code of Ethics of the American Arbitration Association.
(E) An arbitrator who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately resign or be withdrawn as an arbitrator.
(F) Any issue concerning the qualification of a person to serve as an arbitrator on the panel of arbitrators shall be referred to the Judicial Arbitration Commission for a final, non-reviewable determination.

RULE 11. AUTHORITY OF ARBITRATORS

(A) Arbitrators shall have the general powers of a court and may hear cases in accordance with established rules of evidence and procedure, liberally construed to promote justice and the expeditious resolution of disputes. These include, but are not limited to, the power:
(1) To administer oaths or affirmations to witnesses;
(2) To relax all applicable rules of evidence and procedure to effectuate a speedy and economical resolution of the case without sacrificing a party's right to a full and fair hearing on the merits;
(3) To decide procedural issues arising before or during the arbitration hearing, except issues relating to his or her qualifications as an arbitrator;
(4) To invite or order, with reasonable notice, the parties to submit pre-hearing or post-hearing briefs;
(5) To examine, after notice to the parties, any site or object relevant to the case;
(6) To issue subpoenas for the attendance of witnesses or production of documentary evidence;
(7) To determine the place, time and procedure to hear all matters;
(8) To interpret these rules in all proceedings before him or her;
(9) To find witnesses or parties in contempt and to impose sanctions as provided by the laws of the State of Hawai'i; and
(10) To attempt, with the consent of all parties in writing, to aid in the settlement of the case.
(B) Any challenge to the authority or the act of an arbitrator shall be made to the Arbitration Administrator in writing and state the specific grounds for the challenge. The challenge shall be filed with the Arbitration Administrator and served on the arbitrator and all parties within ten (10) days of the challenged act. Any response to the challenge shall be filed with the Arbitration Administrator and served on the arbitrator and all parties within three (3) days after service of the challenge. The Arbitration Administrator shall render a decision on the challenge, which may be appealed to the

Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on the arbitrator and all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal which was not presented to the Arbitration Administrator, will be not considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge shall have the non-reviewable power to uphold, overturn or modify the decision of the Arbitration Administrator, including the power to stay any proceeding.

RULE 12. STIPULATIONS

Any stipulation between the parties relating to the conduct of the arbitration proceeding, or any factual matter therein, shall be in writing and signed by the counsel or parties, and filed with the arbitrator.

RULE 13. RESTRICTIONS ON COMMUNICATIONS

(A) Neither counsel nor parties may communicate directly with the arbitrator regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties.
(B) No disclosure of any offer or demand of settlement made by any party shall be made to the arbitrator prior to the filing of an award without the agreement of all other parties.

RULE 14. DISCOVERY

(A) Once a case is submitted or ordered to the Program, the extent to which discovery is allowed, if at all, is at the sole discretion of the arbitrator, except as provided in section (B) of this rule. Types of discovery shall be those permitted by the Hawai'i Rules of Civil Procedure, but these may be modified in the discretion of the arbitrator to save time and expense.
(B) A party may at anytime: (1) serve on other parties the standard form interrogatories and requests for production of documents, which the Judicial Arbitration Commission has approved; and (2) conduct, by agreement, additional formal or informal discovery. Any dispute arising out of the discovery permitted by this section (B) shall be determined by the arbitrator upon his or her assignments.

RULE 15. SCHEDULING OF HEARINGS; PRE-HEARING CONFERENCES

(A) All arbitrations shall take place and all awards filed no later than nine (9) months from the date of service of the complaint to all defendants, or the Order of Arbitration by the Arbitration Judge, unless said time is modified by the Arbitration Judge pursuant to this rule. Arbitrators shall set the time and date of the hearing within this period.
(B) The arbitration hearing date may be advanced or continued by the arbitrator for good cause upon written request from either party; however, a request for a continuance of the hearing beyond the above nine (9) month period may not be granted by the arbitrator until said arbitrator obtains an extension of the above nine (9) month period. Any request for extension of the above nine (9) month period must be made in writing to the Arbitration Judge by the arbitrator.
(C) Consolidated actions shall be heard on the date assigned to the latest case involved.
(D) Arbitrators and/or the Arbitration Administrator may, at their discretion, conduct pre-arbitration hearings or conferences. However, arbitrators shall conduct a pre-hearing conference within thirty (30) days from the date a case is assigned to an arbitrator.
(E) The arbitrator shall give immediate written notification to the Arbitration Administrator of any change of the arbitration date, any settlement or change of counsel.

