University of Arkansas

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Rhode Island

www.NationalAgLawCenter.org

States' Alternative Dispute Resolution Statutes

STATE OF RHODE ISLAND

Index

Arbitration

Title 10, Chapter 3.

Current with all 2008 legislation

§ 10-3-1. Short title

This chapter may be referred to as "The Arbitration Act".

§ 10-3-2. Agreements to arbitrate subject to chapter

When clearly written and expressed, a provision in a written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two (2) 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; provided, however, that the provisions of this chapter shall not apply to collective contracts between employers and employees, or between employers and associations of employees, in respect to terms or conditions of employment; and provided further, that in all contracts of primary insurance, wherein the provision for arbitration is not placed immediately before the testimonium clause or the signature of the parties, the arbitration procedure may be enforced at the option of the insured, and in the event the insured exercises the option to arbitrate, then the provisions of this chapter shall apply and be the exclusive remedy available to the insured.

§ 10-3-3. Stay of actions on issues referable to arbitration

If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the suit is pending, upon being satisfied that the issue involved in the suit or proceeding is referable to arbitration under such an agreement, shall, on

application of one of the parties, stay the trial of the action until the 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.

§ 10-3-4. Petition for arbitration--Service, hearing, and reference

The party aggrieved by the alleged failure, neglect, or refusal of another to perform under a written agreement for arbitration may petition the superior court for the county in which any of the parties reside or has his or her place of business for an order directing that the arbitration proceed in the manner provided for in the agreement. Five (5) days' notice in writing of the application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of a writ of 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 in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

§ 10-3-5. Determination as to whether issue is subject to arbitration

If the making of the arbitration agreement or the failure, neglect, or refusal to perform the arbitration agreement is in issue, the court shall proceed summarily to the trial thereof. If no jury trial be 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 the demand of a jury trial the court shall make an order referring the issue or issues to a jury as in equity causes. 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 make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

§ 10-3-6. Judicial appointment of arbitrators

If, in the agreement, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, the method shall be followed; but if no method is provided in the agreement, or if a method is provided and any party thereto shall fail to avail himself or herself of such 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, as described in § 10-3-4, 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, she, or they had been specifically named in the agreement; and, unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

§ 10-3-7. Manner of making and hearing applications

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 expressly provided in this chapter.

§ 10-3-8. Arbitrators' hearing--Summons of witnesses

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 shall 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, her, or them any book, record, document or paper, which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses in the superior court. The summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the person to be summoned and shall be served in the same manner as subpoenas to appear and testify before superior court. If any person or persons, so summoned to testify, shall refuse or neglect to obey the summons, upon petition the court may compel the attendance of the person or persons before the arbitrator or arbitrators or punish the person or persons for contempt, in the same manner now provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend superior court.

§ 10-3-9. Taking of depositions

Upon petition, approved by the arbitrators or by a majority of them, the superior court may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in superior court.

§ 10-3-10. Form and signature of arbitrators' award

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

§ 10-3-11. Order confirming award

At any time within one year after the award is made, any party to the arbitration may apply to the court for an order confirming the award, and thereupon the court must grant the order confirming the award unless the award is vacated, modified or corrected, as prescribed in §§ 10-3-12--10-3-14. Notice in writing of the application shall be served upon the adverse party or his or her attorney ten (10) days before the hearing on the application.

§ 10-3-12. Grounds for vacating award

In any of the following cases, the court must make an order vacating the award upon the application of any party to the arbitration:
(1) Where the award was procured by corruption, fraud or undue means.
(2) Where there was evident partiality or corruption on the part of the arbitrators, or either of them.
(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in hearing legally immaterial evidence, or refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been substantially prejudiced.
(4) 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.

§ 10-3-13. Rehearing after vacation of award

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.

