

RESOLUTION” for “ARBITRATION” in chapter heading and amended analysis generally, substituting items 651 to 658 for former items 651 “Authorization of arbitration”, 652 “Jurisdiction”, 653 “Powers of arbitrator; arbitration hearing”, 654 “Arbitration award and judgment”, 655 “Trial de novo”, 656 “Certification of arbitrators”, 657 “Compensation of arbitrators”, and 658 “District courts that may authorize arbitration”.

§ 651. Authorization of alternative dispute resolution

(a) DEFINITION.—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

(b) AUTHORITY.—Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court’s alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court’s alternative dispute resolution program.

(e) TITLE 9 NOT AFFECTED.—This chapter shall not affect title 9, United States Code.

(f) PROGRAM SUPPORT.—The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

(Added Pub. L. 100–702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4659; amended Pub. L. 105–315, §3, Oct. 30, 1998, 112 Stat. 2993.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Alternative Dispute Resolution Act of 1998, referred to in subsec. (c), is the

date of enactment of Pub. L. 105–315, which was approved Oct. 30, 1998.

AMENDMENTS

1998—Pub. L. 105–315 amended section generally, substituting provisions relating to authorization of alternative dispute resolution for provisions relating to authorization of arbitration.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 100–702, title IX, §907, Nov. 19, 1988, 102 Stat. 4664, provided that: “This title and the amendments made by this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 19, 1988].”

Pub. L. 100–702, title IX, §906, Nov. 19, 1988, 102 Stat. 4664, as amended by Pub. L. 103–192, §1(a), Dec. 14, 1993, 107 Stat. 2292, provided that, effective Dec. 31, 1994, this chapter and the item relating to this chapter in the table of chapters at the beginning of part III of this title were repealed, prior to repeal by Pub. L. 103–420, §3(b), Oct. 25, 1994, 108 Stat. 4345.

Pub. L. 103–192, §2, Dec. 14, 1993, 107 Stat. 2292, provided that this chapter and the item relating to this chapter in the table of chapters at the beginning of part III of this title continued on or after Dec. 14, 1993, as if they had not been repealed by section 906 of Pub. L. 100–702, formerly set out above, as such section was in effect on the day before Dec. 14, 1993.

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Pub. L. 105–315, §2, Oct. 30, 1998, 112 Stat. 2993, provided that: “Congress finds that—

“(1) alternative dispute resolution, when supported by the bench and bar, and utilizing properly trained neutrals in a program adequately administered by the court, has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements;

“(2) certain forms of alternative dispute resolution, including mediation, early neutral evaluation, minitrials, and voluntary arbitration, may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently; and

“(3) the continued growth of Federal appellate court-annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts; therefore, the district courts should consider including mediation in their local alternative dispute resolution programs.”

MODEL PROCEDURES

Pub. L. 100–702, title IX, §902, Nov. 19, 1988, 102 Stat. 4663, provided that: “The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44, as added by section 901 of this Act. No model rule may supersede any provision of such chapter 44, this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or any law of the United States.”

REPORTS BY DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS AND BY FEDERAL JUDICIAL CENTER

Pub. L. 100–702, title IX, §903, Nov. 19, 1988, 102 Stat. 4663, provided that:

“(a) ANNUAL REPORT BY DIRECTOR OF ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of

the Administrative Office required under section 604(a)(3) [28 U.S.C. 604(a)(3)], statistical information about the implementation of chapter 44, as added by section 901 of this Act.

“(b) REPORT BY FEDERAL JUDICIAL CENTER.—Not later than 5 years after the date of enactment of this Act [Nov. 19, 1988], the Federal Judicial Center, in consultation with the Director of the Administrative Office of the United States Courts, shall submit to the Congress a report on the implementation of chapter 44, as added by section 901 of this Act, which shall include the following:

“(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

“(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

“(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

“(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

“(5) Recommendations to the Congress on whether to terminate or continue chapter 44, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.”

EFFECT ON JUDICIAL RULEMAKING POWERS

Pub. L. 100-702, title IX, §904, Nov. 19, 1988, 102 Stat. 4663, provided that: “Nothing in this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or in chapter 44, as added by section 901 of this Act, is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.”

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 105-315, §11, Oct. 30, 1998, 112 Stat. 2998, provided that: “There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.”

Pub. L. 100-702, title IX, §905, Nov. 19, 1988, 102 Stat. 4664, as amended by Pub. L. 103-192, §1(b), Dec. 14, 1993, 107 Stat. 2292; Pub. L. 103-420, §3(a), Oct. 25, 1994, 108 Stat. 4345; Pub. L. 105-53, §1, Oct. 6, 1997, 111 Stat. 1173, provided that: “There are authorized to be appropriated for each fiscal year to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended.”

§ 652. Jurisdiction

(a) CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES.—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of al-

ternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

(b) ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION.—Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

(c) AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

(d) CONFIDENTIALITY PROVISIONS.—Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

(Added Pub. L. 100-702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4659; amended Pub. L. 105-315, §4, Oct. 30, 1998, 112 Stat. 2994.)

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-315 amended section generally, substituting provisions relating to alternative dispute resolution jurisdiction for provisions relating to arbitration jurisdiction.

Statutory Notes and Related Subsidiaries

EXCEPTION TO LIMITATION ON MONEY DAMAGES

Pub. L. 100-702, title IX, §901(c), Nov. 19, 1988, 102 Stat. 4663, provided that notwithstanding establishment by former section 652 of this title of a \$100,000 limitation on money damages with respect to cases referred to arbitration, a district court listed in former section 658 of this title whose local rule on Nov. 19, 1988, provided for a limitation on money damages of not more than \$150,000, could continue to apply the higher limitation, prior to repeal by Pub. L. 105-315, §12(a), Oct. 30, 1998, 112 Stat. 2998.

§ 653. Neutrals

(a) PANEL OF NEUTRALS.—Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

(b) QUALIFICATIONS AND TRAINING.—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to