

United States District Court
District of Idaho

FILED
U.S. DISTRICT COURT

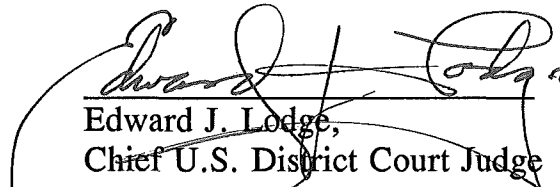
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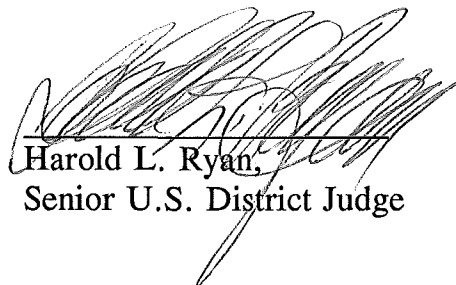
DISTRICT OF IDAHO
CAMERON S. BURKE

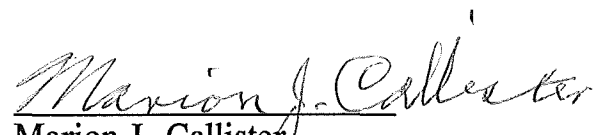
Re: Arbitration Program)
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General Order
No. 92

IT IS HEREBY ORDERED that the Arbitration Program detailed in the attachment hereto, be adopted effective May 5, 1993.


Edward J. Lodge,
Chief U.S. District Court Judge


Harold L. Ryan,
Senior U.S. District Judge


Marion J. Callister,
Senior U.S. District Judge

U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO
ARBITRATION RULES AND PROCEDURES

(a) Description and Scope

This rule governs the voluntary referral of certain civil actions to non-binding arbitration, a process whereby an experienced attorney with subject matter expertise conducts an informal hearing under relaxed rules of evidence and renders an advisory decision/award on the merits. Its purpose is to provide an incentive for the speedy, fair, and economical resolution of controversies by informal procedures while preserving the right to a conventional trial. There is no penalty for non-participation in this program or for not accepting the advisory decision/award. Parties retain the right for a trial de novo. Cases in which parties voluntarily consent to arbitration do not relinquish their position on a judge's calendar with respect to trial date or hearing dates. The parties are encouraged to enter into an agreement between themselves that the arbitration be binding, or for other related matters.

(b) Eligibility

Any civil case not involving prisoners as party litigants.

(c) Referral to Arbitration

Upon the consent of all parties, any eligible civil action shall be referred to binding or non-binding arbitration at any point during the course of the lawsuit. However, cases considered most appropriate are those in which a substantial amount of discovery has been completed and there are no dispositive motions pending.

(d) Notice of Availability of Arbitration

The Court will notify parties in appropriate civil cases about the availability of voluntary, arbitration at the time of filing and answer. In addition, the Court will systematically target some cases at certain stages of the litigation process to remind parties of the availability of voluntary, arbitration as well as other alternative dispute resolution programs. Attorneys should also apprise their clients of the availability of arbitration and other ADR programs.

(e) Method of Referral

Counsel for the respective parties shall contact the ADR programs coordinator for the Court. Counsel will be provided with the appropriate forms, including an agreement to arbitrate and a list of Court-authorized arbitrators from which the parties will make their selection.

(f) Authority of the Court and Arbitrator

The referral of civil actions to arbitration does not divest the assigned judge of the responsibility for exercising overall management and control of a case during the pendency of the arbitration process. However, the arbitrator has authority to decide all

issues relating specifically to the arbitration, including arbitration discovery issues, arbitration venue, arbitration deadlines, interpretation of arbitration rules and procedures, need for a preliminary meeting, etc.

(g) Roster of Arbitrators

The Court shall maintain a roster of arbitrators who shall conduct the arbitration hearings and render decisions and awards under this rule. Arbitrators shall be selected from time to time by the Court from applications submitted by attorneys willing to serve. To be eligible for selection by the Court, an attorney:

(1) must have been admitted to practice for not less than 5 years or possess a particular expertise or background in arbitration or in a certain relevant legal area;

(2) must be a member of the bar of this Court or a retired or non-practicing attorney or judge;

(3) must have substantial experience resolving complex matters;

(4) must have attended a comprehensive, formal arbitration training session;

All individuals selected to serve as arbitrators must take the oath prescribed in 28 USC § 453.