§ 10-3-14. Modification or correction of award

(a) In any of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the arbitration:
(1) 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.
(2) 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.
(3) Where the award is imperfect in matter of form not affecting the merits of the controversy.
(b) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

§ 10-3-15. Notice of motion to vacate, modify, or correct award

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his or her attorney within sixty (60) days after the award is filed or delivered, and before the award is confirmed, as prescribed by law for service of notice of a motion in an action at law. The court may make an order, to be served with the notice of the motion, staying the proceedings of the adverse party to enforce the award.

§ 10-3-16. Judgment on award

Upon the granting of an order confirming, modifying or correcting an award, judgment shall be entered in conformity with the award in the court within thirty (30) days, unless an appeal is taken as provided in this chapter, in which last case the order of the superior court shall pursue the mandate of the supreme court.

§ 10-3-17. Papers filed for judgment

Any party to a proceeding for an order confirming, modifying or correcting an award shall, when the order is entered, file with the clerk, for the entry of judgment thereon, the following papers:
(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.

§ 10-3-18. Effect of judgment

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 at law; and it may be enforced as if it has been rendered in an action at law in the court in which it is entered.

§ 10-3-19. Appeal to supreme court

Any party aggrieved by any ruling or order made in any court proceeding as authorized in this chapter may obtain review as in any civil action, and upon the entry of any final order provided in § 10-3-3, or an order confirming, modifying or vacating an award, he or she may appeal to the supreme court as provided for appeals in civil actions, and the supreme court shall make such orders in the premises as the rights of the parties and the ends of justice require.

§ 10-3-20. Severability

If any provision of this chapter shall be declared unconstitutional or invalid, the unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the part so declared unconstitutional or invalid.

§ 10-3-21. Sureties--Bound to arbitration award on construction contract

(a) If a contractor principal on a bond furnished to guarantee performance or payment on a construction contract and the claimant are parties to a written contract with a provision to submit to arbitration any controversy thereafter arising under the contract, the arbitration provisions shall apply to the surety for all disputes involving questions of the claimant's right of recovery against the surety. Either the claimant, the contractor principal, or surety may demand arbitration in accordance with the written contract in one arbitration proceeding. The arbitration award shall decide all controversies subject to arbitration between the claimant, on the one hand, and the contractor principal and surety on the other hand, including all questions involving liability of the contractor principal and surety on the construction bond, but a claimant must file suit for recovery against the surety within the time limits set forth by law or by the terms of the bond when there are no applicable statutory provisions. The arbitration shall be in accordance with § 10-3-1 et seq. and the court shall enter judgment on the arbitration as provided in the agreement.

(b) The arbitrator or arbitrators, if more than one, shall make findings of fact as to the compliance with the requirements for recovery against the surety, and those findings of fact shall be a part of the award binding on all parties to the arbitration.

Superior Court Rules Governing Arbitration of Civil Actions

Current with amendments received through 2008

Rule 1. Actions Subject to Arbitration

(a) Types of Actions; Exceptions. All civil actions filed in the Superior Court in which there is a claim or there are claims for monetary relief not exceeding $100,000 total, exclusive of interest, costs and attorneys' fees, and district court appeals as determined from the arbitration certificate filed by counsel, are subject to court-annexed arbitration under these rules except actions:

(1) Involving a class;

(2) In which there is a substantial claim for injunctive or declaratory relief;

(3) Involving:
(i) family law issues,
(ii) title to real estate,
(iii) wills and decedents' estates, or
(iv) landlord and tenant;

(4) Which are cognizable on the formal and special cause calendar;

(5) Involving a claim for monetary recovery in an unspecified amount later to be determined by an accounting or otherwise, if the claimant certifies in the pleading asserting the claim that the amount of the claim will actually exceed $100,000; or

(6) Which are certified by a party to be companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue.

(b) Arbitration by Agreement. The court may submit any other civil action to arbitration under these rules or any modification thereof, pursuant to agreement by the parties approved by the court.

