
University of Arkansas

An Agricultural Law Research Project

# States' Alternative Dispute Resolution Statutes

## State of Louisiana

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States' Alternative Dispute Resolution Statutes

# STATE OF LOUISIANA

***Index***



## Arbitration Law

Title 9, Code Book III, Code Title XIX, Chapter 2.

*Current through the 2008 Regular Session*

§ 4201. Validity of arbitration agreements

A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 4202. Stay of proceedings brought in violation of arbitration agreement

If any suit or proceedings be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which suit is pending, upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until an arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.

§ 4203. Remedy in case of default; petition and notice; hearing and proceedings

The party aggrieved by the alleged failure or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties, or of the property, for an order directing that the arbitration proceed in the manner provided for in the agreement. Five

days' written notice of the application shall be served upon the party in default. Service shall be made in the manner provided by law for the service of a summons.

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not an issue, the court shall issue an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure or refusal to perform is an issue, the court shall proceed summarily to the trial thereof.

If no jury trial is demanded, the court shall hear and determine the issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of the issue, and upon such demand the court shall issue an order referring the issue or issues to a jury called and empanelled in the manner provided by law.

If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall issue an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

§ 4204. Appointment of arbitrators

If, in the agreement, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, this method shall be followed. If no method is provided or if a method is provided and a party thereto fails to avail himself of the method or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then, upon the application of either party to the controversy, the court aforesaid or the court in and for the parish in which the arbitration is to be held shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the agreement with the same force and effect as if he or they had been specifically named therein. Unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

§ 4205. Application heard as motion

Any application to the court under this Chapter shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

§ 4206. Witnesses; summoning; compelling attendance

When more than one arbitrator is agreed to, all the arbitrators shall sit at the hearing of the case unless, by consent in writing, all parties agree to proceed with the hearing with a less number. The arbitrators, selected either as prescribed in this Chapter or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for attendance shall be the same as the fees of witnesses in courts of general jurisdiction.

The summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be

signed by the arbitrator, arbitrators, or a majority of them, and shall be directed to the person and shall be served in the same manner as subpoenas to appear and testify before the court. If any person or persons summoned to testify refuses or neglects to obey the summons, upon petition, the court in and for the parish in which the arbitrators are sitting may compel the attendance or punish the person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of this state.

§ 4207. Depositions

Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the parish in which the arbitrators are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this state.

§ 4208. Award

The award shall be in writing and shall be signed by the arbitrators or by a majority of them.

§ 4209. Motion to confirm award; jurisdiction; notice

At any time within one year after the award is made any party to the arbitration may apply to the court in and for the parish within which the award was made for an order confirming the award and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as prescribed in R.S. 9:4210 and 9:4211. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof.

§ 4210. Motion to vacate award; grounds; rehearing

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

D. Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

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

§ 4211. Motion to modify or correct award; grounds

In any of the following cases the court in and for the parish wherein the award was made shall issue an order modifying or correcting the award upon the application of any party to the arbitration.

A. Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

B. Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted.

C. Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award so as to effect the intent thereof and promote justice between the parties.

§ 4212. Judgment upon award

Upon the granting of an order confirming, modifying, or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted.

§ 4213. Notice of motions; when made; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award shall be served upon the adverse party or his attorney within three months after the award is filed or delivered, as prescribed by law for service of a motion in an action. For the purposes of the motion any judge, who might issue an order to stay the proceedings in an action brought in the same court may issue an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§ 4214. Record; filing; judgment; effect and enforcement

Any party to a proceeding for an order confirming, modifying, or correcting an award shall, at the time the order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(1) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it were rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action, and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 4215. Appeals

An appeal may be taken from an order confirming, modifying, correcting, or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

§ 4216. Limitation of application of Chapter

Nothing contained in this Chapter shall apply to contracts of employment of labor or to contracts for arbitration which are controlled by valid legislation of the United States or to contracts made prior to July 28, 1948.

§ 4217. Short title

This Chapter may be referred to as the "Louisiana Arbitration Law."

## International Commercial Arbitration Act

Title 9, Code Book III, Code Title XIX, Chapter 4.

*Current through the 2008 Regular Session*

§ 4241. Scope of application

A. This Chapter applies to international commercial arbitration, subject to any agreement in force between the United States and any other country or countries.

B. The provisions of this Chapter, except R.S. 9:4248, 4249, 4275, and 4276, apply only if the place of arbitration is in the territory of this state.

