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Voluntary Arbitration Program

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VOLUNTARY ARBITRATION PROGRAM

On January 4, 1982, the Board of Judges of the District of Columbia Superior Court adopted a program for voluntary arbitration of civil actions.[1] The program, which became effective February 15, 1982, is intended to provide civil litigants with the option of using a speedier and less expensive procedure to resolve their disputes rather than resort to the increasingly congested civil dockets of the Superior Court.

Judge Gladys Kessler chaired a committee established by Chief Judge H. Carl Moultrie to investigate the feasibility of establishing a voluntary arbitration program for the Superior Court. After much testimony and investigation into similar programs in other jurisdictions,[2] Judge Kessler's committee recommended a program in which any case, once referred to an arbitrator, must be heard within ninety days.

Although the chief characteristic of the program is its voluntary nature, the parties may agree to a binding as well as a nonbinding resolution of their dispute. If a nonbinding decision is agreed to, either party may elect to have a trial de novo after the arbitrator has rendered his decision. To encourage binding arbitration, however, the party demanding a de novo trial must improve its position at trial by at least ten percent to avoid paying the other side's arbitration fee, expert witness fees, and court costs. Each party, moreover, must pay an initial arbitration fee of $50.00.

As a result of this system, it is expected that more litigants with rela-

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1. Daily Wash. L. Rep., Jan. 19, 1982, at 109.

2. In 1970 the City Court in Rochester, New York began operating under a compulsory civil arbitration program for all disputes under $60,000. The primary goal of the program was to reduce the backlog of cases and reduce the delay in bringing cases to trial.

A recent study comparing Rochester to similar jurisdictions revealed that court processing time (the time a case enters the arbitration process to its disposition) was greatly reduced. However, total case processing was not substantially changed due to an increase in the average time lapse between the issuance of summons and the time the case enters the arbitration process.

The study concluded, however, that the local bar had accepted the compulsory arbitration program with a high degree of satisfaction. Apparently, attorneys were pleased with the shorter trial time and their increased efficiency through knowing whether a trial was to take place at all. *See* Weller, Ruhnka, & Martin, *Compulsory Civil Arbitration: The Rochester Answer to Court Backlogs*, 20 JUDGES J. 36 (Summer 1981).

The study cites other voluntary and compulsory judicial arbitration programs in California, Iowa, New Hampshire, New York, Ohio, Pennsylvania, and Washington. *Id.* at 38 n.8. *See also* Nejelski, *Court Annexed Arbitration*, 14 FORUM 215 (1978-1979).

tively small claims will find redress through the arbitration process. A brief review of the eleven Rules of Arbitration follows:

Rule 1: TYPE OF ACTION. The program extends to all civil actions, both legal and equitable, except small claims and landlord and tenant actions.

Rule 2: APPLICATION AND REFERRAL TO ARBITRATION DOCKET. The plaintiff seeking arbitration must file and serve an Arbitration Praecipe along with its summons and complaint, plus the $50.00 arbitration fee, which is refundable at the final disposition of the case if all parties do not agree to arbitration. Defendants seeking arbitration must file and serve their Arbitration Praecipe, and the $50.00 fee, with their answer or final responsive pleading. If all parties do not agree to arbitration prior to trial, the case is processed as a regular jury or nonjury action.

The parties may choose binding or nonbinding arbitration, which is to be noted on the arbitration praecipe. Ambiguities as to choice are to be resolved in favor of nonbinding arbitration. The parties may at any time change their initial choice to binding arbitration. This rule also provides that any party may petition the court to proceed in forma pauperis in arbitration just as in any civil matter.

Rule 3: REMOVAL FROM ARBITRATION DOCKET. Once assigned to the arbitration docket, a case may be removed only by leave of the court and only upon a showing of good cause.

Rule 4: QUALIFICATIONS OF ARBITRATORS. To qualify as an arbitrator, an individual must not only be a member of the District of Columbia Bar, but must also have regularly appeared before the Superior Court of the District of Columbia or the United States District Court, or have taught or successfully completed a law course or continuing legal education program in any of the following: torts, contracts, commercial or consumer transactions, corporate or partnership law, nonpossessory landlord and tenant law, real estate transactions, or employment law. The arbitrators will be restricted to the substantive area of the law stated as their experience. The court will maintain a roster of arbitrators in the order of their certification and a public file of the current resumes of all arbitrators.