(c) Court-Ordered Arbitration in Cases Having Excessive Claims. The court may order any case submitted to arbitration under these rules at any time before trial if it finds that the amount actually in issue is $100,000 or less, even though a greater amount is claimed.

(d) Exemption and Withdrawal From Arbitration. The court may exempt or withdraw any action from arbitration on its own motion or on motion of a party made not less than 10 days before the arbitration hearing and a showing that: (i) the amount of the claim(s) exceed(s) $100,000; (ii) the action is excepted from arbitration under Rule 1(a); or (iii) for good cause shown.

(e) Arbitration Certification. Upon the filing of the last responsive pleading counsel for plaintiff, within three days thereof shall, with the exception of actions under section (a)(1)-(6) hereof, file an Arbitration Certification of Counsel specifying the amount of the claim.

Rule 2. Arbitrators

(a) Selection. The court shall develop and maintain a list of qualified arbitrators, which shall be a public record. The parties may file a stipulation identifying their mutual selection as an arbitrator from the court's list within thirty (30) days from the date the action is submitted to or designated by the court for arbitration. Otherwise, the court shall provide each party with an identical list of five candidates from which they may strike no more than two names. If one mutually satisfactory name remains, that individual shall be appointed as the arbitrator. If more than one name on the list is acceptable to both parties, the remaining candidate whose surname comes first alphabetically shall be appointed.

(b) Eligibility for the Panel of Arbitrators. An arbitrator shall have been a member of the Rhode Island Bar in good standing for at least ten years and must be approved by the court for such service, provided, however, that the Presiding Justice may approve a prospective arbitrator with less than ten years of membership in the Rhode Island Bar, who is otherwise qualified. Each attorney wishing to serve as an arbitrator shall participate in an orientation and training session on the program and the role

of an arbitrator. The court shall oversee the preparation of a manual outlining selection criteria and describing for arbitrators their role and functions in the program.

(c) Fees and Expenses. Arbitrators shall be paid for their services (including but not limited to preparation, hearing and rendering of an award or decision) at the rate of $300.00 per case. Arbitrators shall be paid promptly when they file their awards with the court. Arbitrators may be reimbursed for reasonable expenses actually and necessarily incurred in connection with arbitration hearings. Arbitrators may petition the court and on a showing of good cause may be granted an increased fee in cases lasting longer than a day.

(d) Disqualification. An arbitrator shall disclose to the parties any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel and shall be disqualified on the motion of any party to the arbitrator.

(e) Replacement of Arbitrator. If any arbitrator is disqualified or unable or unwilling to serve, a replacement shall be appointed by the court within ten (10) days.

Rule 3. Arbitration Hearings

(a) Hearing Scheduled by Arbitrator. Arbitration hearings shall be scheduled by the assigned arbitrator on a date, time and place agreed to by the parties or, if they do not agree, selected by the arbitrator.

(b) Pre-hearing Exchange of Information. At least 10 days before the date set for the hearing, the parties shall exchange and furnish to the arbitrator:

(1) Lists of witnesses they expect to testify;

(2) Copies of documents or exhibits they expect to offer in evidence; and

(3) A brief statement of the issues and their contentions.

Parties may rely on stipulations and/or statements, sworn or unsworn, rather than a formal presentation of witnesses and documents, for all or part of the hearing.

(4) The information referred to in Subsection (b) shall not be filed with the court.

(c) Exchanged Documents Considered Authenticated. Any document exchanged may be received in the hearing as evidence without further authentication; however, the party against whom it is offered may subpoena and examine as an adverse witness anyone who is the author, custodian or a witness through whom the document might otherwise have been introduced. Documents not so exchanged may not be received if to do so would, in the arbitrator's opinion, constitute prejudicial surprise.

(d) Copies of Exhibits Admissible. Copies of exchanged documents or exhibits are admissible in arbitration hearings.

(e) Witnesses. Witnesses may be compelled to testify under oath or affirmation and produce evidence

by the same authority and to the same extent as if the hearing were a trial. The arbitrator is empowered and authorized to administer oaths and affirmations in arbitration hearings.

