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States' Alternative Dispute Resolution Statutes

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STATE OF SOUTH CAROLINA

Index

Uniform Arbitration Act

Title 15, Chapter 48.

Current through the end of the 2007 Regular Session

§ 15-48-10. Validity of arbitration agreement; exceptions from operation of chapter.

(a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:
(1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder;
(2) Arbitration agreements between employers and employees or between their respective representatives unless the agreement provides that this chapter shall apply; provided, however, that notwithstanding any other provision of law, employers and employees or their respective representatives may not agree that workmen's compensation claims, unemployment compensation claims and collective bargaining disputes shall be subject to the provisions of this chapter and any such provision so agreed upon shall be null and void. An agreement to apply this chapter shall not be made a condition of employment.
(3) A pre-agreement entered into when the relationship of the contracting parties is such that of lawyer-client or doctor-patient and the term "doctor" shall include all those persons licensed to practice medicine pursuant to Chapters 9, 15, 31, 37, 47, 51, 55, 67 and 69 of Title 40 of the 1976 Code.

(4) Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.

§ 15-48-20. Proceedings to compel or stay arbitration.

(a) On application of a party showing an agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

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

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to § 15-48-190, the application may be made in any court of competent jurisdiction.

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

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

§ 15-48-30. Appointment of arbitrators.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, there shall be three arbitrators with one chosen by the party making the demand for arbitration, one chosen by the party against whom demand is made and third being chosen by those two chosen by the parties.

§ 15-48-40. Majority action by arbitrators.
The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

§ 15-48-50. Hearing; record thereof.
Unless otherwise provided by the agreement:
(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a

later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.
(d) Upon the request of any party or arbitrator, the arbitrators shall cause to be made a record of the testimony and evidence introduced at the hearing.

§ 15-48-60. Joinder of parties to arbitration.
Upon application to the arbitration panel by a party, a person who is subject to service of process over the subject matter of the arbitration shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, (2) he claims an interest relating to the subject of the action and is so situate that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) lead any of the persons already parties subject to a substantial risk of incurred double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the arbitrators shall order that he be made a party. Any person joined as a party to the arbitration shall have the same time to answer which was given to the initial defendant in the case.

§ 15-48-70. Representation by attorney.
A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 15-48-80. Witnesses; subpoenas; depositions.

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

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

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

§ 15-48-90. Award.

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

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

§ 15-48-100. Change of award by arbitrators.

On application of a party or, if an application to the court is pending under §§ 15-48-120, 15-48-130, 15-48-140, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of § 15-48-140, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of §§ 15-48-120, 15-48-130 and 15-48-140.

§ 15-48-110. Fees and expenses of arbitration.

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

§ 15-48-120. Confirmation of an award.

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.

§ 15-48-130. Vacating an award.

(a) Upon application of a party, the court shall vacate an award where:
(1) The award was procured by corruption, fraud or other undue means;
(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
(3) The arbitrators exceeded their powers;
(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or
(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;
But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in item (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 15-48-30. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 15-48-140. Modification or correction of award.

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:
(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.
(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

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

§ 15-48-150. Judgment or decree on award.

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

§ 15-48-160. Judgment roll; docketing.

(a) On entry of judgment or decree, the clerk of court shall prepare the judgment roll consisting, to the extent filed, of the following:
(1) The agreement and each written extension of the time within which to make the award;
(2) The award;
(3) A copy of the order confirming, modifying or correcting the award; and
(4) A copy of the judgment or decree.
(b) The judgment or decree may be docketed as if rendered in an action.

§ 15-48-170. Applications to court.

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

§ 15-48-180. Court; jurisdiction; questions of law and fact.
The term "court" means any court of competent jurisdiction of this State. The making of an agreement described in § 15-48-10 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder. Unless otherwise provided by the arbitration agreement, when a dispute is submitted to arbitration, the arbitrators shall determine questions of both law and fact.

§ 15-48-190. Venue.

An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 15-48-200. Appeals.
(a) An appeal may be taken from:
(1) An order denying an application to compel arbitration made under § 15-48-20;
(2) An order granting an application to stay arbitration made under § 15-48-20(b);
(3) An order confirming or denying confirmation of an award;
(4) An order modifying or correcting an award;
(5) An order vacating an award without directing a rehearing; or
(6) A judgment or decree entered pursuant to the provisions of this chapter.
(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

§ 15-48-210. Chapter not retroactive.

This chapter applies only to agreements made subsequent to the effective date of this chapter.

