

RULES OF THE CIVIL ARBITRATION PROGRAM

By action of the Board of Judges of the Superior Court of the District of Columbia and pursuant to D.C. Code § 11-946, on the 9th day of July 1993, former Chief Judge Fred B. Ugast

ORDERED that the Rules of the Civil Arbitration Program be adopted as set forth below, and it was

FURTHER ORDERED that the Rules of the Civil Arbitration Program are effective September 1, 1993 and govern all cases ordered to arbitration thereafter.

**Please keep this copy of the Civil Arbitration
Rules for future reference.**

**Contact the Arbitration Coordinator at
202-879-0062 or 202-879-1549 with questions.**

Thank you.

RULES OF THE CIVIL ARBITRATION PROGRAM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA MULTI-DOOR DISPUTE RESOLUTION DIVISION

Introduction: The Superior Court of the District of Columbia has adopted the Civil Arbitration Rules in order to provide a Court-sponsored arbitration program for parties with lawsuits pending in the Civil Division. The Arbitration program is an integral component of the Court's Civil Delay Reduction project. The rules authorize the Court to assign certain actions filed in the Civil Division to the Arbitration Program.

The Court-sponsored program is not intended to supersede or modify the provisions of the D.C. Uniform Arbitration Act, D.C. Code 1981, Title 16, Chapter 42 or the Federal Arbitration Act, 9 U.S.C. Section 1, both of which apply when the parties themselves make a written contractual agreement to submit their dispute to arbitration rather than resort to the Court's system. The Superior Court Arbitration Program is intended to operate exclusively and independently of the procedures set forth in the D.C. Uniform Arbitration Act and the Federal Arbitration Act.

Rule I: Eligibility of Cases for and Assignment to Arbitration

(a) All cases filed in the Civil Division shall be eligible for assignment to Superior Court Civil Arbitration Program, with the exception of (1) actions in the Small Claims and Conciliation Branch, (2) actions in the Landlord and Tenant Branch, (3) actions seeking only equitable or declaratory relief, (4) class actions and (5) cases in which one of the parties is incarcerated. Any case so assigned shall be governed by these rules.

(b) The individual calendar Judge may assign a case to arbitration at any time.

(c) Arbitration is non-binding unless otherwise agreed to in writing by the parties. The parties may agree to binding arbitration at any time by filing with the Multi-Door Dispute Resolution Division (hereinafter referred to as the Multi-Door Division) a written praecipe to that effect signed by counsel for each party and by any unrepresented party. Parties to a binding arbitration waive their right to appeal the arbitrator's decision on any grounds except those listed under Rule XII.

(d) The parties may submit a case to *binding* arbitration before an arbitrator other than one assigned under this program by filing a praecipe with the Court indicating this fact. These Rules shall not apply to any case so submitted.

(e) Where cases are consolidated, if the oldest case was assigned to arbitration then all of the consolidated cases shall be assigned to arbitration, unless otherwise ordered by the Judge whom the case has been assigned.

Rule II: Removal of Cases from the Arbitration Program

(a) For good cause the arbitrator may recommend, or any party may move, that the Court remove the case from the Arbitration Program. If a party files such a motion with the arbitrator, the arbitrator shall attach a recommended decision to the motion. The arbitrator shall file a copy of such a motion (and a recommended decision on the motion) with the Multi-Door Division. The arbitrator shall stay the arbitration proceeding pending a ruling by the Court on the recommendation or motion. A motion to remove shall only be granted for good cause.

(b) The individual calendar Judge shall submit to the Multi-Door Division a copy of his or her decision. The Clerk of the Multi-Door Division shall notify the arbitrator and the parties of that decision.

(c) An individual calendar Judge may order removal of a case on his or her calendar from the Arbitration Program.

(d) A case that is stayed pursuant to court order shall be removed from the arbitration program.