(f) Subpoenas. Rhode Island Court R.Civ.P. 45 shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(g) Authority of Arbitrator to Govern Hearings. Except for the power to punish for contempt, arbitrators shall have the authority of a trial judge to govern the conduct of hearings in accordance with adopted procedures published in the Arbitrators Manual. The arbitrator shall refer all contempt matters to the court.

(h) Law of Evidence Used as a Guide. The Rhode Island Court Rules of Evidence do not apply, except as to privilege, in an arbitration hearing but shall be considered as a guide toward full and fair development of the facts. The arbitrator shall consider all evidence presented and give it the weight and effect deemed appropriate.

(i) No Ex Parte Communications With Arbitrator. No ex parte communication as to substantive matters by a party or counsel with an arbitrator is permitted.

(j) Failure to Appear; Defaults; Rehearing. If a party who has been notified of the date, time and place of the hearing fails to appear without good cause thereof, the hearing may proceed and an award may be made by the arbitrator against the absent party upon the evidence offered by the parties present, but not by default for failure to appear. If a party is in default for any other reason but no judgment has been entered upon the default pursuant to Rhode Island Court R.Civ.P. 55(b) before the hearing, the arbitrator may hear evidence and may issue an award against the party in default. The court may order a rehearing of any case in which an award was made against a party who failed to obtain a continuance of a hearing and failed to appear for reasons beyond a party's control. Such motion for rehearing shall be filed with the court within the time allowed for rejection of the award as stated in Rule 5(a).

(k) No Record of Hearing Made. No transcript or other recording of an arbitration hearing shall be made. The arbitrator may permit any party to record the arbitration hearing in any manner that does not interfere with the proceeding.

(l) Sanctions. Any party failing or refusing to participate in an arbitration proceeding in a good faith and meaningful manner shall be subject to sanctions by the court on motion of a party, or report of the arbitrator, as provided in Rhode Island Court R.Civ.P. 37.

(m) Proceedings in Forma Pauperis. The right to proceed in forma pauperis is not affected by these rules.

(n) Limits of Hearings. Arbitration hearings shall be limited to four hours unless the arbitrator determines at the hearing that more time is necessary to ensure fairness and justice to the parties.

(1) A written application for a substantial enlargement of time for a hearing must be filed with the arbitrator and must be served on opposing parties at the earliest practicable time, and no later than the date for prehearing exchange of information under Rule 3(b). The arbitrator will rule on these applications subject to review by the court.

(2) An arbitrator is not required to receive repetitive or cumulative evidence.

(o) Hearing Concluded. The arbitrator shall declare the hearing concluded when arguments, if permitted, have been completed and all the evidence is in. In exceptional cases, the arbitrator has discretion to receive post-hearing briefs, but not evidence, if submitted within 10 days after the hearing has been concluded.

(p) Parties Must Be Present at Hearings; Representation. All parties shall be present at hearings in person or through representatives authorized to make binding decisions on their behalf in all matters in controversy before the arbitrator. All parties may be represented by counsel. Only individuals may appear pro se.

(q) Motions. Designation of an action for arbitration does not affect a party's right to file any motion with the court.

(1) The court, in its discretion, may consider and determine any motion at any time. It may defer consideration of issues raised by motion to the arbitrator for determination in the award. Parties shall state their contentions regarding pending motions deferred to the arbitrator in the exchange of information required by Rule 3(b).

(2) Pendency of a motion shall not be cause for delaying an arbitration hearing unless the court so orders.

Rule 4. The Award

(a) Filing the Award. The award shall be in writing, signed by the arbitrator and filed with the court within 10 days after the hearing is concluded or the receipt of posthearing briefs, whichever is later.

(b) Findings; Conclusions; Opinions. No findings of fact and conclusions of law or opinions supporting an award are required unless requested by a party.

(c) Scope of Award. The award must resolve all issues raised by the pleadings and may exceed $100,000.

