

7 GCA CIVIL PROCEDURE
CH. 42B COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 42B

**ARTICLE 1
COURT-REFERRED ARBITRATION
AND ALTERNATIVE DISPUTE RESOLUTION**

SOURCE: P.L. 27-081:4 (Apr. 30, 2004) added Chapter 42-B, (§§ 42901 - 42908). Codified by the Compiler as Chapter 42B (§§ 42B101 - 42B108).

NOTE: Pursuant to the authority granted by § 1606, references were altered to reflect the existing codification structure.

- § 42B101. Actions in the Superior Court.
- § 42B102. Funding of Court-Referred Arbitration or Other Alternative Dispute Resolution Programs.
- § 42B103. Finality of Award; *De Novo* Trial; Request.
- § 42B104. Judgment on Trial *De Novo* Equal to or Less Favorable than Arbitration Award for Party Electing; Payment of Nonrefundable Costs and Fee.
- § 42B105. Award; Writing, Signature and Filing; Entry in Judgment Book; Force and Effect.
- § 42B106. Reference to Arbitration Proceedings or Award During Trial; Grounds for New Trial.
- § 42B107. Application of Chapter to Actions with Public Agency or Entity as Party.
- § 42B108. Administrative Costs; Compensation of Arbitrators; Payment.

§ 42B101. Actions in the Superior Court.

(a) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for arbitration for such civil actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam finds appropriate in order to encourage the prompt and equitable resolution of disputes.

(b) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for alternative dispute resolution for any civil, probate or domestic actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam deems appropriate in order to encourage the prompt and equitable resolution of disputes.

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(c) Upon stipulation of the parties, any action, except custody cases in which the authority is separately provided for, may be submitted to an alternative method of resolving disputes established by rules and procedures to be promulgated by the Supreme Court of Guam, including, without limitation, binding arbitration, a settlement conference, mediation, early neutral evaluation, case evaluation, expert fact finding or a binding short trial or any combination of these processes, which method may result in a binding disposition of the action.

(d) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court of Guam and the Supreme Court of Guam shall further establish standards, compensation and certification for all personnel conducting alternative dispute resolution programs in the courts of Guam.

(e) The rules and regulations promulgated by the Supreme Court of Guam pursuant to this Section shall be submitted to *I Liheslaturan Guåhan* for approval. Said rules and regulations shall be deemed approved unless otherwise acted upon by *I Liheslaturan Guåhan* within ninety (90) days plus one (1) Legislative Day of receipt.

(f) Any arbitration conducted pursuant to § 42B101(a) shall be defined as a court-referred arbitration.

§ 42B102. Funding of Court-Referred Arbitration or Other Alternative Dispute Resolution Programs.

Court-referred arbitration and other alternative dispute resolution programs should be accessible to all parties regardless of financial status and the Judicial Council may adopt and levy fees to implement provisions of this Chapter 42B.

§ 42B103. Finality of Award; *De Novo* Trial; Request.

(a) An arbitral award resulting from a Court-referred arbitration shall be final unless a request for a *de novo* trial is filed within thirty days after the date the arbitrator files the award with the court.

(b) Any party may elect to have a *de novo* trial, by court or jury, as the law permits both as to law and facts. Such trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.

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(c) If a party attempts to withdraw a request for a *de novo* trial, after the expiration of the thirty day period referred to in Subsection (a) of this Section, such an attempted withdrawal shall not be valid, unless all parties stipulate in writing to agree to such a withdrawal.

§ 42B104. Judgment on Trial *De Novo* Equal to or Less Favorable than Arbitration Award for Party Electing; Payment of Nonrefundable Costs and Fee.

(a) If the judgment upon the trial *de novo* is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial *de novo* than the court-referred arbitration award, the court shall order that party to pay the following nonrefundable costs and fees incurred in the trial *de novo*, unless the court finds, in writing and upon motion, that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(1) To the Superior Court, the costs of the arbitration, less any amount paid pursuant to paragraph (4);

(2) To the other party or parties, all costs including legal fees and expenses, and the party electing the trial *de novo* shall not recover his or her costs including legal fees and expenses;

(3) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case; and

(4) To the other party or parties, the costs of the arbitration paid by the other party or parties, pursuant to Subsection (b) of Section 42B108. Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial *de novo*.

(b) If the party electing the trial *de novo* has proceeded in the action *in forma pauperis* and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (2) and (3) of Subsection (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial *de novo* has proceeded in the action *in forma pauperis* and has failed to obtain a more favorable judgment, the costs under paragraph (1) of Subsection (a) shall be imposed only to the extent

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that there remains a sufficient amount in the judgment after the amount offset under Subsection (b) has been deducted from the judgment.

§ 42B105. Award; Writing, Signature and Filing; Entry in Judgment Book; Force and Effect.

All arbitration awards resulting from court-referred arbitration shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. Such an award shall conform with the requirements of Section 42A604 of this Chapter 42A. If there is no request for a *de novo* trial and the award is not vacated, the court-referred arbitration award shall be entered as a judgment of the court in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided by Section 42A701 of this Chapter 42A or Guam Rule of Civil Procedure 60.

§ 42B106. Reference to Arbitration Proceedings or Award During Trial; Grounds for New Trial.

Any reference to the court-referred arbitration proceedings or court-referred arbitration award during any subsequent trial shall constitute grounds for a new trial and/or amendment of judgment for the purposes of Guam Rule of Civil Procedure 59.

§ 42B107. Application of Chapter to Actions with Public Agency or Entity as Party.

This Article shall apply to any civil action otherwise within the scope of this Chapter 42B in which a party to the action is a public agency or public entity but shall not waive the limits on liability of a public agency or public entity otherwise provided by law.

§ 42B108. Administrative Costs; Compensation of Arbitrators; Payment.

(a) All costs of court-referred arbitrations conducted pursuant to Section 42B101(a), including the compensation of arbitrators, shall be paid for in equal shares by the parties, unless the Superior Court of Guam determines that the imposition of these costs would create such a substantial economic hardship for any party as not to be in the interest of justice. The determination as to substantial economic hardship may be reviewed by the court.

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(b) All costs of court-referred arbitrations conducted pursuant Section 42B101(c), including the compensation of the arbitrators, shall be paid for in equal shares by the parties.