Rule III: Qualifications and Service of Arbitrators

(a) Anyone who seeks to be considered for the position of arbitrator shall certify in writing that he or she (1) is an active or inactive member of the District of Columbia Bar who has been licensed to practice law in any jurisdiction for at least 5 years and (2) has participated as lead attorney in at least 3 civil trials of over 4 hours in length in a court of record or in at least 3 hearings of over 4 hours in length before an administrative law judge. The Multi-Door Division shall select and train arbitrators from applicants so qualified, or who are otherwise certified by Director of the Multi-Door Division as being authorized to arbitrate.

(b) The Multi-Door Division shall maintain a file, open to public inspection, containing current information about arbitrators.

(c) The Director of the Multi-Door Division may remove an arbitrator from a case for administrative reasons, and the Director may recommend to the Chief Judge or the Chief Judge's designee that an arbitrator be removed from the program for non-performance, inadequate performance or other good cause.

Rule IV: Assignment of Arbitrators

(a) The Court shall provide one arbitrator for each case assigned to arbitration. The parties shall forward to the arbitrator or panel of arbitrators a copy of the complaint and answer within 14 days of the assignment of the arbitrator.

(b) The parties may agree among themselves to select a particular arbitrator from a roster of eligible arbitrators provided by the Multi-Door Division. Otherwise, when a Judge assigns a case to arbitration an arbitrator shall be assigned pursuant to procedures designated by the Presiding Judge of the Civil Division. The Multi-Door Division shall make available to the public copies of the current assignment procedures.

(c) Parties may have their case decided by a panel of 3 arbitrators if all parties so request at the time of assignment to arbitration and pay the fee established by the Chief Judge of the Superior Court for each additional arbitrator. The Multi-Door Division shall distribute the current fee schedule upon request. The parties shall deposit with the Civil Finance Office a check to cover the additional arbitrator's fee within 10 days of the assignment of their case to arbitration. The parties shall submit a receipt for payment of this fee to the Multi-Door Division. The Director of the Multi-Door Division shall designate one arbitrator to preside, who shall be responsible for scheduling and coordination all proceedings.

(d) A party who objects to the assignment of an arbitrator must file a request for recusal with the arbitrator within 5 days of the arbitrator's assignment. The request for recusal shall be accompanied by an affidavit that states the facts and reasons for the request. An arbitrator may recuse himself or herself without stating the reasons for so doing. The arbitrator's decision on withdrawal shall be guided by the standards for recusal for a trial Judge of this Court. An arbitrator who withdraws shall immediately give written notice to the Multi-Door Division and all parties. The Multi-Door Division shall assign another arbitrator within 10 days of the arbitrator's notification of recusal. If an arbitrator does not withdraw in response to a party's request, the party may file a motion with the Multi-Door Division requesting that the individual calendar Judge remove the arbitrator. The moving party shall mail or electronically transmit copies of the motion for the removal of the arbitrator to the arbitrator and all parties. The Multi-Door Division

shall forward the motion to the individual calendar Judge and reassign the case to another arbitrator if so ordered by the Judge. The arbitration proceedings shall be stayed pending the decision of the individual calendar Judge.

Rule V: Compensation of Arbitrators

The Court shall compensate each arbitrator according to a schedule established by the Chief Judge of the Superior Court. The fee shall be paid after the Arbitration Award is filed or the case is otherwise removed from arbitration.

Rule VI: Powers of the Arbitrator

(a) The arbitrator shall have the same authority to act in the arbitration proceedings as a Superior Court Judge assigned to hear a non-jury action, except that the arbitrator shall have no power to hold any person in contempt, but may so recommend to the calendar Judge to whom the case has been assigned. The arbitrator's authority shall include, but not be limited to, the power to place all witnesses under oath or affirmation pursuant to Rule IX(h)(3), the power to issue subpoenas, rule on evidentiary matters, decide discovery disputes, compel the production of documents, impose sanctions for failure to comply with others compelling discovery, enter judgment by default or consent, and stay execution of such judgment conditioned upon the agreement in writing of all parties to pay certain express amounts over a stated period of time. However, only the calendar Judge whom the case has been assigned may grant a subsequent request to vacate the stay of execution and enter judgment.