RULE 16. PREHEARING STATEMENT

(A) At least thirty (30) days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a Prehearing Statement. The Prehearing Statement shall state that the party submitting the statement will be ready to proceed with the hearing upon completion of the inspection and/or copying permitted in section (B) of this rule. The statement shall also contain, wherever applicable, the following information:

(1) Information about the party submitting the statement, including, at minimum:

(i) The name, address, telephone number, age, marital status and occupation of such party;

(ii) The name, address, telephone number, and place of registration, if such party is a general or limited partnership; or

(iii) The name, address, telephone number, and place of incorporation, if such party is a corporation.

(2) A statement of the facts which the party submitting the statement reasonably believes will be established at the hearing by such party;

(3) The name, address, telephone number and field of expertise of each expert, including all doctors, whom the party submitting the statement intends to call as a witness or use in any other manner at the hearing, and copies of their reports;

(4) The name, address and telephone number of all other witnesses the party submitting the statement intends to call at the hearing;

(5) A statement of the party's position on general damages;

(6) A statement of the party's position on special damages and an itemized list of all special damages claimed or disputed by such party; and

(7) A list of exhibits and documentary evidence anticipated to be introduced at the hearing by the party submitting the statement.

(B) Each party shall provide copies of all exhibits and documentary evidence to the arbitrator and upon request shall make all exhibits and documentary evidence available for inspection and copying by other parties, at least twenty (20) days prior to the date of the hearing.

(C) A party failing to comply with this rule, or failing to comply with any discovery order, may not present at the hearing a witness or exhibit required to be disclosed or made available, except with the permission of the arbitrator.

(D) Each party shall furnish the arbitrator at least twenty (20) days prior to the arbitration hearing copies of any pleadings and other documents contained in the court file which that party deems relevant.

RULE 17. CONDUCT OF THE HEARING

(A) The arbitrator shall have complete discretion over the mode and order of presenting evidence and the conduct of the hearing.

(B) No transcription or recording shall be permitted of the arbitration proceedings.

RULE 18. ARBITRATION IN THE ABSENCE OF A PARTY

An arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance. The arbitrator shall require the party present to submit such evidence as he or she may require for the making of an award, and may offer the absent party an opportunity to appear at a subsequent hearing.

RULE 19. FORM AND CONTENT OF AWARD

(A) Awards by the arbitrator shall be in writing and signed by the arbitrator. Awards may be on standard award forms approved by the Judicial Arbitration Commission or may be in a form the arbitrator determines appropriate for the case.
(B) The arbitrator shall determine all issues raised by the pleadings that are subject to arbitration under the Program, including a determination of comparative negligence, if any, damages, if any, and costs. The amount of damages that can be awarded is not limited to the jurisdictional amount for arbitration.
(C) Findings of Fact and Conclusions of Law are not required.
(D) After an award is made, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

RULE 20. FILING OF AWARD

(A) Within seven (7) days after the conclusion of the arbitration hearing, or thirty (30) days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the Arbitration Administrator, who shall then serve copies of said award upon all parties. Application by the arbitrator to the Arbitration Administrator must be made for an extension of these time periods.
(B) Within the seven day period for filing an award, the arbitrator may file with the Arbitration Administrator an amended award to correct an obvious error in the award. Subsequent to this time, the arbitrator must obtain the approval of the Arbitration Administrator to file an amended award. The arbitrator's written request to the Arbitration Administrator shall state the reason(s) for the request, include the proposed amended award, and be served on all parties. Except as provided under section (C) of this rule, the arbitrator may not file an amended award that changes the arbitrator's decision on the merits. An amended award filed pursuant to this section (B) may modify an award only to correct an inadvertent miscalculation or description, or to adjust the award in a matter of form rather than substance.
(C) To file an amended award that includes any modification of substance, the arbitrator must obtain the approval of the Arbitration Judge. The arbitrator's written request to the Arbitration Judge shall state the reason(s) for the request, include the proposed amended award, and shall be served on the Arbitration Administrator and all parties.
(D) The Arbitration Administrator shall serve any amended award upon all parties.