C. An arbitration is international if:

(1) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different countries; or

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

(a) The place of arbitration if determined in, or pursuant to, the arbitration agreement;

(b) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

D. For the purposes of Subsection C of this Section:

(1) 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.

(2) If a party does not have a place of business, reference is to be made to his habitual residence.

E. This Chapter shall not affect any other law of this state by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Chapter.

§ 4242. Definitions and rules of interpretation

A. For the purposes of this Chapter:

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

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

(3) "Court" means a body or organ of the judicial system of a country.

B. When a provision of this Chapter, except R.S. 9:4268, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

C. When a provision of this Chapter 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, the agreement includes any arbitration rules referenced in that agreement.

D. When a provision of this Chapter, other than R.S. 9:4265(A) and 4272(B)(1), refers to a claim, it also applies to a counterclaim, and when it refers to a defense, it also applies to a defense to a counterclaim.

§ 4243. Receipt of written communications

A. Unless otherwise agreed by the parties:

(1) 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. If none of these locations 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 letter or any other means which provides a record of the attempt to deliver it.

(2) Any written communication is deemed to have been received on the day it is delivered.

B. The provisions of this Section do not apply to communications in court proceedings.

§ 4244. Waiver of right to object

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

§ 4245. Extent of court intervention

In matters governed by this Chapter, no court shall intervene except when provided for in this Chapter.

§ 4246. Court; functions of arbitration assistance and supervision

The procedures provided in R.S. 9:4251(C) and (D), 4253(C), 4254, 4256(C), and 4274(B) shall be performed by a state or federal district court in this state with jurisdiction over civil actions in which the arbitral tribunal sits.

§ 4247. Definition and form of arbitration agreement

A. 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.

B. The 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 the 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 makes that clause part of the contract.

§ 4248. Arbitration agreement and substantive claim before court

A. A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed.

B. When an action referred to in Subsection A of this Section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made while the issue is pending before the court.

§ 4249. Arbitration agreement and interim measures by court

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

§ 4250. Number of arbitrators

The parties are free to determine the number of arbitrators. However, if they do not make a determination, the number of arbitrators shall be three.

§ 4251. Appointment of arbitrators

A. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

B. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of Subsections D and E of this Section.

C. Failing an agreement:

(1) In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court.

(2) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court.

D. When, under an appointment procedure agreed upon by the parties:

(1) A party fails to act as required; or

(2) The parties, or two arbitrators, are unable to reach an agreement expected of them; or

(3) A third party, including an institution, fails to perform any function entrusted to it, any party may request the court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

E. A decision on a matter entrusted to the court by Subsections C and D of this Section shall be subject to no appeal. The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to the considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

§ 4252. Grounds for challenge

A. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any circumstances to the parties unless they have already been informed of them by him.

B. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

§ 4253. Challenge procedure

A. The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of Subsection C of this Section.

B. Failing an agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance provided in R.S. 9:4252(B), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

C. If a challenge under any procedure agreed upon by the parties or the procedure of Subsection B of this Section is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge, which decision shall be subject to no appeal. While a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

§ 4254. Failure or impossibility to act

A. If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.

B. If, in accordance with this Section or R.S. 9:4253(B), an arbitrator withdraws from his 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 accordance with this Section or R.S. 9:4252(B).

§ 4255. Appointment of substitute arbitrator

When the mandate of an arbitrator terminates in accordance with R.S. 9:4253 or 4254 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

§ 4256. Competence of arbitral tribunal to rule on its jurisdiction

A. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. 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. A

decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

B. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. 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. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

C. The arbitral tribunal may rule on a plea in Subsection B of this Section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court in accordance with R.S. 9:4246, to decide the matter and that decision shall be subject to no appeal; while a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

§ 4257. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with the measure.

§ 4258. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

§ 4259. Determination of rules of procedure

A. Subject to the provisions of this Chapter, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

B. Failing an agreement, the arbitral tribunal may, subject to the provisions of this Chapter, conduct the arbitration in a manner it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

§ 4260. Place of arbitration

A. The parties are free to agree on the place of arbitration. Failing an agreement, 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.

B. Notwithstanding the provisions of Subsection A of this Section, 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 goods, other property, or

documents.

§ 4261. Commencement of arbitral proceedings

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.

§ 4262. Language

A. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing an agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision, or other communication by the arbitral tribunal.

B. 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.

§ 4263. Statements of claim and defense

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

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

§ 4264. Hearings and written proceedings

A. Subject to any contrary agreement 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. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

§ 4265. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause:

(1) The claimant fails to communicate his statement of claim in accordance with R.S. 9:4263(A), the arbitral tribunal shall terminate the proceedings.