(d) Copies of Award to Parties. The arbitrator shall forward copies of the award to counsel of record or to a party not represented by counsel.

Rule 5. Trial

(a) Trial as of Right. Any party not in default for a reason which may result in judgment by default who is dissatisfied with an arbitrator's award may have a trial as of right upon filing a written rejection of the award on an approved form within 20 days after the arbitrator's award has been filed, or within 20 days after an adverse determination of a Rule 3(j) motion to rehear.

(b) Filing Fee. A party rejecting an award shall post a filing fee of $200.00 with the clerk of court.

(c) Multi-Party Case. In consolidated cases and in those involving multiple parties, cross-claims,

counterclaims and third party claims, a rejection by any one party will cause the entire civil action or actions to proceed to trial in the normal course.

(d) No Reference to Arbitration. A trial shall be conducted as if there had been no arbitration proceeding. No reference may be made to prior arbitration proceedings in the presence of a jury without the consent of all parties to the arbitration and/or the approval of the court.

(e) No Evidence of Arbitration Admissible. No evidence that there have been arbitration proceedings or any fact concerning them may be admitted in a trial, or in any other proceedings, without the consent of all parties to the arbitration and/or the approval of the court.

(f) Arbitrator Not to Be Called as Witness. An arbitrator may not be deposed or called as a witness to testify concerning anything said or done in an arbitration proceeding. The notes of the arbitrator are privileged and not subject to discovery.

(g) Arbitrator's Immunity. The arbitrator shall have immunity to the same extent as a trial judge with respect to actions of the arbitrator in the arbitration proceeding.

Rule 6. The Court's Judgment

(a) Termination of Action by Agreement Before Judgment. The parties may file with the court a stipulation of dismissal or consent judgment at any time before entry of judgment on an award.

(b) Judgment Entered on Award. If the case is not terminated by agreement of the parties, and no party files a written rejection of the award within 20 days after the award is filed, the court shall enter judgment to include interest and costs, if any, on the arbitrator's award.

Rule 7. Administration

(a) Actions Designated and Time Schedules. (i) Actions pending as of the effective date of these rules, and all district court appeals, shall be subject to immediate designation by the court for arbitration. For such actions, an arbitrator shall be selected within 30 days of designation, and if the parties are unable to agree upon the selection of an arbitrator, the court shall select one. The court shall set a date of not more than 90 days after designation, by which time the arbitration hearing must be concluded. (ii) For all other actions subject to arbitration the court shall designate such actions for arbitration 180 days after the filing of the arbitration certificate required by Rule 1(e). An arbitrator shall be selected within 30 days of designation, and if the parties are unable to agree upon the selection of an arbitrator, the court shall select one. The court shall set a date of not more than 90 days after designation, by which time the arbitration hearing must be concluded. The Arbitration Office may, on motion by one of the parties, for good cause shown, extend once the 90 day period after designation but in no event beyond an additional 60 days.

(b) Notice. Notice that a case has been assigned to arbitration shall be served on the selected arbitrator and all parties within five days of such selection.

(c) Date of Hearing Advanced by Agreement. A hearing may be held earlier than the date set by the arbitrator by agreement of the parties with arbitrator approval.

(d) Forms. Forms for use in these arbitration proceedings must be approved by the Superior Court.

(e) Delegation of Nonjudicial Functions. To conserve judicial resources and facilitate the effectiveness of these rules, the court may delegate nonjudicial, administrative duties and functions to supporting court personnel and authorize them to require compliance with approved procedures.

(f) Definitions. "Court" as used in these rules means, depending upon the context in which it is used, the Presiding Justice or a designee of the Presiding Justice.

