

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

Section 902 of title IX of Pub. L. 100-702 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

Section 903 of Pub. L. 100-702 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

Section 904 of title IX of Pub. L. 100-702 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.”

Section 905 of Pub. L. 100-702, 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 alternative 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.)

AMENDMENTS

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

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 serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).

(Added Pub. L. 100-702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4660; amended Pub. L. 105-315, §5, Oct. 30, 1998, 112 Stat. 2995.)

AMENDMENTS

1998—Pub. L. 105-315 amended section generally, substituting provisions relating to neutrals in alternative dispute resolution process for provisions relating to powers of arbitrator and arbitration hearing.

§ 654. Arbitration

(a) **REFERRAL OF ACTIONS TO ARBITRATION.**—Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where—

- (1) the action is based on an alleged violation of a right secured by the Constitution of the United States;
- (2) jurisdiction is based in whole or in part on section 1343 of this title; or
- (3) the relief sought consists of money damages in an amount greater than \$150,000.

(b) **SAFEGUARDS IN CONSENT CASES.**—Until such time as rules are adopted under chapter 131 of

this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

- (1) consent to arbitration is freely and knowingly obtained; and
- (2) no party or attorney is prejudiced for refusing to participate in arbitration.

(c) **PRESUMPTIONS.**—For purposes of subsection (a)(3), a district court may presume damages are not in excess of \$150,000 unless counsel certifies that damages exceed such amount.

(d) **EXISTING PROGRAMS.**—Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section¹ title IX of the Judicial Improvements and Access to Justice Act (Public Law 100-702), as amended by section 1 of Public Law 105-53.

(Added Pub. L. 100-702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4660; amended Pub. L. 105-315, §6, Oct. 30, 1998, 112 Stat. 2995.)

REFERENCES IN TEXT

Title IX of the Judicial Improvements and Access to Justice Act (Public Law 100-702), as amended by section 1 of Public Law 105-53, referred to in subsec. (d), is title IX of Pub. L. 100-702, Nov. 19, 1988, 102 Stat. 4659, which enacted this chapter and provisions set out as notes under sections 651 and 652 of this title. Section 1 of Pub. L. 105-53, Oct. 6, 1997, 111 Stat. 1173, amended section 905 of title IX of Pub. L. 100-702, which is set out as a note under section 651 of this title.

AMENDMENTS

1998—Pub. L. 105-315 amended section generally, substituting provisions relating to arbitration for provisions relating to arbitration award and judgment.

§ 655. Arbitrators

(a) **POWERS OF ARBITRATORS.**—An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration—

- (1) to conduct arbitration hearings;
- (2) to administer oaths and affirmations; and
- (3) to make awards.

(b) **STANDARDS FOR CERTIFICATION.**—Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

- (1) shall take the oath or affirmation described in section 453; and
- (2) shall be subject to the disqualification rules under section 455.

(c) **IMMUNITY.**—All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(Added Pub. L. 100-702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4661; amended Pub. L. 105-315, §7, Oct. 30, 1998, 112 Stat. 2996.)

¹So in original. The word "section" probably should not appear.