(b) The arbitrator shall have the exclusive power to decide all motions pending at the time of assignment to arbitration or filed after assignment to arbitration, with the following exceptions: (1) motions to remove a case from arbitration, (2) motions to remove the arbitrator from a case in accordance with Rule IV (d), (3) motions to consolidate cases and (4) motions to continue the arbitration hearing more than 60 days beyond the 120-day deadline for conduction an arbitration hearing. The arbitrator may grant or deny a motion without explaining the reasons for the decision. The arbitrator's rulings on motions are not appealable.

(c) In the case of motions listed in Rule VI (b) (1)-(4) above, the arbitrator shall file a copy of the motion and the recommended ruling with the Multi-Door Division within 15 days of the motion's receipt. Within 5 days thereafter, the Multi-Door Division shall transmit the motion and arbitrator's recommended ruling to the individual calendar judge. The arbitrator's recommended ruling shall be deemed an

order of the Court unless the individual calendar Judge orders otherwise within 15 days of his or her receipt of the arbitrator's ruling.

(d) The arbitrator may suspend particular requirements of Superior Court Rules of Civil Procedure 26-37 unless such a suspension would substantially prolong resolution of the case or impede a fair arbitration decision.

(e) All settlements and judgments involving minors must, in accordance with D.C. Code Section 21-120, be approved by the individual calendar Judge to whom the case has been assigned.

(f) The arbitrator's authority ends with the filing of the Arbitration Award, except that the arbitrator shall have the authority to rule on subsequent Bills of Costs. The arbitrator's decisions are not binding on the Court in the event of a trial *de novo* or removal of the case from the arbitration program.

Rule VII: Discovery

(a) Formal discovery is permitted in arbitration cases but informal discovery is encouraged. Discovery must be completed 15 days prior to the arbitration hearing. Discovery may be used in any subsequent Court proceeding if permitted by the Superior Court Rules of Civil Procedure.

(b) The deadline for the completion of any subsequent discovery after the filing of a demand for trial *de novo* is the 60th day after any party has filed a timely demand for a trial *de novo*.

Rule VIII: Filing Procedures

(a) Every filing motion shall be in writing and served on all other parties or their counsel and transmitted to the arbitrator to ensure receipt at least 10 days prior to the arbitration hearing, except motions made before the arbitrator in the presence of affected opposing parties or their counsel and motions made under emergency conditions.

(b) Parties shall file any of the following motions or paper with the Multi-Door Division: (1) a demand for trial *de novo*, (2) objections to the arbitration proceedings or award or (3) motions to request removal of an arbitrator in accordance with Rule IV (d). A party shall mail or electronically transmit copies of all motions and associated papers to all other parties.

(c) Parties shall file with the Civil Clerk's Office all papers as required under the Superior Court Rules of Civil Procedure, except for motions, oppositions and responses thereto filed prior to the filing of an arbitration award. Parties shall mail or electronically transmit a copy of each paper to the arbitrator and all parties.

(d) The arbitrator shall mail or electronically transmit any arbitration orders and recommended rulings to the parties. The arbitrator shall file with the Multi-Door Division any of the following documents: (1) recommended rulings attached to motions to consolidate cases or to remove the case from arbitration, (2) a ruling to extend the arbitration proceedings up to 60 days beyond the deadline for conducting an arbitration hearing, (3) a recommendation to extend the arbitration proceedings more than 60 days beyond the deadline for conducting an arbitration hearing, (4) notification of recusal as the assigned arbitrator or reason(s) for a decision not to recuse, (5) the Arbitration Award and (6) other forms as required by the Multi-Door Division.