§ 15-48-220. Mechanics liens not precluded.
Nothing in this chapter shall preclude the filing and perfecting of a mechanics lien by any party to an arbitration agreement.

§ 15-48-230. Uniformity of interpretation.
This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 15-48-240. Short title.

This chapter may be cited as the "Uniform Arbitration Act".

Alternative Dispute Resolution (ADR) Rules

Current with amendments received through 2008

RULE 1. SCOPE OF RULES

With the exceptions stated in Rule 3, these rules govern court-annexed Alternative Dispute Resolution (ADR) processes in South Carolina Circuit Courts in civil suits, and in South Carolina Family Courts in domestic relations actions in counties designated by the Supreme Court of South Carolina for mandatory ADR or as required by statute. They shall be construed to secure the just, speedy, inexpensive and collaborative resolution of every action.

These rules shall also govern all mediations in Medical Malpractice actions as required by S.C. Code § 15-79-120 and S.C. Code § 15-79-125(C).

RULE 2. DEFINITIONS

(a) Mediation. An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial.

(b) Mediator. A neutral person who acts to encourage and facilitate the resolution of a dispute. The mediator does not decide the issues in controversy or impose settlement.

(c) Arbitration. An informal process in which a third-party arbitrator issues an award deciding the issues in controversy. The award may be binding or non-binding as specified in these rules.

(d) Arbitrator. A neutral person who acts to decide the issues in controversy of a dispute.

(e) Neutral. A mediator or arbitrator.

(f) Certified. A mediator or arbitrator who is approved by the Board of Arbitrator and Mediator Certification to be eligible for court appointment pursuant to these rules.

(g) Alternative Dispute Resolution (ADR) Conference. A mediation or arbitration. Arbitration conferences may also be referred to as hearings.

(h) Roster. The official list of certified neutrals maintained and published by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

(i) Board. The South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

RULE 3. ACTIONS SUBJECT TO ADR

(a) Mediation. All civil actions filed in the circuit court, all cases in which a Notice of Intent to File Suit is filed pursuant to the provisions of S.C. Code § 15-79-125(A), and all contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules unless the parties agree to conduct an arbitration.

The parties may select their own neutral and may mediate or arbitrate at any time.

(b) Exceptions. ADR is not required for:

(1) special proceedings, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

(2) requests for temporary relief;

(3) appeals;

(4) post-conviction relief (PCR) matters;

(5) contempt of court proceedings;

(6) forfeiture proceedings brought by governmental entities;

(7) mortgage foreclosures;

(8) family court cases initiated by the South Carolina Department of Social Services; and

(9) cases that have been previously subjected to an ADR conference, unless otherwise required by this rule or by statute.

(c) Motion to Refer Case to Mediation. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

RULE 4. SELECTION OR APPOINTMENT OF NEUTRAL

(a) Eligibility. A neutral may be a person who:

(1) is a certified neutral under Rule 15; or

(2) is not a certified neutral but in the opinion of all of the parties is otherwise qualified by training or experience to mediate or arbitrate all or some of the issues in the action.

(b) Roster of Certified Neutrals. The Board shall maintain a current roster ("Roster") of neutrals certified under Rule 15 who are willing to serve in each county. The Board shall make the Roster available to the clerks of court for each county. A certified neutral shall notify the Supreme Court's Board of Arbitrator and Mediator Certification if the neutral desires to be added to or deleted from the Roster. The Board and clerk of court for each county shall make this roster available to the public.

(c) Appointment of Mediator by Circuit Court. In circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its

designee. In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators. In lieu of mediation, the parties may select non-binding arbitration pursuant to these rules.

In medical malpractice cases subject to pre-suit mediation as required by S.C. Code § 15-79-125(C), the Notice of Intent to File Suit shall be filed in accordance with procedures for filing a lis pendens and requires the same filing fee as provided by S.C. Code § 8-21-310(11)(b). The Notice of Intent to File Suit shall contain language directed to the defendant(s) that the dispute is subject to pre-suit mediation within 120 days and must contain a place for the names of the primary and secondary mediators. At the time the Notice of Intent to File Suit is filed, the Clerk of Court shall appoint a primary mediator and a secondary mediator in the manner set forth in the paragraph above. The plaintiff shall serve the defendants with the Notice of Intent to File Suit containing the mediator appointment. Notwithstanding the clerk's appointments, the parties by agreement may choose a different mediator at any time.

(d) Appointment of Mediator by Family Court. In family court cases subject to ADR, early mediation is encouraged.