(h) Selection of Arbitrator not on Court Authorized Roster

The parties may by mutual written agreement designate an arbitrator who is neither an attorney nor on the Court authorized roster. Under these circumstances, the parties will work out all compensation arrangements with any arbitrator not on the court authorized list.

(i) Compensation of Arbitrators

Arbitrators shall be compensated at a rate of \$100 per hour. On large, complex cases where it is anticipated that a substantial amount of time would be spent in preparation of and/or conducting an arbitration, the parties and arbitrator are free to negotiate a fee arrangement acceptable to everyone. The parties shall be wholly responsible for the payment of the arbitrator's fee. Unless other arrangements are made among the parties, or a binding award provides otherwise, the plaintiff(s) and defendant(s) shall each be responsible for 1/2 of the arbitrator's fee. If a party withdraws from the arbitration process at any time prior to the issuance of the written award, that party is still responsible for payment of its portion of the arbitrator's fee unless prior arrangements have been made directly with the arbitrator.

If an arbitrator is selected from outside his or her geographic area, the parties shall be responsible for the arbitrator's travel and lodging expenses.

A bill will be submitted directly by the arbitrator to the respective parties after the written decision/award is given to the parties. If the arbitrator's bill is not paid in full

within 15 days after the written decision/award is given to the parties, the Court will enter an order mandating its immediate payment. Unless otherwise excused by the Court upon a showing of good cause, such as the discovery of circumstances contained in 28 USC § 455, once an arbitrator accepts a particular case and begins work upon it, that arbitrator cannot withdraw from the action without forfeiting all monetary compensation.

Arbitrators are encouraged to serve pro bono on at least one case during the time in which they are on the court authorized list.

(j) Selection of Arbitrators by Parties/Panel of 3 Arbitrators

Upon notification of the consent by all parties to participate in the arbitration process, the Court will provide each party with an identical list of 10 potential arbitrators. Each party will be given 7 days to strike-out no more than 5 unacceptable names, rank in order of descending preference the names of the remaining attorneys, and return the list to the Court. The Court ADR coordinator will then select an arbitrator in accordance with the priorities of the parties and availability of the arbitrators requested.

In larger or more complex cases, parties are free to have a panel of 3 arbitrators. Each arbitrator will receive the same compensation that a single arbitrator would receive unless a special fee arrangement has been satisfactorily worked out among all parties and the panel. The Court ADR coordinator will select an arbitrator from the list submitted by each party, in accordance with the priorities of the parties and the availability of the requested arbitrators. These two arbitrators will select a third arbitrator jointly agreeable to them from the Court authorized list. If the two arbitrators first selected are unable to agree, the third arbitrator will be selected by the Court ADR coordinator. Any decision/award must be agreed to by at least two of the selected arbitrators. All other arbitration rules and procedures remain the same.

(k) Disqualification of Arbitrator/Conflict of Interest/Code of Ethics

No person shall serve as an arbitrator in an action in which any of the circumstances set forth in 28 USC § 455 exist or may in good faith be believed to exist. The arbitrator shall disclose any and all present or past relationships, affiliations or connections with the particular case being arbitrated or with any party, law firm or counsel involved. Any claims of a conflict of interest should be raised at the earliest possible time. If the arbitrator and objecting party cannot satisfactorily resolve the situation, the Court ADR coordinator will make the final determination. A person assigned as an arbitrator is subject to disqualification for bias or prejudice as provided for in 28 USC § 144. Arbitrators shall be governed by the *Code of Ethics for Arbitrators in Commercial Disputes* promulgated by the American Arbitration Association.

(l) Arbitration Hearing

1. Hearing Date - Unless otherwise agreed to by the parties, or upon a showing of good cause, the arbitrator shall conduct the arbitration hearing not less than 20 days nor more than 90 days after notification of selection as arbitrator in a particular action. The arbitrator shall provide the parties with a minimum of 15 days notice of the hearing date(s). In no event should an arbitration hearing be held less than 60 days in advance of any scheduled trial date.

2. Place of Hearing - Arbitration hearings shall be held at a location within the District of Idaho designated by the arbitrator, after taking into consideration the convenience of all parties and witnesses. Unless the parties agree otherwise, arbitration hearings shall be conducted during normal business hours.

3. Submission of Summaries, Documents and Witness List - At least 10 days prior to the hearing, a summary of the facts and legal positions, including citations of primary authority, together with relevant documentation, exhibits, affidavits and materials supporting the respective claims, with respect to both liability and damages, and a list of witnesses shall be provided to the arbitrator and to all opposing parties. The witness list should explain who the witnesses are and what they will testify about. All materials submitted to the arbitrator by the parties will be returned by the arbitrator immediately after the written decision/award is given to the parties.