(e) The Multi-Door Division shall forward to the individual calendar Judge copies of any of the following: (1) an arbitrator's recommended ruling attached to a motion to consolidate cases or to remove a case from arbitration, (2) A party's motion requesting removal of an arbitrator from the case in accordance with Rule IV (d), (3) an arbitrator's recommendation to extend the arbitration proceedings more than 60 days beyond the 120-day deadline for conducting an arbitration hearing and (4) parties' objections to the arbitration proceedings or to an award.

(f) The deadline for filing motions addressed to the Court is the fifteenth day after the close of discovery in accordance with Rule VII(b). Previous rulings of the arbitrator are not binding on the Judge. All motions papers filed after a demand for a trial *de novo* shall be filed with the Civil Clerk's office and a chambers' copy submitted to the assigned Judge.

Rule IX: Arbitration Hearing

(a) Date

The arbitrator shall conduct the hearing within 120 days of his or her assignment as arbitrator and, unless consent is granted by all parties or the case has been reassigned to another arbitrator in accordance with Rule XII (f), no earlier than 60 days after the date the case was assigned to arbitration. The arbitrator shall give the Multi-Door Division and the parties' written notice of the hearing at

least 30 days prior to the hearing date. In the event a defendant is added to the case after the arbitrator has set a hearing date, the arbitrator shall set a new hearing date which is at least 60 days after the date the motion to add a defendant is granted.

(b) Time and Location

After consultation with counsel and unrepresented parties, the arbitrator shall fix a time and place for the hearing which, to the extent practicable, will be convenient for the hearing participants. Hearings shall take place within the District of Columbia unless the arbitrator and all parties agree to a different location.

(c) Attendance

All parties and their attorneys must attend the arbitration hearing unless excused by the arbitrator.

(d) Continuances

(1) The arbitrator may continue the hearing upon request by any party and a showing of good cause, so as long as the hearing is held within the 120-day period required by Rule IX(a). The arbitrator's decision to grant or deny a continuance is not appealable.

(2) The arbitrator may grant a continuance of up to 60 days beyond the 120-day period upon a showing by a party of exceptional circumstances. The arbitrator shall promptly notify the Multi-Door Division in writing of the reasons for granting such a continuance and of the new hearing date. The arbitrator's decision to grant or deny a continuance is not appealable.

(3) If the arbitrator believes good grounds exists to continue the hearing more than 60 days beyond the 120-day period, he or she must file a recommendation to that effect with the Multi-Door Division. The arbitrator's decision not to recommend a continuance is not appealable. The Multi-Door Division shall forward such a recommendation to the individual calendar Judge, who shall approve or disapprove the continuance based solely upon the arbitrator's recommendation. The Multi-Door Division shall notify the arbitrator of the Court's decision.

(4) Arbitration hearing that are subsequently continued may be held upon 10 days written notice, unless the parties agree on an earlier date.

(e) Nonappearance of Party

The arbitrator may conduct an arbitration hearing in the absence of any party who, after due notice, fails to appear. The arbitrator may impose liability or determine damages against an absent defendant based upon evidence presented by the plaintiff but not solely upon the absence of the defendant. A decision for the defendant on the plaintiff's claim may be based solely upon the absence of the plaintiff.

(f) Evidence

Formal rules of evidence shall guide the arbitration hearing, but strict adherence is not required. Generally, rules of evidence should be liberally construed to promote the ends of justice. Relevance, fairness and reliability shall be the primary considerations in the admission of evidence.

(1) In actions involving personal injury and/or property damage, the arbitrator may receive in evidence doctors' and dentists' reports and the bills or estimates listed in subsections A-E below without further proof, provided that at least 2 weeks written notice shall have been given to all adverse parties accompanied by a copy of any bills, estimates or reports to be offered in evidence. Any objection to the use or authenticity of such bills, estimates or reports must be made at least one week in advance of the hearing.