(1) If there are unresolved issues of custody or visitation, an early mediation of those issues is required. In such event, the court shall appoint a mediator at a temporary hearing. If there is no temporary hearing, then the parties shall agree upon a mediator or notify the court for the appointment of a mediator within fifteen (15) days of the joinder of the issues of custody or visitation. In the event a mediation has not already been held to attempt resolution of the issues of custody and visitation, the temporary order shall designate a mediator in language substantially complying with the form approved by the Supreme Court or its designee. The designation shall include the name, address and phone number of the primary mediator, whether the mediator was selected or appointed, and if appointed, the name, address and phone number of a secondary mediator. E-mail addresses shall be included, if available.

(2) If issues other than custody or visitation are in dispute and no Proof of ADR has been filed certifying that the issues have been mediated, the parties must mediate those issues prior to the scheduling of a hearing on the merits; provided, however, the parties may submit the issues of property and alimony to binding arbitration in accordance with subparagraph (5). A mediator shall be designated in the following manner:
(A) When the parties file a request for a merits hearing, the request shall include the name of the stipulated mediator or a request for appointment of a mediator. The court shall not schedule a hearing on the merits until a Proof of ADR has been filed.
(B) If a mediator has not been stipulated in the request for merits hearing, the clerk of court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee.
(3) In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file

with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators.

(4) An initial mediation conference must occur within thirty (30) days of appointment or selection. The parties must complete mediation and file a Proof of ADR with the clerk's office before a merits hearing can be scheduled.

(5) In lieu of mediation, the parties may elect to submit issues of property and alimony to binding arbitration in accordance with the Uniform Arbitration Act, S.C. Code § 15-48-10 et seq.

(e) By agreement. By agreement, the parties may choose a neutral at any time. In any event, the ADR conference shall be held on or before the deadlines provided for in these rules.

(f) Notice to Neutral. The parties shall notify the selected or appointed neutral to initiate scheduling of the ADR Conference.

RULE 5. THE ADR CONFERENCE

(a) Location of the Conference. The ADR Conference is to be held within the county where the case is filed at a site designated by the neutral or any other site agreed upon by the parties and the neutral.

(b) Discovery and Motions. The ADR conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter that would delay preparation of the case for trial, except by order of the court.

(c) Recesses. The neutral may recess the ADR conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) Privacy. ADR conferences are private. Other persons may attend only with the permission of the parties, their attorneys and the mediator.

(e) Motion to Defer or Exempt from ADR. A party may file a motion to defer an ADR conference or exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to defer an ADR conference or completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or mental or physical condition.

(f) Deadline for the ADR Conference in Circuit Court. The ADR conference shall be held on or before three hundred (300) days from the date of the filing of the action. The case shall not be on the circuit court trial roster until a Proof of ADR is filed.

Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the Notice of Intent to File Suit or as the Court directs.

(g) Scheduling in Family Court. The parties shall contact and cooperate with the mediator to set the schedule for conferences and the mediator may recess a conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference. The

case shall not be docketed in family court for trial until a Proof of ADR is filed.

RULE 6. DUTIES OF THE PARTIES, REPRESENTATIVES AND ATTORNEYS--MEDIATION

(a) Duty to Inform. In cases subject to ADR under these rules, all attorneys should fairly and objectively inform their clients about mediation and arbitration.

(b) Attendance. The following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

(1) The mediator;

(2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;

(3) The party's counsel of record, if any; and

(4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

(c) Identification of Matters in Dispute. The mediator may require, prior to the scheduled mediation conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.

(d) Cooperation. The parties and their representatives shall cooperate with the mediator.

(e) Confidentiality. Communications during the mediation settlement conference shall be confidential in accordance with Rule 8.

(f) Agreement in Circuit Court. Upon reaching an agreement, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the parties envision a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the agreement. A consent judgment or voluntary dismissal shall be filed with the court by such persons as may be designated by the mediator.

(g) Agreement in Family Court. Parties must participate in at least three (3) hours of mediation unless an agreement is reached sooner. Upon the parties reaching an agreement, the mediator shall provide a Memorandum of Agreement to the parties, attorneys of record, and guardians ad litem of record. It is the obligation of the parties to seek approval of the agreement by the family court.

RULE 7. AUTHORITY AND DUTIES OF MEDIATORS

(a) Authority of Mediators. The mediator shall at all times be authorized to control the conference and the procedures to be followed.