Rule 7.1. Administration and Proration of Reasonable Costs of Arbitration Pursuant to R.I.G.L. § 8-6-5, as Amended

(a) It is hereby determined that three hundred dollars ($300.00) is a reasonable cost of an arbitration performed within these rules and said three hundred dollars ($300.00) shall be apportioned as follows:
PAYMENT SCHEDULE
(1) Each party, (a party shall be all the plaintiffs and all the defendants, if more than one of each) shall pay $75.00 in accordance with Rule 7.1(d) 1 and 2.

(2) If, at the conclusion of the arbitration hearing an award is rendered for the plaintiff and no rejection is filed, each party shall pay $75.00.

(3) If, at the conclusion of the arbitration hearing an award is rendered for the defendant and no rejection is filed, the defendant shall pay $150.00 and the plaintiff will pay no fee.

(b) The following actions shall not be subject to above assessments:

(1) Small claims matters appealed from District Court;

(2) Any other District Court matters appealed by pro-se individuals.

(c) All matters rejected by any party shall be subject to Rule 5(b) regarding the filing fee for rejecting an award.

(d) The Arbitration Office shall be responsible for establishing a process for billing, collecting and transmitting to the Supreme Court all of the funds received by it pursuant to these rules, which shall be maintained and used exclusively for arbitration purposes.

The monies assessed and apportioned as directed in paragraph (a) shall be collected by the Arbitration Office in the following manner:

(1) As to all cases certified to arbitration pursuant to Rule 1(a), (b), and (c) all funds due the court must be delivered to the Arbitration Office no later than 30 days after the arbitration certificate has been received and filed by it;

(2) As to all cases designated to arbitration or otherwise placed into arbitration where the arbitrator is to be selected or appointed within 30 days, the funds due must be paid before the arbitrator is notified

of the appointment or selection;

(3) As to all cases not rejected under Rule 5(b) the funds due shall be paid no later than 30 days after the arbitrator's award was received and filed by the Arbitration Office.

Rule 7.2. Sanctions

If a party(ies) does not comply with the Rules stated herein and does not deliver the monies to the Arbitration Office when required the case may be defaulted or dismissed by the Presiding Justice or his/her designee upon a showing that notice, to the last known address, was properly sent by the Arbitration Office and payment was not received within the time provided by these Rules. If an award has been filed and no rejection timely filed, the judgment usually entered pursuant to said award shall not be entered until payment has been made.

The Honorable Court, after a hearing, may impose such other sanctions as may be warranted.

Rule 8. Application of Rules

These rules shall apply to cases filed on or after their effective date or cases referred to arbitration by order of the court.

Article I. Appellate Procedure

Current with amendments received through 2008

Provisional Rule A. Mediation Session Procedures

(1.) Purpose of the Rule. The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court Appellate Mediation Program and with the help of designated mediators.

(2.) Eligibility. All civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions:

a.) Applications for post-conviction relief;

b.) Petitions for habeas corpus;

c.) Cases brought by prisoners in the custody of the Department of Corrections;

d.) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a mediator-justice);

e.) Appeals from the Family Court;

f.) Juvenile cases;

g.) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued;

Criminal cases will not be included in the Appellate Mediation Program. Criminal cases will be construed to include cases on review from traffic tribunals of the state or municipalities, or adjudication of offenses by municipal courts, however designated.

The Appellate Mediation Program shall use its discretion in determining the assignment and scheduling of civil cases that meet the requirements for eligibility and are appropriate for mediation. Any civil case that has been appealed from the trial court may be directed by the Court to participate in the Appellate Mediation Program.

At any time during the appellate process, any party in a civil case may request participation in the program on a voluntary basis.

(3.) Mediators. Mediators will be designated retired justices of the Supreme Court, retired justices or judges of trial courts, other judges, or persons who may from time to time be designated by the Chief Justice in a particular proceeding.

(4.) Modifications of Procedures Relating to Cases Eligible for Mediation. Within 20 days of filing a notice of appeal, all parties shall complete a mediation statement on a form provided by the Clerk of the Superior Court to be filed with the Appellate Mediation Program.