(2) The respondent fails to communicate his statement of defense in accordance with R.S. 9:4263(A), the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegations.

(3) Any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

§ 4266. Expert appointed by arbitral tribunal

A. Unless otherwise agreed by the parties, the arbitral tribunal:

(1) May appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

(2) May 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 inspection.

B. 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 written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

§ 4267. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this state assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

§ 4268. Rules applicable to substance of dispute

A. The arbitral tribunal shall decide the dispute in accordance with the rules of law as chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of law rules.

B. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

C. The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties

have expressly authorized it to do so.

D. 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.

§ 4269. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

§ 4270. Settlement

A. 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.

B. An award on agreed terms shall be made in accordance with R.S. 9:4271 and shall state that it is an award. An award has the same status and effect as any other award on the merits of the case.

§ 4271. Form and contents of award

A. The award shall be made in writing and shall be signed by the arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

B. The 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 award on agreed terms in accordance with R.S. 9:4270.

C. The award shall state its date and the place of arbitration as determined in accordance with R.S. 9:4260(A). The award shall be deemed to have been made at that place.

D. After the award is made, a copy signed by the arbitrators in accordance with Subsection A of this Section shall be delivered to each party.

§ 4272. Termination of proceedings

A. The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with Subsection B of this Section.

B. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(1) The claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute.

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

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

C. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of R.S. 9:4273 and 4274(D).

§ 4273. Correction and interpretation of award; additional award

A. Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

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

(2)(a) A party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(b) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

B. The arbitral tribunal may correct any error of the type referred to in Paragraph (A)(1) of this Section on its own initiative within thirty days of the date of the award.

C. Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

D. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or an additional award in accordance with Subsections A and C of this Section.

E. The provisions of R.S. 9:4271 shall apply to a correction or interpretation of the award or to an additional award.

§ 4274. Application for setting aside as exclusive recourse against arbitral award

A. Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with Subsections B and C of this Section.

B. An arbitral award may be set aside by the court specified in R.S. 9:4246 only if:

(1) The party making the application furnishes proof that:

(a) A party to the arbitration agreement in accordance with R.S. 9:4247 was under some incapacity; or

the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this state; or

(b) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless the agreement was in conflict with a provision of this Chapter from which the parties cannot derogate, or, failing an agreement, was not in accordance with this Chapter; or

(2) The court finds that:

(a) The subject matter of the dispute is not capable of settlement by arbitration under the law of this state or of the United States of America; or

(b) The award is in conflict with the public policy of this state.

C. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made in accordance with R.S. 9:4273, from the date on which that request had been disposed of by the arbitral tribunal.

D. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

§ 4275. Recognition and enforcement

A. An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced in accordance with this Section and R.S. 9:4276.

B. The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement provided for in R.S. 9:4247 or a duly certified copy thereof. If the award or agreement is not made in the English language, the party shall supply a duly certified translation thereof into that language.

§ 4276. Grounds for refusing recognition or enforcement

A. Recognition or enforcement of an arbitral award, irrespective of the country in which it was made,

may be refused only:

(1) At the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(a) A party to the arbitration agreement provided in R.S. 9:4247 was under some incapacity; or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing an agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(2) If the court finds that:

(a) The subject matter of the dispute is not capable of settlement by arbitration under the law of this state; or

(b) The recognition or enforcement of the award would be contrary to the public policy of this state.

B. If an application for setting aside or suspension of an award has been made to a court provided in Subparagraph (A)(1)(e) of this Section, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

## Louisiana Mediation Act

Title 9, Code Book III, Code Title XIX, Chapter 1.

*Current through the 2008 Regular Session*

§ 4101. Short title; purpose; definitions

A. This Chapter shall be known and may be referred to as the "Louisiana Mediation Act".

B. The purpose of this Chapter is to provide encouragement and support for the use of mediation to promote settlement of legal disputes.

C. For purposes of this Chapter:

(1) "ADR Section" means the Louisiana State Bar Association, Alternative Dispute Resolution Section.

(2) "Approved register" means the register of qualified mediators prepared and maintained by the ADR Section.

(3) "Cost of mediation" includes the mediator's fee, administrative fees, and expenses.

(4) "Mediation" is a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement.

(5) "MCLE Committee" means the Louisiana State Bar Association, Mandatory Continuing Legal Education Committee.