(b) Duties. The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties:

(1) The mediation process, including the difference between mediation and other forms of conflict resolution;

(2) The facts that the mediation conference is not a trial; the mediator is not a judge, jury or arbitrator; and the parties retain the right to trial if they do not reach a settlement;

(3) The inadmissibility of conduct and statements as evidence in any arbitral, judicial or other proceeding;

(4) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(6) The duties and responsibilities of the mediator and the parties;

(7) The fact that any agreement must be reached by mutual consent of the parties; and

(8) The costs of the mediation settlement conference.

(c) Confidentiality. The mediator must comply with Rule 8 regarding confidentiality.

(d) Duty of Impartiality/Disclosure. The mediator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the mediation or any past or present relationship with the parties or their representatives.

(e) Declaring Impasse. It is the duty of the mediator to timely determine when the mediation is not viable, that an impasse exists, or that the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(f) Reporting Results of Conference. Within ten (10) days of conclusion of the conference, the mediator shall file with the Clerk of Court a Proof of ADR on a form approved by the Supreme Court or its designee. Any request for a final hearing in a contested case subject to ADR under these rules shall include a copy of a Proof of ADR. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the mediator to provide additional statistical data for evaluation of the program.

In pre-suit medical malpractice mediations required by S.C. Code § 15-79-125, the Clerk of Court shall

serve notice of entry of the Proof of ADR by first class mail upon all attorneys and unrepresented parties. The 60-day period in which to file a summons and complaint in accordance with S.C. Code § 15-79-125 (E)(1) shall commence upon receipt of written notice of entry of the Proof of ADR from the Clerk of Court.

(g) Immunity. The mediator shall have immunity from liability to the same extent afforded judicial officers of this state.

RULE 8. CONFIDENTIALITY

(a) Confidentiality. Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

(1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;

(2) Admissions made in the course of the mediation proceeding by another party or any other person present;

(3) Proposals made or views expressed by the mediator;

(4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or

(5) All records, reports or other documents created solely for use in the mediation.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

(1) Disclosures as may be stipulated by all parties;

(2) A report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules;

(3) The mediator or participants from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the ADR program;

(4) Threats of harm or attempts to inflict physical harm made during the mediation sessions; and

(5) Any disclosures required by law or a professional code of ethics.

(c) Private Consultation/Confidentiality. The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(d) No Waiver of Privilege. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(e) Mediator Not to be Called as Witness. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential.

RULE 9. COMPENSATION OF NEUTRAL

(a) By Agreement. When the parties stipulate the neutral, the parties and the neutral shall agree upon compensation.

(b) By Court Order--Mediation. When the mediator is appointed by the court, the mediator shall be compensated by the parties at a rate of $175 per hour, provided that the court-appointed mediator shall charge no greater than one hour of time in preparing for the initial mediation conference. Travel time shall not be compensated. Expense reimbursement shall be limited to actual expenses not exceeding $50, unless otherwise ordered by the Chief Judge for Administrative Purposes of the circuit. An appointed mediator may charge no more than $175 for cancellation of an ADR Conference.

(c) Payment of Compensation by the Parties. Unless otherwise agreed to by the parties or ordered by the court, fees and expenses for the ADR conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the neutral, or unless a party advises the neutral of his or her intention to file a motion to be exempted from payment of neutral fees and expenses pursuant to Rule 9(d).

(d) Indigent Cases. Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Rule 10. SANCTIONS

(a) Proof of ADR. If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, including the dismissal of an action without prejudice or the striking of a pleading. The court may also manage such cases through status conferences and/or scheduling orders.

(b) Sanctions. If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.

RULE 11. DUTIES OF THE PARTIES, REPRESENTATIVES AND ATTORNEYS--ARBITRATION

(a) Attendance. The following persons shall physically attend an arbitration unless otherwise agreed to by the arbitrator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes:

(1) The arbitrator;

(2) All individual parties; or an officer, director, or employee for a corporate party; or in the case of a governmental agency, a representative of that agency; and

(3) The party's counsel of record, if any.

(b) Identification of Matters of Dispute. The arbitrator may require, prior to the scheduled arbitration conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the arbitrator. Such memoranda shall be exchanged by the parties at the same time and in the same manner as the memoranda are furnished to the arbitrator.

(c) Cooperation. The parties and their representatives shall cooperate with the arbitrator.