Commentary

The December 21, 2004 amendment clarifies that Rule 20 authorizes the arbitrator to request and obtain leave of the Arbitration Administrator or Arbitration Judge to file an amended award. The rule is not intended to authorize parties to request modification of an arbitration award by the Arbitration Administrator or Arbitration Judge.

RULE 21. JUDGMENT ON AWARD

If, after twenty (20) days after the award is served upon the parties, no party has filed a written Notice of Appeal and Request for Trial De Novo, the clerk of the court shall, upon notification by the Arbitration Administrator, enter the arbitration award as a final judgment of the court. This period may be extended by written stipulation, filed with the Arbitration Administrator within twenty (20) days after service of the award upon the parties, to a period no more than forty (40) days after the award is served upon the parties. Said award shall have the same force and effect as a final judgment of the court in a civil action, but may not be appealed.

RULE 22. REQUEST FOR TRIAL DE NOVO

(A) Within twenty (20) days after the award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the Arbitration Administrator a written Notice of Appeal and Request for Trial De Novo of the action. This period may be extended to a period of no more than forty (40) days after the award is served upon the parties, by stipulation signed by all parties remaining in the action and filed with the Arbitration Administrator within twenty (20) days after service of the award upon the parties.
(B) After the filing and service of the written Notice of Appeal and Request for Trial De Novo, the case shall be set for trial pursuant to applicable court rules.
(C) Demand For Jury Trial.
(1) If any issue in the action is triable of right by a jury and a jury trial is not demanded by the date the decision exempting or removing the case from the Program is served upon the parties, the trial shall include a jury if a demand for jury trial is served upon the parties not later than ten (10) days after service of the decision exempting or removing the case from the Program or by the deadline set forth in the Hawai'i Rules of Civil Procedure, whichever is later, and the demand is filed in accordance with the Hawai'i Rules of Civil Procedure. The demand for jury trial fee shall be paid as provided by law.
(2) If any issue in the action is triable of right by a jury and a jury trial is not demanded by the date the Notice of Appeal and Request for Trial De Novo is served upon the parties, the trial de novo shall include a jury if a demand for jury trial is served upon the parties not later than ten (10) days after service of the Notice of Appeal and Request for Trial De Novo, and the demand is filed in accordance with the Hawai'i Rules of Civil Procedure. The demand for jury trial fee shall be paid as provided by law.
(3) In the case of an action admitted or readmitted to the Program after being exempted or removed, if any issue in the action is triable of right by a jury and a jury trial is not demanded by the date the Notice of Appeal and Request for Trial De Novo is served upon the parties, subsection (C)(2) of this rule shall govern.
(D) After a written Notice of Appeal and Request for Trial De Novo has been filed and served, it may not be withdrawn except by stipulation of all remaining parties or by order of the Arbitration Judge. The Arbitration Judge shall not allow withdrawal of a Notice of Appeal and Request for Trial De Novo over objection of any non-appealing party but may order that an objecting party be deemed an appealing party for purposes of these rules. The Arbitration Judge in allowing a withdrawal may do so upon such terms and conditions as the Court deems proper, including an order that the appealing party pay the attorneys' fees and costs incurred by non-appealing parties after service of the Notice of Appeal and Request for Trial De Novo. In the event a Notice of Appeal and Request for Trial De Novo is withdrawn pursuant to this rule and no other Notice of Appeal and Request for Trial De Novo remains, judgment shall be entered in accordance with Rule 21.

RULE 23. PROCEDURES AT TRIAL DE NOVO

(A) The clerk shall seal any arbitration award if a trial de novo is requested. The jury will not be informed of the arbitration proceeding, the award, or about any other aspect of the arbitration proceeding. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a court trial.
(B) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial de novo subject to all applicable rules of civil procedure and evidence. The court in the trial de novo shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial de novo.
(C) No statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial de novo.

RULE 24. SCHEDULING OF THE TRIAL DE NOVO

Every case transferred to the Program shall maintain the approximate position on the civil trial docket as if the case had not been so transferred, unless at the discretion of the court, the docket position is modified.

RULE 25. THE PREVAILING PARTY IN THE TRIAL DE NOVO; COSTS

(A) The "Prevailing Party" in a trial de novo is the party who (1) appealed and improved upon the arbitration award by 30% or more, or (2) did not appeal and the appealing party failed to improve upon the arbitration award by 30% or more. For the purpose of this rule, "improve" or "improved" means to increase the award for a plaintiff or to decrease the award for the defendant.