(A) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized;

(B) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor;

(C) Bills of registered nurses, licensed practical nurses, or physical therapists, when dated and containing an itemized statement of the days and hours of service and the charges therefor;

(D) Bills for medicine, eye glasses, hearing aids, prosthetic devices, or similar items, when dated and itemized;

(E) Property repair bills or estimates, when identified, dated and itemized, setting forth the charges for labor and material used in the repair of the property. In the case of an estimate, the party intending to offer the estimate shall include with the notice and copy of the estimate sent to the adverse party, a statement indicating whether or not the property was repaired, and if so, whether the estimated repairs were made in the full or in part, attaching a copy of the receipted bill showing the items of repair made and the amount paid. Estimates shall bear a statement of the issuer that they are true and correct, and that the charges appearing therein are fair, reasonable, and those customarily charged to members of the public.

(2) The arbitrator may receive the testimony of a witness without requiring the witness' presence if the testimony is presented by signed affidavit, provided that at least 2 weeks written notice shall have been given to all adverse parties accompanied by a copy of such affidavit. Any objection to the use or authenticity of such affidavits must be made one week in advance of the arbitration hearing.

(g) Recording of the Hearing

The Court will not provide or pay for a record of the arbitration hearing, but any party may record the hearing and shall notify all other parties in advance of the intent to record. If a party intends to tape record the hearing, the party shall allow any other party to examine, duplicate and transcribe the record at that party's own expense. If a party intends for a court reporter to be present and transcribe the hearing, all other parties may arrange to secure a copy of the transcript from the court reporter. The recording or its transcription shall not be admitted as evidence in any subsequent proceeding in Superior Court, except as provided for by Rule XI (f) below.

(h) Conduct of the Hearing

The arbitrator has wide latitude in conducting the arbitration hearing, but at a minimum shall incorporate the following events in sequence:

(1) The arbitrator shall make a written record of the date, time and location of the hearing and the names of all parties, counsel and witnesses in attendance. The arbitrator shall attach this record to the arbitration award.

(2) The arbitrator shall decide all pending pre-hearing motions before

the plaintiff presents his or her case, unless the arbitrator expressly defers a decision until issuance of the award or sooner.

(3) The arbitrator or other duly-qualified officer shall place all witnesses under oath or affirmation. See D.C. Code, Section 16-4307.

(4) The plaintiff shall present his or her claims, proof and witnesses. The defendant shall present his or her claims, proof and witnesses. The arbitrator may accept appropriate rebuttal evidence. All witnesses shall be subject to cross-examination by the parties and to questions by the arbitrator.

(5) The arbitrator shall inquire of all parties whether they have any further proof or witnesses to be heard. At this time the arbitrator may continue or conclude the hearing.

(i) Witness Fees

Witness fees in any case referred to arbitration shall be the same as those now or hereafter provided for in trials in the Civil Division of Superior Court, and shall be paid by the same party who would have paid had the case been tried in Superior Court.

Rule X: Arbitration Award and Judgment

(a) The arbitrator shall file an Arbitration Award, as to each party and on a form provided by the Multi-Door Division, with the Multi-Door Division and shall mail or electronically transmit it to all parties, within 15 days after the arbitration hearing. The arbitrator may provide findings of fact and conclusions of law, but they are not required.

(b) If the time for filing a demand for trial *de novo* expires without such action, the Clerk of the Civil Division shall enter the Award as judgment of the Court as to each party. This judgment shall have the same force and effect as a final judgment of the Court in a civil action, but may not be appealed nor be the subject of a motion under Superior Court Rules of Civil Procedures 59 or 60 (b).

(c) Rules 54 and 54-I of the Rules of Civil Procedure govern the award of costs on arbitration awards entered as final judgments of the court.

Rule XI: Trial *de Novo*

(a) Parties who agreed to submit their case to binding arbitration shall be deemed to have waived their right to file a request for a trial *de novo*.