RULE 12. NON-BINDING ARBITRATION HEARING AND AWARD

(a) Scope. This rule applies only to non-binding arbitrations. Nothing in this rule shall be construed to apply to binding arbitration pursuant to the Uniform Arbitration Act as adopted in South Carolina. Arbitrations selected by the parties under these rules are deemed non-binding arbitrations unless otherwise expressly agreed by the parties.

(b) Arbitration Hearings. The following shall apply to arbitration hearings, unless otherwise expressly agreed by the parties:

(1) 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 at trial. The arbitrator is empowered and authorized to administer oaths and affirmations.

(2) Rule 45, SCRCP, shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(3) The arbitrator shall have the authority of a trial judge to govern the conduct of hearings, except for the power to punish for contempt. The arbitrator shall refer all contempt matters to the Chief Judge for Administrative Purposes.

(4) The South Carolina 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 the arbitrator determines appropriate.

(5) No ex parte communications between the parties or their counsel and the arbitrator are permitted.

(6) The arbitration hearing shall be limited to two hours unless the arbitrator determines that more time is necessary to insure fairness and justice to the parties. The arbitrator is not required to receive repetitive or cumulative evidence.

(7) No recording or transcript of an arbitration hearing shall be made.

(c) Award. Unless otherwise expressly agreed by the parties:

(1) The award shall be in writing, signed by the arbitrator. Within ten (10) business days after the hearing is concluded, the arbitrator shall serve the original award on the prevailing party, copies of the award on all other parties, and a Proof of ADR with the court, together with a certificate of service. The arbitration hearing is concluded when all the evidence is in and any arguments or post-hearing briefs the arbitrator permits have been completed or received.

(2) The award must resolve all issues raised by the pleadings.

(3) Findings of facts and conclusions of law or opinions supporting an award are not required.

(d) Trial De Novo as a Right. Any party not in default for a reason subjecting that party to judgment by default who is dissatisfied with an arbitrator's award may have a trial de novo of right upon filing a written demand for trial de novo with the court, and service of the demand on all parties on a form approved by the Supreme Court or its designee within thirty (30) days after receipt of the arbitrator's award. No evidence that there has been an arbitration proceeding or any fact concerning the arbitration may be admitted in a trial, or in any subsequent proceeding involving any of the issues in or parties to the arbitration, without the consent of all parties and the court's approval.

(e) Judgment Entered on Award. If the case is not terminated by agreement of the parties, and no party files a demand for trial de novo under Rule 12(d), the prevailing party shall submit to the Chief Judge for Administrative Purposes a proposed order directing the entry of judgment on the award, which when entered, shall have the same effect as a consent judgment in the action and may be enforced accordingly.

RULE 13. AUTHORITY AND DUTIES OF ARBITRATORS

(a) Authority of Arbitrators. The arbitrator shall at all times be authorized to control the hearing and the procedures to be followed.

(b) Duties. The arbitrator shall set up the arbitration hearing. The arbitrator shall define and describe the following to the parties:

(1) The non-binding arbitration process, including the difference between arbitration and other forms of conflict resolution;

(2) The duties and responsibilities of the arbitrator and the parties; and

(3) The cost of the arbitration hearing.

(c) Arbitrator Not to be Called as Witness. The arbitrator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the arbitration in any adversary proceeding or judicial forum. All records, reports and other documents received by the arbitrator while serving in that capacity shall be confidential.

(d) Duty of Impartiality/Disclosure. The arbitrator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(e) Reporting Results of Hearing. Within ten (10) days of conclusion of the hearing as set forth in Rule 12(c), the arbitrator shall file with the Clerk of Court Proof of ADR on a form approved by the Supreme Court or its designee. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the arbitrator to provide additional statistical data for evaluation of the program.

(f) Immunity. The arbitrator shall have immunity from liability to the same extent afforded judicial officers of this state.

RULE 14. BOARD OF ARBITRATOR AND MEDIATOR CERTIFICATION

There is hereby established a Board of Arbitrator and Mediator Certification. The Board will be composed of five (5) persons appointed by the Supreme Court for a term of three (3) years or until a replacement member is appointed. In the event of a vacancy on the Board, the Supreme Court shall appoint someone to fill the unexpired term. Three members of the Board shall constitute a quorum. In the event that members of the Board disqualify themselves in a pending matter leaving less than a quorum, the Supreme Court may appoint ad hoc members to restore the Board to full membership in that matter.

RULE 15. CERTIFICATION OF COURT-APPOINTED NEUTRALS

The Board of Arbitrator and Mediator Certification ("Board") shall receive and approve applications for certifications of persons to be appointed as mediators or arbitrators. The application shall be on a form approved by the Supreme Court or the Board.