(B) The "Prevailing Party" under these rules, as defined above, is deemed the prevailing party under any statute or rule of court. As such, the prevailing party is entitled to costs of trial and all other remedies as provided by law, unless the Court otherwise directs.

RULE 26. SANCTIONS FOR FAILING TO PREVAIL IN THE TRIAL DE NOVO

(A) After the verdict is received and filed, or the court's decision rendered in a trial de novo, the trial court may, in its discretion, impose sanctions, as set forth below, against the non-prevailing party whose appeal resulted in the trial de novo.

(B) The sanctions available to the court are as follows:

(1) Reasonable costs and fees (other than attorneys' fees) actually incurred by the party but not otherwise taxable under the law, including, but not limited to, expert witness fees, travel costs, and deposition costs;

(2) Costs of jurors;

(3) Attorneys' fees not to exceed $15,000;

(C) Sanctions imposed against a plaintiff will be deducted from any judgment rendered at trial. If the plaintiff does not receive a judgment in his or her favor or the judgment is insufficient to pay the sanctions, the plaintiff will pay the amount of the deficiency. Sanctions imposed against a defendant will be added to any judgment rendered at trial.

(D) In determining sanctions, if any, the Court shall consider all the facts and circumstances of the case and the intent and purpose of the Program in the State of Hawai'i.

RULE 27. EFFECTIVE DATE

These rules become effective as of February 15, 1986 for the circuit court of the first circuit; as of October 1, 1987 for the circuit court of the third circuit; as of October 15, 1987 for the circuit court of the second circuit; and as of November 1, 1987 for the circuit court of the fifth circuit.

RULE 28. SANCTIONS FOR FAILURE TO MEANINGFULLY PARTICIPATE IN ARBITRATION HEARING

The Arbitration Judge, on the motion of any party filed and served within thirty (30) days after the arbitration award is served upon the parties by the Arbitration Administrator, shall have the power to award sanctions against any party or attorney for failure to participate in the arbitration hearing in a meaningful manner. Sanctions may include costs, expert fees and attorneys' fees reasonably incurred by all other parties for the arbitration hearing and in the prosecution of the motion for sanctions. These sanctions are independent of sanctions under Rule 26. The court may hold hearings as deemed

appropriate. If the court determines that the motion was brought without good cause, it may award costs and attorney fees against the movant.

RULE 30. PILOT PROJECT FOR ARBITRATION OF CONTRACT CASES

(A) Effective Date. Effective September 1, 2005 to January 1, 2010, the Pilot Project for Arbitration of Contract Cases (hereinafter "PPACC") is established in the First Circuit Court. Under the PPACC, civil actions in contract (hereinafter "contract cases") having a probable judge/jury award value of $150,000 or less, exclusive of interest and costs, except cases in which declaratory or injunctive relief is sought, may be admitted to the Court Annexed Arbitration Program (hereinafter "CAAP") in accordance with section B of this rule.

(B) Admission to the CAAP. All contract cases filed in the First Circuit Court shall be eligible for inclusion in the PPACC. Such cases shall be admitted to the CAAP upon the written agreement of all parties to the case, provided that no more than 30 of such cases may be admitted to the CAAP in any 12 month period.

The arbitration administrator shall provide written notice to the plaintiff of the contract case's eligibility for admission to the CAAP and the plaintiff shall serve all parties with a copy of such notice. If the parties agree to submit the case to the CAAP, the parties shall file their written agreement with the arbitration administrator no later than 90 days after service of the complaint on all parties.

The cases admitted to the CAAP pursuant to this rule shall be subject to the Hawai'i Arbitration Rules.

(C) Applicability of Rule 30. This Rule 30 shall not apply to cases admitted to the CAAP pursuant to Rule 6 of the Hawai'i Arbitration Rules.

(D) Expiration Date. The PPACC shall expire on January 1, 2010, unless extended by order of the Supreme Court of Hawai'i. Cases in which the parties' written agreement has been filed with the arbitration administrator by December 31, 2009 (one day before expiration date) shall be completed in accordance with this Rule 30 and the Hawai'i Arbitration Rules, unless removed from the CAAP by the Court.