(b) Any party to a non-binding arbitration may file a demand for trial *de novo* with the Multi-Door Division within 15 days after the filing of the Arbitration Award. In the event any party objects to the Award pursuant to Rule XII below, a demand for trial *de novo* must be made within 15 days after denial of the objection.

(c) A demand for trial *de novo* by any party returns the case to the trial calendar as to all parties.

(d) If any party files a demand for trial *de novo*, the Director of the Multi-Door Division or the Director's designee shall notify the Clerk of the Civil Division who shall schedule the case for a pre-trial hearing with the individual calendar judge.

(e) The trial *de novo* shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the Arbitration Award in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor shall a jury be informed that there has been an arbitration proceeding.

(f) Sworn testimony of a witness given during the arbitration proceeding is admissible in subsequent proceedings to the extent allowed by court rules and District of Columbia law, except that the testimony shall not be identified as having been given in an arbitration proceeding. The arbitrator shall not be called as witness at the trial *de novo*.

Rule XII: Objections to Arbitration Proceeding and Award

(a) A party may file objections to the binding or non-binding arbitration proceeding or Award for any of the following reasons and no other:

(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 the arbitrator or misconduct prejudicing the rights of any party; or

(3) the arbitrator exceeded his or her powers.

(b) A party shall file any such objections with the Multi-Door Division within 15 days of the filing of the Arbitration Award and shall mail or electronically transmit copies of the objections to the arbitrator and all parties.

(c) A party may file an opposition to the objections with the Multi-Door Division within 15 days of the filing of the objections and shall mail or electronically transmit copies of the opposition to the arbitrator and all parties.

(d) An arbitrator may file a response to the objections with the Clerk of the Multi-Door Division within 15 days of the filing of the objections and shall mail or electronically transmit copies of the response to all parties.

(e) The Multi-Door Division shall forward the objections and any oppositions or responses to the individual calendar Judge no later than 30 days after the filing of the objections.

(f) The individual calendar Judge may dismiss or sustain the objections. In the event the Judge sustains the objections, he or she shall vacate the Arbitration Award. The Multi-Door Division shall assign a new arbitrator to the case and shall ensure that a new hearing is held within 60 days of assignment of the case to the new arbitrator, unless otherwise directed by the individual calendar Judge.

Rule XIII: Modification or Correction of Award

(a) A party may apply to modify or correct the Arbitration Award within 60 days after its filing.

(b) A party shall file an application to modify or correct the Award with the Multi-Door Division and shall mail or electronically transmit copies of the application to the arbitrator and all parties.

(c) The Multi-Door Division shall forward the application to the individual calendar Judge to whom the case is assigned no later than 5 days after receipt of the application.

(d) The Judge 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 arbitrator rendered an award upon a matter not submitted to him or her 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.

(e) If the application is granted, the Judge shall (1) modify and correct the Award so as to effect its intent, (2) confirm the Award as so modified and corrected, and (3) vacate any judgment incorporating the Award and issue a new judgment incorporating the corrected Award. Otherwise, the Judge shall confirm the Award as made.

Rule XIV: Appearance and Withdrawal of Attorneys

(a) The provisions of Rule 101 of the Superior Court Rules of Civil Procedure apply to all matters assigned to arbitration. No corporation may appear in any arbitration proceedings except through a person authorized by Superior Court Civil Rule 101 to appear in this Court in a representative capacity.

(b) If an attorney's appearance at the previously-scheduled arbitration hearing conflicts with a later-scheduled trial or other Court proceeding that does not involve an incarcerated or detained person, the attorney must notify the Judge in the trial or other proceeding. The Judges of this Court shall defer to the arbitration hearing.

Rule XV: Applicability of Superior Court Rules of Civil Procedure

Except as otherwise provided herein, the Superior Court Rules of Civil Procedure shall apply to all proceedings under the Arbitration Program. In the event of a conflict between an Arbitration Rule and a Rule of Civil Procedure, the Arbitration Rule shall control.

Note: Rules are effective for all cases referred as of September 1, 1993.