§ 4102. Discussion of mediation with clients

Counsel are encouraged to discuss with their clients the appropriateness of using mediation in any civil case pending in the courts.

§ 4103. Referral of a case for mediation; exceptions

A. On motion of any party, a court may order the referral of a civil case for mediation. Upon filing of an objection to mediation by any party within fifteen days after receiving notice of the order, the mediation order shall be rescinded.

B. The following types of proceedings shall not be referred to mediation pursuant to this Chapter:

(1) Actions brought pursuant to the Post Separation Family Violence Relief Act, R.S. 9:361 et seq., or the Domestic Abuse Assistance Act, R.S. 46:2131 et seq.

(2) Actions for child custody or visitation, which are subject to mediation pursuant to the provisions of R.S. 9:332 et seq.

(3) Actions governed by the Code of Criminal Procedure or the Children's Code.

§ 4104. Selection of mediator

A. Once an order referring a case for mediation has been signed, the parties are encouraged to mutually agree upon a person to be appointed as the mediator. Upon submission of the chosen person's name to the court, the court shall issue an order making such appointment.

B. If the parties do not agree on a mediator within fifteen days after the signing of the referral order, each party shall submit to the opposing party or parties a list of four names of mediators from the approved register, and each party may strike any names on this list. The parties shall then submit the lists to the court. If any names remain after the parties have exercised their strikes, the court shall appoint a mediator from the names not struck. If all names are stricken, the court shall appoint a mediator from the approved register, excluding any person whose name was previously stricken by any party.

C. After an order referring a case for mediation has been signed in a complicated or complex case, a court may appoint as mediator a person who has professional training or experience in the subject matter of the dispute and in dispute resolution procedures.

D. A person appointed pursuant to Subsection A or C hereof need not be listed on the approved register of mediators nor possess the qualifications of a mediator, as required pursuant to R.S. 9:4105 and 4106, respectively, and for purposes of this Chapter, is considered a "mediator" during the tenure of his appointment.

§ 4105. Approved register of mediators

A. The ADR Section shall prepare and maintain a register of those persons qualified under criteria established pursuant to R.S. 9:4106. A mediator denied listing in the approved register may request a review of that decision by a panel of three members of the ADR Section.

B. The ADR Section shall make available to participating courts and parties the approved register of mediators and a summary of their professional qualifications.

C. The ADR Section may assess such reasonable fees as are necessary to perform the functions associated with administering the provisions of this Chapter and creating and maintaining the approved register of qualified mediators.

§ 4106. Qualifications of mediators

A. To qualify for appointment as a mediator under this Chapter:

(1)(a) A person must have completed a minimum of forty classroom hours of training in mediation in a course conducted by an individual or organization approved by the MCLE Committee or the ADR Section and must be licensed to practice law in any state for not less than five years. Any previous mediation training approved by the MCLE Committee can be used to satisfy the requirements of this Section; or

(b) A person, whether or not licensed to practice law, must have completed a minimum of forty classroom hours of training in mediation in a course conducted by an organization or individual approved by the MCLE Committee or the ADR Section, and must have mediated more than twenty-five disputes or must have engaged in more than five hundred hours of dispute resolutions. The ADR Section shall determine the proper method by which to certify the requirements hereof.

(2) A person must have served as a Louisiana district, appellate, or supreme court judge for at least ten

years and no longer be serving as a judge.

B. In order to maintain a listing in the approved register of qualified mediators, a mediator must be willing to accept two annual pro bono appointments and participate in ten hours of training in alternative dispute resolutions in a continuing education course approved by the MCLE Committee or the ADR Section every two years.

§ 4107. Standard of conduct; disclosure

A. The Standards of Conduct for Mediators adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution shall apply to the professional conduct of mediators appointed under this Chapter unless the ADR Section adopts an alternative code of conduct.

B. Upon receiving notice of appointment as a mediator in a particular proceeding, the mediator shall make available to all parties a list of his professional qualifications, curriculum vitae, and fee schedule and disclose to the parties all past or present conflicts or relationships with the parties or their counsel.

§ 4108. Required attendance and participation in mediation

A. A court order referring a case to mediation may require any or all of the following:

(1) Attendance of parties, including those persons with authority to negotiate and enter into binding settlement agreements.

(2) Advance submission to other parties and the mediator of a position paper and relevant documents or information.

(3) Minimal meaningful participation by parties and their counsel during the procedure.

B. Mediation shall be completed within ninety days of notice of appointment of the mediator, unless extended by agreement of all parties.