The mediation eligibility portion of the form (Part I) shall enable the Appellate Mediation Program to determine whether the case is eligible and appropriate for mediation, and shall include the procedural history of the case, including the type of judgment entered, the amount of any monetary judgment and/or injunctive relief, the facts giving rise to the initial dispute, the history of negotiation, including any demand(s) that have been transmitted by the plaintiff(s), as well as any counteroffer(s) that have been made by the defendant(s). Counsel for the plaintiff(s) or other claimant(s) will include a list of out-of-pocket expenses upon which the claim(s) for compensation is based in whole or in part, as well as a description of physical and other injuries upon which the claim(s) for compensation is based. An original and two copies of the mediation eligibility portion of the form must be provided to the Appellate Mediation Program and one copy must be provided to all opposing counsel.

If the case is eligible for mediation, the parties shall also include a confidential mediation statement (Part II) with the mediation eligibility form to be filed with the Appellate Mediation Program. The confidential mediation statement shall include significant factors that could affect the party's chances of prevailing on appeal, a description of why past efforts at negotiation have failed, the priorities of the parties and possible acceptable outcomes to the mediation process. The statement should be sufficiently detailed to enable the mediator-justice to determine the areas of agreement and disagreement and to consider any other relevant information that would assist the mediator in the resolution of the dispute. To maintain the confidentiality of the mediation process, the confidential mediation statement shall be sent only to the Appellate Mediation Program and shall not be provided to opposing counsel. Counsel may supplement a mediation statement with additional relevant information

at any time prior to the mediation session.

As a condition for participation in mediation, the parties shall include a statement that counsel has been authorized to negotiate on behalf of the client(s), with full authority to make and/or accept offers. If counsel is not so authorized, arrangements must be made to have the client(s) or authorized representative(s) available at the mediation session, or available for consultation by telephone at the time of the mediation session. At any time during the mediation process, the mediator-justice may request the record be transferred for reference at his or her discretion.

In the event that the judgment has not included all parties or all claims for relief, a judgment shall be requested in the trial court pursuant to Rule 54(b).

(5.) Ordering of Transcript and Filing of Briefs. In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and referred to mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal. This extension may be modified by special order issued by the mediator-justice or any other justice of the Supreme Court. After the mediation session, the mediator-justice may make such order as may be appropriate in respect to the ordering of the transcript and the filing of briefs or memoranda in the event that the case is not settled. The full record of the case shall then be filed in the office of the Clerk of the Supreme Court.

(6.) Mediation Session. At the time of the mediation session, counsel for the parties should have had a prior meeting with their clients and opposing parties in order to seek as much agreement on issues, including settlement issues as possible. Counsel should have obtained authority from their client(s) to make demands and counteroffer(s) to the fullest extent possible. Client(s) and/or representatives of client(s) should be available at the mediation session or by telephone in order to furnish additional authority that may be required in order to achieve a successful mediation in the course of the session.

(7.) Confidentiality. All documents filed, and statements made in furtherance of mediation, including, but not limited to, the history of negotiation, listing of out-of-pocket expenses, injuries, responses by the parties, counteroffers, and memoranda relating to the narrowing of issues, will be confidential. The only portion of the mediation process that will be public is the fact that the session took place and that the case has been settled, if such a result is reached.

(8.) Sanctions. A party or counsel for a party who fails to participate in a mediation session after notice, or fails to provide the necessary preliminary documents and other information required for a meaningful mediation session, or fails to keep confidential any mediation statements or documents, or fails to participate in the mediation session in good faith, or otherwise fails to follow the provisions of this Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise be subject to sanctions to be imposed after hearing by the Court or the mediator-justice. Sanctions may be brought either on motion by a party, or by the mediator-justice or the Court. Such sanctions may include monetary fines, costs, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellee(s) as circumstances and justice may require.

(9.) Effective Date. This amended provisional rule shall become effective August 1, 2004 and any rule inconsistent with this provisional rule shall be superseded hereby.