(a) Circuit Court Certification. For circuit court certification, a person must:

(1) Either:
(A) Be admitted to practice law in this State for at least three (3) years and be a member in good standing of the South Carolina Bar; or
(B) Be admitted to practice law in the highest court of another state or the District of Columbia for at least three (3) years and:
(i) Be at least 21 years old;
(ii) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association;

(iii) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;
(iv) Be an associate member of the South Carolina Bar in good standing; and
(v) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rule on Disciplinary Procedure, Rule 413, SCACR, to the same extent as an active member of the South Carolina Bar.
(2) Be of good moral character;

(3) Have not, within the last five (5) years, been:
(A) Disbarred or suspended from the practice of law;
(B) Denied admission to a bar for character or ethical reasons; or
(C) Publicly reprimanded or publicly disciplined for professional conduct;
(4) Pay all administrative fees and comply with all procedures established by the Supreme Court, the Board and the Commission on Alternative Dispute Resolution; and

(5) Agree to provide mediation/arbitration to indigents without pay.

(6) To be certified as a Mediator, a person must also:
(A) Have completed a minimum of forty (40) hours in a civil mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and
(B) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina.
(7) To be certified as an Arbitrator, a person must also:
(A) Have served as a Master-in-Equity, Circuit or Appellate Court Judge; or
(B) Have completed a minimum of six (6) hours in a civil arbitration training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and
(C) Demonstrate familiarity with the statutes, rules and practice governing arbitration hearings in South Carolina;
(b) Family Court Mediator Certification. For family court mediator certification, a person must:

(1) Either:
(A) Be admitted to practice law in this State for at least three (3) years and be a member in good standing of the South Carolina Bar;
(B) Be admitted to practice law in the highest court of another state or the District of Columbia for at least three (3) years and:
(i) Be at least 21 years old;
(ii) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association;
(iii) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;
(iv) Be an associate member of the South Carolina Bar in good standing; and,
(v) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rule on Disciplinary Procedure, Rule 413, SCACR, to the same extent as an active member of the South Carolina Bar; or,
(C) Be a psychologist, master social worker, independent social worker, professional counselor, associate counselor, marital and family therapist, or physician specializing in psychiatry, licensed for at least three (3) years under Title 40 of the 1976 Code of Laws, as amended.

(2) Have completed a minimum of forty (40) hours in a family court mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board;

(3) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina;

(4) Be of good moral character;

(5) Have not, within the last five (5) years, been:
(A) Disbarred or suspended from the practice of law or a profession set forth in Rule 15(b)(1)(C);
(B) Denied admission to a bar or denied a professional license for character or ethical reasons; or
(C) Publicly reprimanded or publicly disciplined for professional conduct;
(6) Pay all administrative fees and comply with all procedures established by the Supreme Court, the Board and the Commission on Alternative Dispute Resolution; and

(7) Agree to provide mediation to indigents without pay.

RULE 16. APPROVAL OF TRAINING PROGRAMS

A training program must be approved by the Supreme Court or its designee, the Board of Arbitrator and Mediator Certification, before the program can be used for compliance with Rule 15(a)(6)(A) (certification of circuit court mediators), Rule 15(b)(2) (certification of family court mediators), or Rule 15(a)(7)(B) (certification of circuit court arbitrators). Approval need not be given in advance of training attendance. The Supreme Court may set administrative fees, which must be paid in advance of approval.

(a) Approval of Circuit Court Mediator Training Programs

(1) An approved training program for mediators of the Court of Common Pleas civil actions shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:
(A) Conflict resolution and mediation theory;
(B) Mediation processes and techniques, including the process and techniques of trial court mediation;
(C) Standards of conduct and ethics for mediators;
(D) Statutes, rules and practice governing mediation settlement conferences in South Carolina;
(E) Demonstrations of mediation settlement conferences;
(F) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and
(G) Such other requirements as the Supreme Court from time to time may decide are appropriate.
(2) Training programs completed in South Carolina or other states may be approved by the Board if:
(A) The program consisted of a minimum of 37 hours of instruction;
(B) The program covered all the topics enumerated in paragraph (a)(1) of this Rule except subparagraph (D) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (a)(1), subparagraph (D) of this Rule.
(b) Approval of Family Court Mediator Training Programs

