

Senate Bill No. 475

Passed the Senate September 12, 2001

Secretary of the Senate

Passed the Assembly September 5, 2001

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 639, 1281.6, 1281.9, and 1286.2 of, and to add Sections 640.5, 1281.85, and 1281.91 to, the Code of Civil Procedure, relating to dispute resolution.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, Escutia. Dispute resolution: referees and arbitrators.

Existing law provides that when the parties to an action do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in certain cases.

This bill would specifically provide that the appointment shall be subject to the procedures specified in a provision of existing law.

Existing law requires the Judicial Council to collect specified information on the use of references in certain cases in which the parties do not consent to the appointment of a referee and to make a specified report thereof to the Legislature by January 1, 2003.

This bill would also require the Judicial Council to collect specified information from the trial courts on the use of referees in discovery matters whether appointed upon agreement of the parties or when the parties do not consent. Further, this bill would extend the period to collect information and would require the Judicial Council to report thereon to the Legislature by July 1, 2003.

Existing law establishes standards for arbitration.

This bill would require arbitrators to comply with ethical standards adopted by the Judicial Council beginning July 1, 2002. This bill would also require the Judicial Council, consistent with the standards established for arbitrators in the judicial arbitration program, to adopt ethics standards that address the disclosure of conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, the acceptance of gifts, and the establishment of future professional relationships. The bill would also specify the grounds upon which a proposed neutral arbitrator may be disqualified and the procedure to do so including the form of the petition to disqualify.



Existing law requires the court to vacate an arbitration award if the arbitrator, upon receipt of a timely demand, fails to disqualify himself or herself from the proceedings.

This bill would also require the courts to dismiss an arbitration award if the arbitrator failed to disclose, within the time required for disclosure, grounds for disqualification of which the arbitrator was then aware.

This bill would also make a declaration of legislative intent regarding the grounds for vacating arbitration awards.

The people of the State of California do enact as follows:

SECTION 1. Section 639 of the Code of Civil Procedure is amended to read:

639. (a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

(b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made



within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.

(B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

(1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

(3) The subject matter or matters included in the reference.

(4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability



to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

SEC. 2. Section 640.5 is added to the Code of Civil Procedure, to read:

640.5. It is the intent of the Legislature that the practice and cost of referring discovery disputes to outside referees be thoroughly reviewed. Therefore, in addition to the requirements of subdivision (e) of Section 639, the Judicial Council shall collect information from the trial courts on the use of referees in discovery matters pursuant to either Sections 638 and 639. The collected data shall include information on the number of referees, the cost to the parties, and the time spent by the discovery referee. The Judicial Council shall report thereon to the Legislature by July 1, 2003.

SEC. 3. Section 1281.6 of the Code of Civil Procedure is amended to read:

1281.6. If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed. If the arbitration agreement does not provide a method for appointing an arbitrator, the parties to the agreement who seek arbitration and against whom arbitration is sought may agree on a method of appointing an arbitrator and that method shall be followed. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his or her successor has not been appointed, the court, on petition of a party to the arbitration agreement, shall appoint the arbitrator.

When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of



persons supplied jointly by the parties to the arbitration or obtained from a governmental agency concerned with arbitration or private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may within five days of receipt of notice of the nominees from the court jointly select the arbitrator whether or not the arbitrator is among the nominees. If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

SEC. 4. Section 1281.85 is added to the Code of Civil Procedure, to read:

1281.85. Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. The Judicial Council shall adopt ethical standards for all neutral arbitrators effective July 1, 2002. These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter. The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

SEC. 5. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral



arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.



(e) For purposes of this section, “any arbitration” does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SEC. 6. Section 1281.91 is added to the Code of Civil Procedure, to read:

1281.91. (a) A proposed neutral arbitrator shall be disqualified if he or she fails to comply with Section 1281.9 and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with Section 1281.9.

(b) (1) If the proposed neutral arbitrator complies with Section 1281.9, the proposed neutral arbitrator shall be disqualified on the basis of the disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after service of the disclosure statement.

(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any single arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

(c) The right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure. Except as provided in subdivision (d), in no event may a notice of disqualification be given after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter. Nothing in this subdivision shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

(d) If any ground specified in Section 170.1 exists, a neutral arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the arbitration proceeding. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or their respective representatives.

SEC. 7. Section 1286.2 of the Code of Civil Procedure is amended to read:



1286.2. (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(1) The award was procured by corruption, fraud or other undue means.

(2) There was corruption in any of the arbitrators.

(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

SEC. 8. It is the intent of the Legislature that the grounds for vacatur added by subparagraph (A) paragraph (6) of subdivision (a) of Section 1286.2, is declarative of existing case law which provides that an arbitration award may be vacated when a neutral arbitrator fails to disclose a matter that might cause a reasonable person to question the ability of the arbitrator to conduct the arbitration proceeding impartially.



Approved _____, 2001

Governor