4. Conduct of Hearing - The arbitrator is authorized to administer oaths and affirmations. All testimony shall be given under oath. Cases may be presented through written statements, affidavits, oral testimony, tangible exhibits and the submission of formal discovery, consistent with Rule (l)5. Arguments of counsel may also be made at the discretion of the arbitrator but are not evidence. The scope and duration of the hearing shall be within the discretion of the arbitrator.

5. Evidence - In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence, but shall not be precluded from receiving evidence which he/she considers to be relevant and trustworthy and which is not privileged. The scope of direct and cross-examination of witnesses shall be within the discretion of the arbitrator.

6. Presence of Parties - All counsel and parties, whether individual litigants or representatives of corporate parties, together with insurance carriers shall be required to attend the arbitration hearing unless otherwise excused by the arbitrator. The arbitrator shall also have the power to exclude whomever he/she feels should not be present during the arbitration hearing.

7. Subpoena Power - The arbitrator is authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45 of the Federal Rules of Civil Procedure.

8. Recording/Transcription - No recording or transcription of the proceedings will be made without the knowledge and consent of all parties. The requesting party shall bear all costs associated with recording or transcription.

9. Ex Parte Communication - There shall be no ex parte communication between an arbitrator and any counsel or party on any matter germane to the action except scheduling.

10. Preparation of Written Decision/Award - Within 30 days after the hearing, the arbitrator will prepare a written decision/award and Record of Hearing, which shall be dated, signed by the arbitrator in that capacity, and served upon the respective parties. The decision/award will clearly and concisely state the caption of the case, court docket number, name or names of the prevailing parties; the parties against whom it was rendered; the precise amount of money and other relief awarded, including equitable relief, and a written opinion explaining the reasons for the decision/award. The arbitrator shall notify the Court in writing that a confidential arbitration decision/award has been rendered but not the substance of the decision/award. The arbitrator shall decide whether prejudgment interest, costs or attorneys' fees are to be awarded but the precise amount shall be subsequently determined by the Court pursuant to federal and local rules.

11. Confidentiality of Decision/Award - The contents of the advisory decision/award shall remain sealed and not be made public. All materials used in connection with the arbitration hearing will be returned to the parties by the arbitrator.

(m) Entry of Judgment on Arbitration Award

Unless a party has filed a written demand for a trial de novo within 30 days after the arbitration decision/award was filed with the Court, that decision/award shall become a final, non-appealable judgment of the Court.

(n) Non-Entry of Judgment on Arbitration Award/Settlement Agreement

If the parties intend to accept the arbitration award, but do not want the award entered as a judgment, they shall notify the Court of their intention of entering into a mutually acceptable settlement agreement within 30 days after they receive the arbitration decision/award.

(o) Trial De Novo

Any party not satisfied with the advisory arbitration decision/award must file and serve a written demand for a trial de novo with the Court within 30 days from the time the arbitration decision/award was received by the parties and the Court notified that a confidential arbitration decision/award has been rendered.

(p) Confidentiality of Proceedings

All memoranda, work product or case files of an arbitrator are confidential and not subject to disclosure in any judicial or administrative proceeding. Any communication made during and records relating to the resolution process whether made by counsel, party litigant, witness, participant, arbitrator or any other person present during the proceedings shall be considered confidential and shall be protected from discovery. Any statements made during the arbitration hearing are strictly confidential and shall not be discoverable nor admissible in any further proceedings before this court or any other court.

(q) Subsequent Admissibility of Arbitration Decision or Process

The Court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any decision/award, or any other matter concerning the arbitration proceeding unless: (a) the evidence would otherwise be admissible under the Federal Rules of Evidence, or (b) the parties have otherwise stipulated.

CLERK'S CERTIFICATE OF MAILING

I certify that a copy of the attached document was mailed to the following named persons:

Chief Judge Edward J. Lodge
Hand Delivered

Chief Judge Alfred C. Hagan
Hand Delivered

Judge Marion J. Callister
Hand Delivered

Judge Jim D. Pappas
Hand Delivered

Chief Magistrate Judge Mikel H. Williams
Hand Delivered

Magistrate Judge Larry M. Boyle
Hand Delivered

United States Court of Appeals
Circuit Librarian
P. O. Box 193939
San Francisco, CA 94119-3939

DATED: May 18, 1993

CAMERON S. BURKE, CLERK

By: Glenda Longstreet