(1) An approved training program for mediators in the Family Court shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:
(A) Statutes, rules and practice concerning family and related law in South Carolina, including the law regarding custody, visitation, support, division of property and alimony;
(B) Conflict resolution, family dynamics, and mediation theory in general, as well as specific training regarding domestic violence;
(C) Mediation processes and techniques, including the process and techniques of trial court mediation;
(D) Standards of conduct and ethics for mediators;
(E) Statutes, rules and practice governing mediation settlement conferences in South Carolina;
(F) Demonstrations of mediation conferences;
(G) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and
(H) Such other requirements as the Supreme Court from time to time may decide are appropriate for good instruction.
(2) Training programs completed in South Carolina or other states may be approved by the Board if:
(A) The program consisted of a minimum of 37 hours of instruction;
(B) The program covered all the topics enumerated in paragraph (b)(1) of this Rule except subparagraphs (A) and/or (E) related to South Carolina law; and
(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (b)(1), subparagraphs (A) and (E) of this Rule.
(c) Approval of Circuit Court Arbitrator Training Programs

(1) An approved training program for arbitrators of the Court of Common Pleas civil actions shall consist of a minimum of six (6) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:
(A) Conflict resolution and arbitration theory;
(B) Arbitration processes and techniques, including the process and techniques of both binding and non-binding arbitration;
(C) Standards of conduct and ethics for arbitrators;
(D) Statutes, rules and practice governing arbitration hearings in South Carolina;
(E) Demonstrations of arbitration hearings; and
(F) Such other requirements as the Supreme Court from time to time may decide are appropriate.
(2) Training programs completed in South Carolina or other states may be approved by the Board if:
(A) The program consisted of a minimum of 6 hours of instruction;
(B) The program covered all the topics enumerated in paragraph (c)(1) of this Rule except subparagraph (D) related to South Carolina law; and
(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (c)(1), subparagraph (D) of this Rule.

RULE 17. STANDARDS OF CONDUCT, DECERTIFICATION AND DISCIPLINE OF NEUTRALS

(a) Standards of Conduct for Mediators. Any person serving as a mediator, whether certified or not, shall comply with the Standards of Conduct for Mediators, which is attached as Appendix A to these rules.

(b) Standards of Conduct for Arbitrators. Any person serving as an arbitrator, whether certified or not, shall comply with the Code of Ethics for Arbitrators, which is attached as Appendix B to these rules.

(c) Decertification of Neutrals. Certification under Rule 15 may be revoked at any time if it is shown that the neutral no longer meets the requirements to be certified under Rule 15 or that the neutral has failed to faithfully observe these rules, the ethical standards of Rules 17(a) or (b), or has engaged in any conduct showing an unfitness to serve as a neutral.

(d) Discipline of Neutrals. A neutral who violates these rules, the ethical standards of Rules 17(a) or (b), or who has engaged in any conduct showing an unfitness to serve as a neutral may, in addition to decertification under Rule 17(c), be subject to discipline by the Supreme Court. This discipline may include any sanction the Supreme Court determines is appropriate, to include an order publicly reprimanding the neutral for the conduct, an order barring the neutral from serving as a neutral in any court of this State for a definite or indefinite period of time, an order requiring the neutral to complete additional training, and/or the assessment of a fine. The fact that discipline is taken against an attorney under this Rule shall not preclude action against the attorney under Rule 413, SCACR, if the conduct is misconduct under that rule. The fact that discipline is taken under this Rule against a licensed professional listed in Rule 15(b)(1)(C) shall not preclude action against the professional under the rules or statutes governing that profession, if the conduct is misconduct under that rule or statute.

(e) Processing Complaints of Misconduct by Neutrals. Persons alleging that a neutral has engaged in misconduct may file a complaint with the Board of Arbitrator and Mediator Certification. Misconduct includes any conduct or other circumstances that would warrant decertification or discipline under Rule 17(c) or (d). Complaints of misconduct shall be investigated by the Board and, upon a finding of probable cause, forwarded to the Commission on Alternate Dispute Resolution for a hearing before a Hearing Panel consisting of three (3) members of the Commission. Subject to the requirements of Rule 422(d), SCACR, the Commission shall promulgate regulations governing the processing of these complaints.

RULE 18. CLERKS OF COURT

All circuit and family court Clerks of Court in each county shall perform whatever duties are required pursuant to these rules relating to record keeping, notification to the court, parties, or attorneys, docket control, maintenance of rosters, and service of orders.

