

# GEORGIA – MIDDLE

*December 1, 2009*

## **LOCAL RULE 16.2 COURT ANNEXED ARBITRATION**

**16.2.1 STATEMENT OF PURPOSE.** It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, voluntary arbitration procedure) leading to an early disposition of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial de novo on demand.

### **16.2.2 CERTIFICATION OF ARBITRATORS.**

(a) The Chief Judge or his designee judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule, in such numbers as he shall deem appropriate, and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time.

(b) An individual may be certified to serve as an arbitrator under this rule if:

(1) He has been for at least ten years a member of a State Bar;

(2) He is admitted to practice before this Court or any other United States District Court;

(3) He is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. ' 453 before serving as an arbitrator. Current lists of all persons certified as arbitrators in each Division of the Court, respectively, shall be maintained in the office of the Clerk. Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators shall be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time by standing order; and no arbitrator shall charge or accept for his services any fee or reimbursement from any other source whatever absent written approval of the Court given in advance of any such payment. Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(d) Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. ' 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. ' 455.

### **16.2.3 CASES TO BE ARBITRATED.**

(a) All civil actions, except those identified in Local Rule 26c, shall be referred by the Clerk to arbitration in accordance with this section subject to the right of any party to opt-out as provided hereafter in section 16.2.4. By not opting-out as provided in section 16.2.4, the court will presume that a party has freely and knowingly consented to the arbitration process. No party or attorney will be prejudiced by refusing to consent to arbitration.

(b) Cases pending at the time of implementation of the arbitration program may be put into the program if the case has not already been pretried and if the presiding judge so directs.

(c) The arbitration process will not interfere with the normal progression of a case through the discovery process. Federal Rules of Civil Procedure Rule 16(b) Scheduling Orders will still be requested of the parties and it is expected that a certain amount of discovery will have been completed prior to the arbitration hearing.

#### **16.2.4 PROCEDURE**

(a) In any civil action subject to arbitration pursuant to Rule 16.2.3, the Clerk shall notify the parties within twenty-one (21) days after an answer has been filed that the action is being referred to arbitration in accordance with these rules. [If a motion to dismiss is filed in lieu of an answer the case will be referred to arbitration after the motion has been ruled on. Pending motions other than motions to dismiss will not delay arbitration.] Within twenty-one (21) days thereafter, by written notice to the Clerk, either party may exercise its right to opt-out of arbitration. Upon the expiration of such twenty-one (21) day period and in absence of timely notice of desire to withdraw from arbitration, the Clerk will begin the arbitrator selection process. First, three (3) names will be chosen from the arbitrator list and mailed to the parties. Each party will be allowed to strike or reject confidentially one of the three names. The one name remaining (or the first name on the list if more than one name is left) will be selected as the arbitrator.

(b) Upon selection and designation of the arbitrator, the Clerk shall communicate with the parties and the arbitrator in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and time of the arbitration hearing which shall be held in space to be provided in a United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and designation of the arbitrator on at least twenty-one (21) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

(c) The award of the arbitrator shall be filed with the Clerk within fourteen (14) days following the hearing, and the Clerk shall give immediate notice to the parties.

(d) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial de novo has been made. If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(e) Within thirty (30) days after the filing of the arbitration award the Clerk, any party may demand a trial de novo in District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

#### **16.2.5 ARBITRATION HEARING.**

(a) The arbitration hearing may proceed in the absence of a party who, after due notice fails to be present; but an award of damages shall not be based solely upon the absence of a party.

(b) At least fourteen (14 ) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrator may refuse to consider any witness or exhibit which has not been so disclosed.

(c) Individual parties or authorized representative of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrator for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrator primarily through the statements and argument of counsel.

(d) Any party may have a recording and transcript made of the arbitration hearing at his expense.

#### **16.2.6 AWARDS.**

(a) The award shall state the result reached by the arbitrator without necessity of factual findings or legal conclusions.

(b) The contents of any arbitration award shall not be made known to any judge who might be assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. ' 655,

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated, or

(3) Except for purposes of preparing the report required by ' 903b of the Judicial Improvements and Access to Justice Act.

#### **16.2.7 TRIAL DE NOVO.**

(a) Upon a demand for a trial de novo the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial shall be preserved inviolate.

(b) At the trial de novo the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence or the Federal Rules of Civil Procedure.

(c) No penalty for demanding a trial de novo shall be assessed by the Court.

**16.2.8 MEDIATION ENCOURAGED.** Private mediation at the expense of the parties is also encouraged by the court. With the consent of all parties, the court will assist in the scheduling of mediation and the selection of a mediator.