§ 4109. Cost of mediation

A. The cost of mediation shall be agreed in writing by the parties and the mediator prior to commencement of mediation. If there is no agreement on such cost, the court shall rescind the appointment and the selection of a mediator shall commence anew.

B. (1) Unless otherwise ordered by the court in its referral order or unless the parties agree to some other allocation of cost:

(a) The cost of mediation shall be taxed as costs of court, to be shared equally by the parties.

(b) If the case is not settled by mediation, the costs of mediation shall be taxed as costs of court upon rendition of a final judgment.

(2) No later than the conclusion of the mediation, whether or not successful, the parties shall pay the cost of mediation, unless the parties and the mediator have agreed otherwise. The mediator may intervene in any pending civil case between the parties to the mediation to enforce payment of the cost of the mediation. An intervention to enforce payment of the cost of the mediation shall be disposed of as a summary proceeding.

C. Any court filings by the mediator appointed under this Chapter shall be accepted by the clerk of court without a filing fee.

§ 4110. Nonbinding effect

Mediation procedures are nonbinding unless all the parties specifically agree otherwise in writing.

§ 4111. Written settlement agreements

A. If, as a result of a mediation, the parties agree to settle and execute a written agreement disposing of the dispute, the agreement is enforceable as any other transaction or compromise and is governed by the provisions of Title XVII of Book III of the Civil Code, to the extent not in conflict with the provisions of this Chapter.

B. The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

§ 4112. Confidentiality

A. Except as provided in this Section, all oral and written communications and records made during mediation, whether or not conducted under this Chapter and whether before or after the institution of formal judicial proceedings, are not subject to disclosure, and may not be used as evidence in any judicial or administrative proceeding.

B. (1) The parties, counsel, and other participants therein shall not be required to testify concerning the mediation proceedings and are not subject to process or subpoena, issued in any judicial or administrative procedure, which requires the disclosure of any communications or records of the mediation, except with respect to the following:

(a) Reports made by the mediator to a court, pursuant to that court's order, only as to whether the parties appeared as ordered, whether the mediation took place, and whether a settlement resulted therein.

(b) In connection with a motion for sanctions made by a party to the mediation based on a claim of a party's noncompliance with the court's order to participate in the mediation proceedings; however, the disclosure of any communications and records made during the course of the mediation shall be strictly limited to the issue of noncompliance with the court's order.

(c) A judicial determination of the meaning or enforceability of an agreement resulting from a mediation procedure if the court determines that testimony concerning what occurred in the mediation proceeding is necessary to prevent fraud or manifest injustice.

(2) The mediator is not subject to subpoena and cannot be required to make disclosure through discovery or testimony at trial except in a judicial or administrative procedure with respect to Subparagraph B(1)(a) of this Section.

C. The confidentiality provisions of this Section do not extend to statements, materials and other tangible evidence, or communications that are otherwise subject to discovery or are otherwise admissible, merely because they were presented in the course of mediation, if they are based on proof independent of any communication or record made in mediation.

D. If this Section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

E. Confidentiality, in whole or in part, may be waived when all parties and the mediator specifically agree in writing.

**Mediation**

LA. Admin Code. tit. 1, pt. III, § 701.

*Current through October 2008*

§ 701.Mediation

A. Any party may request a pre-trial mediation conference.

B. Mediation shall not be conducted over the objection of a party.

C. The administrative law judge to whom the case was originally assigned shall not conduct the mediation. The order setting the matter for mediation shall designate another administrative law judge to act as mediator.

D. Each party, representative or attorney shall negotiate in good faith, and be prepared to obtain the authority necessary to settle and compromise the litigation. The mediator may permit telephone appearances in lieu of a personal appearance for good cause and convenience of the parties.

E. Mediation shall not unduly delay the hearing schedule. The presiding administrative law judge may continue scheduled dates on motion of a party or on his/her own motion.

F. Confidentiality of mediations shall be governed by R.S. 9:4112.

G. Each party or representative should submit information sufficient to explain the gist of the case to the assigned mediator at least one day prior to the conference. The submittals need not be in any certain form and may consist of any documents, exhibits or writings the party wishes the mediator to consider before the conference. The mediator may use all statements, documents, exhibits or other

types of information submitted, as he/she deems appropriate to foster settlement unless a party has expressly stated otherwise.

H. The mediator shall not draft settlement agreements. Agreements may be recited on the record before the presiding administrative law judge and later reduced to writing by the parties or their representatives.