Rule 5: SELECTION OF ARBITRATOR. In selecting an arbitrator, a list of randomly selected arbitrators equal in number to one more than the total number of parties to the action is supplied by the arbitration clerk. After each party has exercised one preemptory challenge, the remaining name is to be the arbitrator. In the event more than one name remains, the first name not challenged on the list shall be designated as the arbitrator.

Rule 6: ARBITRATION HEARING. The arbitration hearing is to be

conducted according to the Superior Court Rules of Civil Procedure.[3] However, the arbitrator may waive particular rules that would interfere with the parties' right to a speedy and fair arbitration decision. This determination is not appealable.

This rule prescribes the procedure for the arbitration hearing. The arbitrator is given the same authority as a Superior Court Judge hearing a nonjury civil action, excluding contempt powers, although a recommendation of contempt may be made to the court. The formal rules of evidence are to be used as a guide only, and strict adherence is not required. The hearing may not be recorded by the court. A party may, however, record the hearing at its own expense, provided all other parties are afforded the opportunity to examine, duplicate, and transcribe the record.

Rule 7: AWARD AND JUDGMENT. The arbitration award is to be filed with the court and served on all parties within fifteen days of the close of the hearing. The court will provide an Arbitration Award form.[4] In nonbinding arbitration, if a demand for trial de novo is not filed within fifteen days of the award, the arbitration award is to be entered as a judgment of the court. A judgment so entered is not subject to appeal under Superior Court Rules 59 or 60(b).[5]

Rule 8: COMPENSATION OF ARBITRATORS. Except in cases where a party files in forma pauperis, each party must pay $50.00 as the arbitrator's fee. An arbitrator may receive more compensation if the court finds the case to be of unusual length (more than one day of hearing time) or of unusual complexity. Any additional cost is borne by the parties.

Rule 9: OBJECTIONS TO ARBITRATION. This rule provides the only basis for objection to an arbitrator's award. These grounds include fraud, corruption, gross misconduct, or conduct by the arbitrator in excess of his jurisdiction. If the objection is sustained, the award is vacated and the case assigned to a new arbitrator.

Rule 10: TRIAL DE NOVO. When a trial de novo is held after nonbinding arbitration, the case proceeds as a normal civil action and no evidence of the prior arbitration is admitted, except for impeachment purposes. An arbitrator may never be called to testify regarding any matter relating to the arbitration proceeding. This rule also provides penalties for the party who elects a trial de novo and then does not improve its recovery by ten

3. D.C. CODE ANN. § 11-946 (1981).

4. Each arbitration award will be in the same format on a form provided by the court. This form does not permit the arbitrator to make findings of fact or conclusions of law.

5. D.C. CODE ANN. § 11-946 (1981). The Superior Court Rules of Procedure must be construed in light of the meaning of the corresponding federal rules. Campbell v. United States, 295 A.2d 498 (D.C. 1972).

percent over the arbitration award. Penalties include payment of the opposing parties' fees and costs, excluding attorney's fees.

Rule 11: PRIORITY OF ATTORNEY'S APPEARANCE BEFORE ARBITRATION HEARING. An attorney's appearance before a previously scheduled arbitration hearing is given priority, whenever practicable, over his appearance before a later scheduled trial or non-trial court proceeding.

CONCLUSION

The increasing number of civil claims for relatively small amounts of money is of great concern, especially in metropolitan areas. Municipal courts are experiencing ever increasing case loads. In response to this problem, Congress passed the Dispute Resolution Act in February, 1980.[6] This law is an attempt to encourage states to explore alternative methods for resolving civil disputes involving nominal sums. Congress found that mechanisms to resolve civil disputes are largely "unavailable, inaccessible, ineffective, expensive or unfair" and that these inadequacies "have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes."[7]

The District of Columbia's Voluntary Arbitration Program could prove to be a solution not only to the problem of overcrowded civil dockets, but to the complaint that litigation expense denies many people access to the judicial process. However, to achieve these worthy goals, the arbitration program must be staffed by competent arbitrators. To insure that only competent lawyers serve as arbitrators, the Board of Judges has required that all potential arbitrators, in addition to meeting the requirements of Arbitration Rule 4, complete a court-approved training program. The first training course was offered at the Georgetown University Law Center on January 22, 1982, and other sessions will be held throughout the year.

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6. Dispute Resolution Act, Pub. L. No. 96-190, §§ 1-10, 94 Stat. 17 (1980).
7. *Id.* § 2(a)(1) & (a)(2).