RULE 19. LOCAL RULE-MAKING

These rules shall be uniform for all counties in which they are applicable. Local rules may be allowed only upon approval of the Supreme Court. Unless otherwise specified by these rules, all motions

related to ADR or to these rules should be directed to the Chief Judge for Administrative Purposes.

RULE 20. APPLICATION OF RULES

These rules shall apply to cases filed in circuit or family court on or after the effective date of any statute mandating ADR or Supreme Court order designating that county or court as subject to these rules.

Agricultural Seeds; Plants; Seed and Plant Certification

Title 46, Chapter 21, Article 3.

Current through the end of the 2007 Regular Session

§ 46-21-260. Complaint by farmer against seed dealer; answer; request for investigation; referral to arbitration committee.

(1) When any farmer alleges that agricultural, vegetable, or flower seeds fail to conform to the label attached to the seeds, as required by §§ 46-21-210 and 46-21-240, as a prerequisite to his right to maintain a legal action against the dealer from whom the seeds were purchased, the farmer shall make a sworn complaint against the dealer indicating in what respects the seeds appear to be deficient. The complaint must be filed with the Department of Agriculture, and a copy of the complaint must be served on the dealer by certified mail, within such time as to permit inspection of the seeds, crops, or plants by the seed arbitration committee or its representatives and by the dealer from whom the seeds were purchased. The language setting forth the requirements for filing and serving the complaint must be legibly typed or printed on a label attached to or on the package containing the seeds at the time of purchase by the farmer. If language setting forth the requirements is not so placed on a package label or on the package itself the filing and serving of a complaint under this subsection are not required. Any party to a judicial action alleging damages from the failure of seeds purchased from a seed dealer to perform as labeled may request an investigation by the arbitration committee as long as sufficient time remains to permit inspection of the seeds, crops, or plants. Any investigation, findings, reports, and recommendations of the committee may be considered by the court in such a judicial action. Within ten days after receipt of a copy of the complaint, the dealer shall file with the department his answer to the complaint and serve a copy of the answer on the farmer by registered mail. The Commissioner of Agriculture shall refer the complaint and the answer to the arbitration committee provided in § 46-21-270 for investigation, findings, and recommendations on the complaints. Upon receipt of the findings, and recommendations of the arbitration committee, the Commissioner shall transmit them to the farmer and to the dealer by registered mail.

(2) The commissioner shall refer the complaint and the answer to the arbitration committee provided in § 46-21-270 for investigation, findings, and recommendation on the complaints. Upon receipt of the findings and recommendation of the arbitration committee, the commissioner shall transmit them to the farmer and to the dealer by registered mail.

§ 46-21-270. Establishment of arbitration committee; members, duties, and sessions; compensation of members.

(A) The commissioner shall appoint an arbitration committee composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following: the Dean of Extension, Clemson University; the Dean of Agricultural Research, Clemson University; and the President of the South Carolina Seedsmen's Association. Two members and two alternates must be appointed by the commissioner in his sole discretion. One of the members and one of the alternates appointed must be a farmer who is not connected in any way in selling seeds at retail or wholesale. Each member and each alternate shall serve for a period of one year and until his successor is appointed and qualifies. The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct all meetings and deliberations held by the committee and direct all other activities of the council. The secretary shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(B) The committee shall assist farmers and seed dealers in determining the validity of complaints made by farmers against dealers and recommend cost damages resulting from alleged failure of seed to produce as represented by the labels on the seed packages.

(C) The committee may be called into session by the commissioner or the chairman to consider matters referred to it by the commissioner.

(D) When the commissioner refers to the committee any complaint made by a farmer against a dealer, the committee shall make a full and complete investigation of the matters complained of and at the conclusion of the investigation report its findings and recommendation of cost damages and file them with the commissioner.

(E) In conducting its investigation, the committee or any member may examine the farmer on the farming operation of which he complains and the dealer on his packaging, labeling, and selling operation of the seed alleged to be faulty, grow to production a representative sample of the alleged faulty seed through the facilities of the State under the supervision of the commissioner and Clemson University when the action is considered necessary, hold informal hearings at a time and place directed by the chairman upon reasonable notice to the farmer and the dealer, and seek evaluations from authorities in allied or any other agricultural disciplines, when considered necessary.

(F) Any investigation made by less than the whole membership of the committee must be by authority of a written directive by the chairman and the investigation must be summarized in writing and considered by the committee in reporting its findings and making its recommendation.

(G) The members of the committee shall receive no compensation for the performance of their duties but must be reimbursed for actual travel expenses when they attend a meeting or perform a service required by this section.