

MISSISSIPPI RULES OF ARBITRATION PROCEDURE

RULE 101 GENERAL PROVISIONS

These rules are available for parties who voluntarily engage in arbitration proceedings that are conducted in the State of Mississippi.

RULE 102 PURPOSE AND CONSTRUCTION

These rules are procedural only and have no substantive effect. These rules shall not be construed to take away from the parties any substantive rights they may have. Nor do these rules affect the substantive law of arbitration in the State of Mississippi. The intent of these rules is to secure fairness.

RULE 103 APPOINTMENT OF ARBITRATORS BY COURT

If a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

RULE 104 MAJORITY ACTION BY ARBITRATORS

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by these rules.

RULE 105 HEARING

Unless otherwise provided by the agreement:

- a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the

hearing and determination of the controversy.

- b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
- c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

RULE 106.
REPRESENTATION BY ATTORNEY

A party has the right to be represented by an attorney at any proceeding or hearing under these rules. A waiver thereof prior to the proceeding or hearing is ineffective.

RULE 107
WITNESSES, SUBPOENAS, DEPOSITIONS

- a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
- b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- c) All provisions of law compelling a person under subpoena to testify are applicable.

RULE 108
AWARD

- a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.
- b) An award shall be made within the time fixed therefore by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

RULE 109
CHANGE OF AWARD BY ARBITRATORS

On application of a party or, if an application to the court is pending under Rules 111, 12 or 113, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of Rule 113, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Rules 111, 112 and 113.

RULE 110
FEES AND EXPENSES OF ARBITRATION

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

RULE 111
CONFIRMATION OF AWARD

Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Rules 112 and 113.

RULE 112
VACATING AN AWARD

- a) Upon application of a party, the court shall vacate an award where:
- (1) The award was procured by corruption, fraud or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party. An arbitrator appointed to a panel by a party shall be considered a non-neutral;
 - (3) The arbitrators exceeded their powers;
 - (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Rule 105, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Rule 102 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award

b) An application under this Rule shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

c) In vacating the award on grounds other than stated in clause (5) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Rule 103, or if the award is vacated on grounds set forth in clauses (3), and (4) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Rule 103. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

RULE 113 MODIFICATION OR CORRECTION OF AWARD

a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

RULE 114

JUDGMENT OR DECREE ON AWARD

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

RULE 115 JUDGMENT ROLL, DOCKETING

a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) The agreement and each written extension of the time within which to make the award;
- (2) The award;
- (3) A copy of the order confirming, modifying or correcting the award; and,
- (4) A copy of the judgment or decree.

b) The judgment or decree may be docketed as if rendered in an action.

RULE 116 APPLICATIONS TO COURT

Except as otherwise provided, an application to the court under these rules shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

RULE 117 COURT

The term "court" means any court of competent jurisdiction of this State.

RULE 118 VENUE

An initial application shall be made to the court of the [county] in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held.

Otherwise the application shall be made in the [county] where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any [county]. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

RULE 119
APPEALS

- a) An appeal may be taken from:
- (1) An order confirming or denying confirmation of an award;
 - (2) An order modifying or correcting an award;
 - (3) An order vacating an award without directing a rehearing; or
 - (4) A judgment or decree entered pursuant to the provisions of these rules.
- b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

RULE 120
RULES NOT RETROACTIVE

These rules apply only to agreements made subsequent to the taking effect of these rules.

RULE 121
UNIFORMITY OF INTERPRETATION

These rules shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

RULE 122.
CONSTITUTIONALITY

If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given without the invalid provision or application, and to this end the provisions of these rules are severable.

RULE 123
SHORT TITLE

These rules may be cited as the Mississippi Rules of Arbitration Procedure.

