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Title 16 Practice, Procedure, and Courts

Chapter 7 Dispute Resolution

Subchapter 2 — Dispute Resolution Processes

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16-7-201. Legislative purpose and intent.

It is the intent of the General Assembly to:

(1) Encourage and authorize the use of dispute resolution processes throughout this state to resolve disputes, cases, and controversies of all kinds. Such processes include, but are not limited to, negotiation, mediation, conciliation, arbitration, private judging, moderated settlement conferences, med-arb, fact finding, mini-trials, and summary jury trials;

(2) Encourage the development of new and the improvement of existing processes in this state;

(3) Encourage the courts, the officers and employees of the courts of this state, state and local officers, departments, state and local governments and administrative agencies, state and local enforcement officers and agencies, prosecuting authorities and public defenders, and all other state and local officials, agencies, districts, and authorities to become versed in, accept, use, develop, and improve processes appropriate to the fair, just, and efficient resolution of disputes, cases, and controversies of all kinds in this state.

History. Acts 1993, No. 641, § 1.

16-7-202. Duty and authority of the courts.

(a) (1) It is the duty of each trial and appellate court of this state, and each court is hereby vested with the authority, to encourage the settlement of cases and controversies pending before it by suggesting the referral of a case or controversy to an appropriate dispute resolution process agreeable to the parties.

(2) On motion of all the parties, the court must make such an order of reference and continue the case or controversy pending the outcome of the selected dispute resolution process.

(b) In addition, each circuit and appellate court of this state is vested with the authority to order any civil, juvenile, probate, or domestic relations case or controversy pending before it to mediation.

(c) If a case or controversy is ordered to mediation, the parties may:

(1) Choose an appropriate mediator from a roster provided by the Arkansas Alternative Dispute Resolution Commission of those mediators who meet the commission's requirement guidelines for that type of case; or

(2) Select a mediator not on the commission's roster, if approved by the court.

(d) (1) A party may move to dispense with the order to mediate for good cause shown.

(2) For purposes of this subsection, "good cause shown" shall include, but not be limited to, a party's inability to pay the costs of mediation.

(e) Each court is further granted the discretionary authority to make, at the request of a party, appropriate orders to confirm and enforce the results produced by the dispute resolution process.

History. Acts 1993, No. 641, § 2; 2003, No. 1179, § 1.

16-7-203. Duty and authority of state and local officers and agencies and

governments. (a) It is the duty of all the elements of government expressed or implied by § 16-7-201(3),

and they are hereby authorized, to use dispute resolution processes in resolving any and all disputes, cases, or controversies in which they may be directly or indirectly involved, whether between themselves and members of the public or between any other state or local officer, agency, government, or entity of this state or of any other state or any element or entity of the federal government.

(b) The elements of government expressed or implied by § 16-7-201 are authorized to use arbitration, private judging, mediation-arbitration, fact finding, mini-trials, and summary jury trials in resolving any and all disputes, cases, or controversies in which they may be directly or indirectly involved, whether between themselves and members of the public, or their employees or bona fide employee organizations, or corporations, or nonprofit organizations, or any other state or local officer, agency, government, or entity of this state or of any other state or any element or entity of the federal government, as long as the parties have agreed to participate. This subsection is permissive and not mandatory.

History. Acts 1993, No. 641, § 3; 2007, No. 1206, § 1.

16-7-204. Counseling by attorneys.

All attorneys licensed in this state when practicing in this state are encouraged to advise their clients about the dispute resolution process options available to them and to assist them in the selection of the technique or procedure, including litigation, deemed appropriate for dealing with the client's dispute, case, or controversy.

History. Acts 1993, No. 641, § 4.

16-7-205. Duty to keep records of dispute resolution efforts and to file annual reports.

The courts and all the other elements of government expressed or implied by § 16-17-201(3) may keep information concerning all their efforts to use dispute resolution processes, whether or not such efforts led to a successful outcome.

History. Acts 1993, No. 641, § 5.

16-7-206. Confidentiality of communications in dispute resolution procedures.

(a) Except as provided by subsection (c) of this section, a communication relating to the subject matter of any civil or criminal dispute made by a participant in a dispute resolution process, whether before or after the institution of formal judicial proceedings, is confidential and is not subject to disclosure and may not be used as evidence against a participant in any judicial or administrative proceeding.

(b) Any record or writing made at a dispute resolution process is confidential, and the participants or third party or parties facilitating the process shall not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure or production of information or data relating to or arising out of the matter in dispute.

(c) If this section conflicts with other legal requirements for disclosure of communications

or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

History. Acts 1993, No. 641, § 6.

16-7-207. Immunity of impartial third parties.

No impartial third party administering or participating in a dispute resolution process shall be held liable for civil damages for any statement or decision made in connection with or arising out of the conduct of a dispute resolution process unless such person acted in a manner exhibiting willful or wanton misconduct.

History. Acts 1993, No. 641, § 7.